

AGENDA REQUEST

FOR: COUNCIL MEETING OF DECEMBER 18, 2011

FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

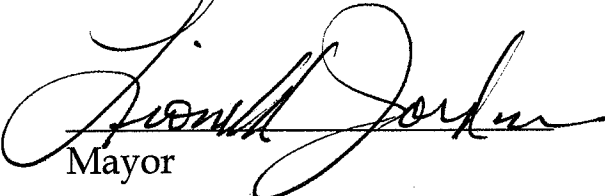
A Resolution To Amend D. Procedures And Parliamentary Rules Subsection 4. Reconsideration Of The City Council Rules Of Order And Procedure To Clarify That Only A Council Member Who Voted On The Prevailing Side Can Move To Reconsider A Motion

APPROVED FOR AGENDA:



City Attorney

Nov 28, 2012
Date



Mayor

11/29/12
Date

11-23-12 A10:15 RCVD

Kim Q.



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

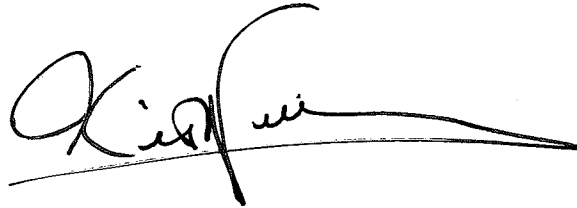
TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

DATE: November 21, 2012

RE: Rule D. 4 Reconsideration



There was some question after the November 20th City Council meeting about who was the proper person to move to reconsider the vote in which the budget resolution failed to get five affirmative votes and thus failed (even though it receive four “yes” votes to three “no” votes). Alderman Ferrell voted with the prevailing side when he voted “no”. Therefore it was proper for him to move to reconsider the Resolution.

In my memo to you of September 17, 2009, (attached), I quoted Robert’s Rules of Order while discussing when an alderman could move to reconsider. It is clear that the alderman must have “voted with the prevailing side.” Below are the sections I quoted from Robert’s Rules of Order.

“The Motion to Reconsider a vote must be made by a member who voted with the prevailing side (whether it was for or against), unless the vote was by ballot, in which case votes are secret.”
(page 133)

In another section, Robert’s Rules of Order discusses Motion to Reconsider.

“There’s only one way to consider a question a second time during the same session after it already has been adopted, rejected, or suppressed: You move to Reconsider the vote on the question. However, to make the motion, you must have voted on the prevailing side (either for or against) when the question was first considered.” (page 221)

Although I believe it was clearly correct for Alderman Ferrell to move to reconsider the Resolution after it failed, I think our Rule 4 **Reconsideration** should be more clear. Thus, I am proposing to amend it to replace “majority” with “prevailing side.”

The reason for such a restriction on who can move to reconsider an ordinance or resolution is to prevent someone on the losing side from vainly bringing up an issue already decided. If none on the prevailing side wants to reconsider an issue, that issue will almost certainly be decided the same if it was reconsidered. Only if a member of the prevailing side is willing to reconsider his or her vote by moving to reconsider will there be a reasonable chance that the vote will be different and the previous decision reversed.

To ensure there is no confusion about who is authorized to bring up a motion to reconsider, please amend your rule as I have suggested.

RESOLUTION NO. _____

A RESOLUTION TO AMEND D. PROCEDURES AND PARLIAMENTARY RULES SUBSECTION 4. RECONSIDERATION OF THE CITY COUNCIL RULES OF ORDER AND PROCEDURE TO CLARIFY THAT ONLY A COUNCIL MEMBER WHO VOTED ON THE PREVAILING SIDE CAN MOVE TO RECONSIDER A MOTION

WHEREAS, through a memo of September 17, 2009, the City Attorney quoted Roberts Rules of Order: “The Motion to Reconsider a vote must be made by a member who voted with the prevailing side (whether it was for or against)”; and

WHEREAS, the current rule’s use of “majority” was intended to mean the “prevailing side”, but could be confusing since ordinances and resolutions must have five affirmative votes to pass so that an ordinance or resolution would fail even if it received more “yes” votes than “no” votes if it failed to receive five affirmative votes; and

WHEREAS, to remove any possible confusion, “majority” should be changed to “prevailing side.”

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends **D. Procedures and Parliamentary Rules** Subsection 4. **Reconsideration** of the **City Council Rules of Order and Procedure** by replacing “majority” with “prevailing side” so that subsection 4. **Reconsideration** shall be as follows:

“After the decision of any question, any member of the prevailing side may move to reconsider any action at the same or next succeeding meeting; provided, however, that a resolution authorizing or relating to a contract may be reconsidered at any time before final execution thereof.” (emphasis added.)

PASSED and APPROVED this 18th day of December, 2012.

APPROVED:

ATTEST:

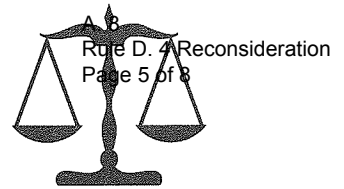
By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council
Sondra Smith, City Clerk

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read "Kit Williams", written over a horizontal line.

DATE: **September 17, 2009**

RE: **Motion To Reconsider**

I have been asked whether an alderman who did not vote could move to reconsider an item that failed. As you know, an ordinance or resolution requires five affirmative votes to pass regardless of the number of aldermen present. The Mayor can only vote yes if the mayor's vote is needed to pass the ordinance, resolution or motion.

Your **Rules of Order and Procedure** is your primary guide for parliamentary procedure. If your rules are not clear or do not cover a parliamentary issue, you refer first to the Arkansas Municipal League's "Procedural Rules of Arkansas Officials." If this does not clarify the issue, your Rules state that you will apply Robert's Rules of Order (See Rule D.2 of the Rules of Order and Procedure of the Fayetteville City Council.)

Your Rules specifically cover a Motion To Reconsider in Rule D.4.

"After the decision of any question, **any member of the majority** may request reconsideration of any action at the same or next succeeding meeting; provided, however, that a resolution authorizing or relating to a contract may be reconsidered at any time before final execution thereof."
(emphasis added.)

This language “member of the majority” would appear to exclude a non-voting member, whether absent or non-voting for any other reason. The Municipal League’s “Procedural Rules For Municipal Officials” provides no further guidance. Robert’s Rules of Order states:

“The Motion to Reconsider a vote must be made by a member who **voted** with the prevailing side (whether it was for or against), unless the vote was by ballot, in which case votes are secret.” (page 133) (emphasis added).

In another section, Robert’s Rules of Order discusses Motion to Reconsider.

“There’s only one way to consider a question a second time during the same session after it already has been adopted, rejected, or suppressed: You move to Reconsider the vote on the question. However, **to make the motion, you must have voted** on the prevailing side (either for or against) when the question was first considered. (page 221) (emphasis added)

Therefore, both your own adopted **Rules of Order and Procedure** and Robert’s Rules of Order indicate that **only an alderman who voted on the prevailing side can move to reconsider** an ordinance, resolution, or motion that passed or failed. Any alderman can second such Motion to Reconsider regardless of how such person originally voted or even if such alderman did not vote.

one nominee for a position. A majority vote of the City Council shall be required for election. In the absence of the Mayor, the Vice Mayor shall preside at the City Council meeting.

3. **Privileges of the Vice Mayor**

The Vice Mayor acting as the Mayor may move, second and debate from the chair and shall not be deprived of the rights and privileges of being a member of the City Council by reason of her or his acting as the Vice Mayor.

D. **PROCEDURES AND PARLIAMENTARY RULES**

1. **Agenda**

The City Council's agenda order shall be coordinated by the Mayor. All items for discussion or action at the regular council meeting shall be included in a Tentative Agenda provided to Aldermen prior to an Agenda Session where the Aldermen shall determine the final arrangement of the Agenda. Any item the Mayor or an Alderman wishes to include on the Final Agenda that was not included on the Tentative Agenda may only be added to the Final Agenda during the Agenda Session. At the regular meeting of the City Council, the Council, by majority vote, may rearrange the order of the Agenda. An item may be added to the Agenda at the City Council meeting only by a Motion to Suspend the Rules.

2. **Precedence of Motions**

The City Council shall follow the precedence and classification of motions as given in the most recent edition of the Arkansas Municipal League's 'Procedural Rules for Arkansas Municipal Officials.' In the event a matter is not covered by the 'Procedural Rules for Arkansas Municipal Officials,' the most recent edition of *Robert's Rules of Order* shall apply. On questions of appeal, a majority of those present is required to overturn a ruling by the chair."

3. **Motions to be Stated by the Chair/Withdrawal**

When a motion is made and seconded; it shall be stated by the Mayor before debate. After being stated by the Mayor, a motion may not be withdrawn by the mover without the consent of the member seconding it and approval of the City Council.

4. **Reconsideration**

After the decision of any question, any member of the majority may request a reconsideration of any action at the same or the next succeeding meeting; provided, however, that a resolution authorizing or relating to any contract may be reconsidered at any time before final execution thereof. A motion to reconsider requires a simple majority for passage. After a motion for reconsideration has once been acted on, no other motion for reconsideration thereof shall be made without unanimous consent.

Current rule ↑

