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CALL TO ORDER

[Time: 00:00:01]

Mayor Ortega: I call the November 9th, 2021, city council regular meeting to order. City clerk, Ben Lane, please call the roll.

ROLL CALL

[Time: 00:00:13]

Clerk Lane: Thank you, Mayor. Mayor David Ortega.

Mayor Ortega: Present.

Clerk Ben Lane: Vice Mayor Tammy Caputi.

Vice Mayor Caputi: Here.

Clerk Ben Lane: Councilmembers Tom Durham.

Councilmember Durham: Here.

Clerk Ben Lane: Betty Janik.

Councilmember Janik: Here.

Clerk Ben Lane: Kathy Littlefield.

Councilmember Littlefield: Here.

Clerk Ben Lane: Linda Milhaven.

Councilmember Milhaven: Here.

Clerk Ben Lane: Solange Whitehead.

Councilmember Whitehead: Here.

Clerk Ben Lane: City Manager Jim Thompson.

Jim Thompson: Here.

Clerk Ben Lane: City Attorney Sherry Scott.

Sherry Scott: Here.

Clerk Ben Lane: City Treasurer Sonia Andrews.

Sonia Andrews: Here.

Clerk Ben Lane: City Auditor Sharron Walker.

Sharron Walker: Here.

Clerk Ben Lane: And the Clerk is Present.

Mayor Ortega: Excellent. We have Dustin Wells and firefighter Anthony Portillo, if anyone requires their assistance. Well, on November 2nd, voters of Scottsdale ratified a new general plan. City council, staff, and the public worked very hard to ensure that this plan was written by all stakeholders and reflected everyone's commission for Scottsdale moving forward. Thank you all for doing your research and voting for the future of Scottsdale.

Now, this Saturday, November 13th, the McDowell Sonoran Preserve will celebrate the unveiling of the Pima-Dynamite trailhead and Art DeCaboater Amphitheater. That will be at 9:00 in the morning on November 13th. I'm proud we are honoring Art DeCaboater. I hope everyone has a

chance to visit the Pima-Dynamite trailhead and the amphitheater. This Thursday, November 11th, is Scottsdale's veteran's day commemoration. It will be held at the McCormick stillman railroad park, at 3 p.m. This event is free to the public, and is great -- is a great opportunity to show our appreciation and respect for those who served our great nation. We will have a complete compliment presentation and I hope to see a lot of families and friends there.

PUBLIC COMMENT

[Time: 00:02:58]

Mayor Ortega: At this point, I will open public comment. Public comment is reserved for Scottsdale's citizens to comment on non-agendized items that are within the council's jurisdiction. No official council action can be taken on these items, and speakers are limited to three minutes.

My record shows that there are no requests to speak at this time for the public comment. So accordingly, I will close public comment.

MINUTES

[Time: 00:03:40]

Mayor Ortega: Next, we will have the approval the minutes and I will request a motion to approve the regular meeting minutes of October 5th, 2021, work study session minutes of October 5th, 2021, special meeting minutes of October 12th, 2021, and work study session minutes of October 12th, 2021. Are there any corrections? If not, I will receive the motion and the second.

Councilmember Durham: So moved.

Councilmember Littlefield: Second.

Mayor Ortega: Thank you. I see a motion by Councilmember Janik and a second by Durham. Please register your vote. Thank you. Unanimous.

CONSENT AGENDA

[Time: 00:04:34]

Mayor Ortega: Our next item are the consent agenda items, 1 through 16. We are open to have public comment on any of these consent items, and at this point, I see none requested. Also, if anyone has any comment for any reason, would like anything pulled to a regular agenda, that could be done at the council level. So at this point, I see no comment on the consent agenda

items. And those are 1 through 16. Therefore, I will close the public comment and ask for a motion and a second on consent agenda items.

Councilmember Janik: I make a motion to receive the consent agenda items 1 through 16.

Councilmember Whitehead: I will second that.

Mayor Ortega: I see a motion and a second. Any discussion? See none, please register your vote. Thank you. That appears unanimous.

Next, we will move to item number 17, which apparently there is none. I'm sorry, 17 is the citizen petition. Citizen petitions is an opportunity under our charter for people to come forward with any petition request. Have there been any received? Nope.

ITEM 18 – DEVELOPMENT REVIEW BOARD MEMBERSHIP

[Time: 00:06:32]

Mayor Ortega: So there were none received, and we will move on, therefore, to mayor and council items 18 and 19. And the subject on number 18, development review board membership. I see Vice Mayor Caputi has her hand up.

Vice Mayor Caputi: I would like to speak to this item, item 18.

Mayor Ortega: Thank you. See that coming up. Since I will open the topic and the discussion on the question that has been posted. As you know, there are four duties involved in the boards and commission.

The first duty, of course, rests with the council itself. So we have the duty of appointing commissioners and boards as you heard earlier today to do their job according to the commission of the respective boards and commissions. That's the primary duty.

The second duty of -- rests with commissioners themselves and board members and that is that they should do their job in terms of mission and so forth of the listed boards and commissions. When commissioners are onboarded. They agree to abide by the questions of conflict of interest, tardiness, avoiding that and there is a requirement to submit recusals and also specific performance on absences.

The third duty that's listed in our rules is the duty of the chair or the staff liaison to report absences to the mayor. So that duty is very clear and when -- as mayor, I receive that notice at my desk, then I have a standard procedure, which is to address the report and which I typically do by a very standard method.

In this case, we're bringing forth the question of a Mr. Fakhri's attendance and absences for the

development review board. On all other occasions, I use the same process, whether there be any board, whatsoever. My standard process that when I received that notice, from the commissioner chair or the liaison staff, I immediately have staff email that commissioner or board member.

That email states the out of compliance absences or whatever issues that may have come, that would breach the terms of service which are observed by all board and commission members. In my standard letter, I do offer the opportunity to resign and in this case, I asked for a response within five days. I did not receive that response until nine days.

[Time: 00:10:30]

And in the interim, I did make a call to Mr. Fakh, and reiterating the letter. On the 29th of October -- hmm, maybe September, I was told he would not resign and at that point, we are here today because when I get a request to a commissioner chair, and it comes to my table, one thing I will not do is I will not put it in any drawer. I will not put in the bottom drawer.

It's my duty to act on it, in an informed and polite manner which I have done, and also I cannot cut a special deal or talk about additional absences with any board or commissioner that exceeds three absences in a row, as specified or four absences in six months. None of us up here unilaterally can offer any other extensions of absences or imply that in any discussion.

Now, in this case, Mr. Fakh decided that he would choose not to resign, although he did exceed the acceptable number of violations. Excuse me, absences. And the one thing that I will not do for any -- in any case, I will not lower the bar. I will not -- the standard of three in a row and four out of six in six months, excuse me, is not something that I feel is something to be toyed with. So, at this point, I have outlined the reason why, of course, the body which appoints members is the body that will remove a potential member, or act upon this with the full information, with full transparency. So that's the reason for our situation today.

Accordingly, I will move to -- to remove Mr. Fakh for excessive absences, which are in line with all the other requirements of all other board members. And that by my motion, that would open the discussion. I do not hear a second for a motion that I made. Accordingly, I don't hear a second for that, okay? Well then, I will -- there's no motion and there's no second for that. So in that case, is there any other motion of any sort before we move on to the next item?

Vice Mayor Caputi: Chair, I mean, I would like to speak, but I would also like to make a different motion.

Mayor Ortega: That's what I mean, to make a different motion.

Vice Mayor Caputi: Sure. I will say a few words if I could or I can motion first.

Mayor Ortega: Why don't you make the motion first.

Vice Mayor Caputi: I want to make the motion to continue the membership of Ali Fakh on the development review board. The community would not be better served by the loss of this valuable volunteer member who is neither unwilling nor unable to serve but has simply had a few unexpected life events that arose. May I say a few other words or do we want to take a vote first.

Mayor Ortega: You said to continue the -- would you repeat that again?

Vice Mayor Caputi: The motion?

Mayor Ortega: Yes, please.

Vice Mayor Caputi: I want to make a motion to continue the membership of Ali Fakh on the development review board.

Councilmember Littlefield: Second.

Councilmember Milhaven: Second.

Mayor Ortega: We have a motion and a second. Now we can have discussion.

[Time: 00:15:28]

Vice Mayor Caputi: Mr. Fakh has devoted his time and expertise to our city for over 11 years. He has two master's degree and Ph.D. in civil engineering. He volunteered his free expert advice while raising a family and running a business here in our city, and we should be grateful for his service to our community. Thank you, Ali. Our boards and commissions are great and important process of community involvement and input as we have just seen today.

An email was sent to Mr. Fakh from the mayor's office demanding that he resign from the D.R.B. immediately or appear before council for a public discussion of his removal, which we are doing today, unfortunately.

Our valued board and commission members who are residents of our community should be treated as we treat anyone who interacts with this golden rule city, with respect, dignity and compassion. We should be alerting a board member that there's an issue and asking if everything is okay, not simply demanding a resignation.

Board and commission members are appointed by and serve at the pleasure of this entire council. One of us should not have the sole discretion to terminate a member. The rules of procedure say after a number of absences consideration of removal may be scheduled for council action. This is being interpreted as a mandate to remove a member without consulting the rest of this council. This process needs to be clarified and amended immediately and we will

be addressing that in our next agenda item.

We have never handled an absence of a volunteer in this way, in the last 20 years. This is not how professional organizations are run and certainly not how Scottsdale has been run. Repeat, these are volunteers. Who would want to serve if this is how we are going to treat them?

And so I will go back and make my motion again to continue the membership of Ali on the development review board. Thank you.

Mayor Ortega: So we have a motion. We have a second. Let's see if anyone -- let's see Councilmember Milhaven and then Littlefield.

Councilmember Milhaven: I would like to make a motion to call the question according to our rules of procedure, motion to call the economy does not require a -- the question, does not require. We immediately vote if the majority of council votes yes, then we would immediately end all -- any additional discussion, and move immediately to vote on the motion at the table. So I make a motion to call the question.

Vice Mayor Caputi: Second.

Mayor Ortega: We have a motion to call the question. Again, there's no need for a second and the discussion of any point is not going to be made for that reason. Let's call the question all in favor in say aye.

[Chorus of ayes]

Mayor Ortega: Actually, indicate your vote. Thank you. Okay. That passed. And now we have the vote for the motion itself. The motion passes, 6-1.

ITEM 19 – AMENDMENT TO COUNCIL RULES OF PROCEDURE AND BOARD AND COMMISSION MEMBER ORDINANCE

[Time: 00:18:53]

Mayor Ortega: Next, we will move on to the item number 19, pertaining to the rules, and changes as proposed, and I will call on the -- excuse me, there's still a few hands up. Ms. Littlefield, did you have something?

Councilmember Littlefield: I was just going to speak on the --

Mayor Ortega: Okay. Then we'll go to Ms. -- Vice Mayor Caputi, on item 19.

Vice Mayor Caputi: So this makes sense to be following that agenda item that we just had. As I said, boards and commission members are appointed by and serve at the pleasure of this entire

council. And one of us should not have sole discretion in deciding to take an action for removal of a member.

This is being interpreted as a mandate to remove members without consulting of the rest of the council this should be made by all of us not just one member of this council. In every other instance a council majority is required to put an item on the agenda under a mayor and council item.

This is a special carve out under the council code and it doesn't make sense to have this one off. All but one of the board and commission members that have been removed over the last year, either moved away from the city, or they decided when asked that they had too many outside commitments to continue serving that makes sense.

If we have a member who wants to serve, but life events intervened, this should prompt a conversation, not just a simple termination, or a challenge. We don't want to have volunteers step down just to avoid the embarrassment of having to come defend themselves in public. If an attendance issue arises, we need to take a look at the problem, not just rid ourselves of these valued members.

[Time: 00:20:56]

I think as the mayor mentioned, a staff liaison is now alerting the member when there's an issue, if it arises and that's great, but if the issue continues, the council as a whole needs to be alerted of the problem so we can all make a decision about whether it merits further action. So having said that, I would like to adopt resolution 12327 and ordinance 4526, both of which I'm happy to read, although I'm open to conversation from the rest of the council.

Councilmember Milhaven: Second.

Mayor Ortega: Okay. We have a motion and a second. And we have Councilman Littlefield and then myself and then Councilwoman Whitehead.

Councilmember Littlefield: Thank you, mayor. The changes that we made to the ordinance were not meant to be punitive to the members of our commissions and our boards. But are meant to enable the council to receive the full benefit of each appointed member's thoughts and discussions.

We cannot receive that if the members aren't there. However, life happens, and sometimes it is beyond our control. I believe that is where the council steps in to make the kinds of decisions that are before us tonight. I suggest the following addition to our ordinance, which is very much in line with Councilwoman Caputi's.

Once a board or commission member has missed two consecutive meetings being one less than the mandate, or three meetings within a six-month period, one less than the mandate, the

official staff liaison shall notify the commissioner or board member in writing of his or her attendance record and remind him or her of the terms of attendance in the ordinance.

Hopefully with this reminder, they will be able to remain in compliance. These people are busy people. Often, they work and they have jobs and they do a lot of other things besides volunteer on our boards and commissions. A little nudge, a little reminder is not a miss. A copy of each of such letter written by the liaison should also be forwarded to the mayor's chief of staff, so that the mayor and the council can be kept abreast of any possible upcoming concerns.

Ali Fakhri and I will just mention here because this is what brought all of this to a head, is a hard-working member of our DR board. I believe he studies each issue and gives his honest opinion for all of us, for our consideration. He and I often don't agree, especially on development issues.

However, I do not want the members of our boards and commissions to simply mimic back to me what they think I want to hear. I want an honest input that I can then evaluate and use when making a final decision on this dais. I believe we get that from Mr. Fakhri.

And at this time, I think that we should have that consideration on the changes for our ordinance, so that people can be made more aware and alert and we're not acting up here as parents, if you will. Thank you.

[Time: 00:24:17]

Mayor Ortega: Thank you. And I will respond to a couple comments here. There is not a mandate for removal of someone. The reason why Mr. Fakhri's situation was brought here was because there was not clarity about the attendance or failure of attendance and Mr. Fakhri and I had a direct talk.

I worked with him ten years ago when I was on DR board. I know Mr. Fakhri. We know each other. The question is whether or not there are -- there's an empty seat too many times on DR board. That standard was not set by myself. That standard has been in place for ten years and it had a purpose and it's observed -- it's observed by 120 board and commission members.

I speak again that as pointed out, for instance, in a couple cases, there was -- there were absenteeism, and the better was sent out, the outreach was done by the mayor's office, as specified, and we got no response from that person. I'm not naming who it is, or who they are. So in effect, I declared the post abandoned, okay? That's abandoned because there was really no response from someone. In other cases, there was an automatic -- you say abandonment, or vacancy when people moved away.

There again, those are things that are something that I have to keep track and someone has to keep track of in terms of performance. So there's no mandate that someone is ejected, that is not correct. There is a discussion that we had with Mr. Fakhri to clarify that and if there's a rule

change, there can be rule changes. However, for instance, in the case with Mr. Fakh, that motion was made to continue, but no clarification was made as far as whether he can have three more misses as you said. He will have notice if he misses two consecutive under the discussion. Nothing has been adopted yet. There has been no clarification on that. It was not conditional.

It was just you shall continue, and the only requirement is, again, he could miss four out of six, or three out of six, over six months, or three in a row, and receive a warning. So there again, that's a point of contention that as mayor, I cannot negotiate that. I heard the points of -- that he made, whether they are vacation, travel, work, personal. I have heard that from him as well as other people that have -- that I have had to contact as a courtesy.

The problem when you decide to pull or decide to ask the clerk to find out what the fact are, because that's what this ordinance is requesting, that the clerk then do -- be the investigator, that the clerk pull or contact seven of us. That's out of public view. That's not transparent. That's not -- as far as the members of the development review board, or another commission may be involved, if it doesn't come to a public discussion, because then it will lead to, let's just say a puzzlement, like, gee, how did that happen?

So and so was gone, whether it's Mr. -- I'm not saying anyone in particular now, but that leads the clerk then, the way it's written, for him or her to poll us and share information. So part of my question back to Vice Mayor, what kind of details do you expect the clerk to provide in polling and, you know, we would have to listen through that without an open -- open deliberation.

[Time: 00:28:46]

Vice Mayor Caputi: We don't have to get into the weeds.

Mayor Ortega: I thought the -- the question is: What kind of polling? Is that in here or not? What kind of information would you expect the clerk to provide us in that respect?

Vice Mayor Caputi: Again, this is very standard procedure for anything else that comes up this has already happened. This is the only carve out where the rest of us don't get called. So I would imagine that when the clerk calls us, he would say, we have missed -- so-and-so has missed so many meetings.

Would you like to hear it as a mayor and council item? And we would say yes or no, just like we do with every other -- it's come up. That's happened many times.

Mayor Ortega: Well, but we have specific performance. There's three missed and four out of six. It's already stated that way. So why would you not hear the case unless you had separate information that would not be in conference with everyone else? You would be deciding based on a conversation with an individual rather than finding out, you know, that's what the tricky part of this is. We would lose the transparency because someone would be deciding whether or

not based on a polling.

Vice Mayor Caputi: We can always put a mayor and council item, if there's something we didn't like or something that came up that we didn't agree with. Again, this is the only instance in which the council doesn't get to have a say about what goes on in the mayor and council items. I don't mean to get deep in the weeds tonight. I just want the council is involved in the conversation.

Mayor Ortega: That's why it comes forward.

Vice Mayor Caputi: Why is this different?

[Time: 00:30:43]

Mayor Ortega: You are saying someone could be polled and decide not to bring it up. And it's a clear discrepancy in attendance that's mandatory for 120 commissioners, but for some reason, it's not going to be decided as a group. I'm all for deciding it as a group. But the question is whether or not it would see the light of day, if someone said, oh, they may have their own opinion, or a sidebar.

Vice Mayor Caputi: This has never come up before. 20 years, this hasn't been an issue. I'm not sure why it's an issue now.

Mayor Ortega: It's an issue because I cannot just as I said, disregard it. That's my duty now in the same way, I can agree if everyone wants to know what the situation is. I don't know that that rule about notification is written in this ordinance as it is. But whether it is written or not, it still requires a full deliberation of an attendance matter that's specified in our -- in our -- in our practice.

And if you don't -- if you want to change the rule to four misses in a row, then let's -- then let's look at changing that. That's why this whole issue was going to come up on December 8th.

Vice Mayor Caputi: Exactly which is why we don't need to get deep in the weeds tonight. The change in the resolution and the adoption of the new ordinance simply is saying that the council needs to be aware. That's all we are asking for.

Mayor Ortega: Well, it also didn't -- doesn't it take about the polling or not?

Vice Mayor Caputi: Okay. I guess we --

Mayor Ortega: Because I remember your original motion was that --

Vice Mayor Caputi: Right, that we should be polled before it comes an item -- like we do with every other mayor and council item. This is how we do this.

Mayor Ortega: But then there is a possibility that it would not be discussed.

Vice Mayor Caputi: Correct. That's right. Just like tonight, it's a perfect example. We would have said that we don't think that we want to fire a valued volunteer. The council would have said, no, we don't think that that's something we should move forward with, and it wouldn't have been in public.

Mayor Ortega: Well, that's prejudicing the discussion by saying that you are deciding not to -- not to -- if you want, as you did, to recommend that he be retained -- continue, that's fine as well, but to say that you won't even hear it is not transparent to the public.

[Time: 00:33:27]

Vice Mayor Caputi: But we do that on every other time. I don't understand why is this different?

Mayor Ortega: Because there are specified -- excuse me, there are specified requirements that this person is not performing. That's why.

Vice Mayor Caputi: Well, then we will have a conversation about -- as Councilwoman Littlefield made in her motion, let's make it clearer that people get alerted before we just demand their resignation.

Mayor Ortega: I did not demand a resignation. I brought it forward that it be discussed.

Vice Mayor Caputi: We sign or come in public and defend your position.

Mayor Ortega: Just a second. Let's move on to -- excuse me. We will move on to -- Councilwoman Janik and Councilmember Durham and then Littlefield.

Councilmember Janik: I wasn't sure if someone else was ahead of me. Is Councilwoman Whitehead ahead of me in the order to speak?

Mayor Ortega: I show Councilmember Durham, Littlefield, council Whitehead now. Then you. I will go after Solange.

City Clerk Ben Lane: I'm sorry, Councilwoman Janik was at the top of the list.

Councilmember Janik: I have several comments to make on this issue. First of all, what we're doing tonight is proof that the system works. We are -- we asked someone to resign because there were problems with attendance and the mayor is directed to do that and he did. And then it comes to us to discuss and vote on, which we did.

So that part of it works quite well and I don't see why that needs to be changed. What I would

like to see changed is number one, what Councilwoman Littlefield said, and that before the member reaches the maximum number to request a recusal, that they be notified. And then I would like to add one other thing, which is somewhat in compliance with what council -- Vice Mayor Caputi wants.

I think that when a letter is sent out asking for resignation, that all -- everybody on city council needs to be cc'd on that so we all know what is occurring, as far as our boards and commissions go. Because I feel like to a certain extent I was blindsided with some of the changes that happened, and then when you were requested about it, you say, whoa -- questioned about it, you say, whoa, I didn't know that. That doesn't look like.

In general, I think the system we put in place, the ordinances and the directives, I think this evening is proof that it works. Thank you.

Mayor Ortega: Thank you. Councilmember Durham and then Councilwoman Littlefield.

Councilmember Durham: Thank you, mayor. This may be a question for the city attorney. But I don't understand the reason for the exception under 6.11.

I mean, I agree very much with the changes to -- and the ordinance 4526, that there be a notice given to all the members of the council, and it seems to me that if we add that Section 2-24-1h and a notice is given to all the members of the council, then under the normal provisions of 6.11, before the amendment, any one of us can ask that that be added as a mayor and council item, and it will be added if there's a vote of four of us.

[Time: 00:37:27]

So I don't understand the reason for the exception there, because it really -- it's just -- I think it just kind of restates the general rule that 4 or more members may have an item added to the council meeting agenda.

And with respect to the mayor's comments about whether an issue becomes public or not, I -- I think that this sort of takes care of itself, because if -- if four of us -- well, if less than four of us decide that this is an issue and that, you know, presumably because there might be good reasons for the absence, then it seems to me that it's really not a matter which requires public attention, because then that would indicate that the majority doesn't consider it to be a major issue.

City Attorney Sherry Scott: Mayor and Councilmember Durham, so there probably are a couple of different ways that the council could go about solving this issue. I wrote the ordinance and the rule change based on the council's motion at the prior meeting, and also just to try to bring more clarity to the rule.

Keep in mind that right now, there are two ways for council to put something on the agenda.

There's the mayor and the council item way, which requires only one member of council to state in a mayor and council item, that they want something on the next agenda, in which case the entire council would vote then to put it on the next agenda.

And then there's the polling method, and from this situation, of boards and commissions as was previously pointed out, there's an exception that the mayor can put an item on the agenda if this is an attendance issue with a board and commission member, but that ordinance did not have the clarity that you would strive for, and so in drafting the rule change that the council wanted to consider at this meeting, and the ordinance change, I think that clarity was at the top of my list.

Let's not have an issue about how this is to proceed. And if the intention of the council is to not have removal of a board and commission member on an agenda, unless four members of the council agree to that, for a public discussion, then why would the council want for that to be brought up in a mayor and council item by one member of council? And that's the reason I wrote it the way I did, with the exception. Does that answer your question?

[Time: 00:40:46]

So without that exception, and with only the ordinance change, Councilmember Durham, then it would require polling of four members to put it on an agenda. You are correct about that.

But one member of council would still be able to put it on as a mayor and council item, with the exception in the rule change, then it wouldn't be allowed to go on as a mayor and council item and it could only go on if four members of the council vote -- agreed to put it on in a poll. So it's -- it's the preference of this council how they would like to handle it, but that was my interpretation of the council's intention when you passed your previous motions.

Councilmember Durham: Okay. So you are saying that under 6.11, any one of us can add an item to the agenda, but it -- it takes four votes to agendaize it for a future meeting?

City Attorney Scott: No, I'm saying any single member of council could bring it up under mayor and council items and then you would have to vote to put it on a future agenda.

Councilmember Durham: Right.

City Attorney Scott: A two-step process. Or any member of council could ask for a poll and it would take four to agree to put it on an agenda.

Councilmember Durham: But either way, you've got to have -- but either way, you have to have four votes to put it on an agenda, but one of those is a poll without the council talking to one another.

Councilmember Durham: Right.

City Attorney Scott: Privately and one is public.

Councilmember Durham: Okay.

City Attorney Scott: And so that was just my interpretation of the motion that was made at the prior meeting, and how that would be best memorialized in a rule change or in an ordinance change, but certainly, that can be amended. It can't be amended with an intention. It has to be amended with specific language if we were to amend that tonight. But there is more than one way to handle it.

So if the council wanted any single councilmember to be able to add the removal of a board and commission member, as a mayor and council item, for the council to discuss in a public meeting, then all you would need to do is strike that exception from the resolution. In an amendment.

Councilmember Durham: Okay. Okay. I understand, I'm not sure I want that. I'm just thinking out loud. I think I would probably not want it agenda'd notice there was a vote of 4 or more.

City Attorney Scott: When you say a vote of 4 or more, are you talking about the poll? Because the poll is not a vote.

Councilmember Durham: Yes. Yes. I think -- if I had my preference, it's Councilwoman Caputi's motion originally, I think I would probably not put that on an agenda unless this was a poll of 4 or more.

[Time: 00:44:03]

City Attorney Scott: That's why we have the exception.

Councilmember Durham: Okay.

Mayor Ortega: I'm sorry. Were you concluded?

Councilmember Durham: Yes.

Mayor Ortega: Councilwoman Littlefield and then Councilwoman Whitehead.

Councilmember Littlefield: Thank you, mayor. Yes, I want to reiterate a little bit here, my goal in making these suggestions to change our ordinance was to not have some of this happen, to catch the problem before it became a problem.

And if we can notify our board members and our commissioners before they hit that line in the sand, if you will, then sometimes that will be enough to stop the problem because they will be brought into aware of it.

It's probably not something most of them think about a whole lot. Whether or not we have the liaison for each board and commission, draft a letter at that point, or whether we have the chief of staff draft the letter, it can be either way as long as they are notified before they hit that deadline.

I think that's the only fair thing to do for folks and I hope -- it's my goal to make this problem not happen as much, because people oh, yeah, I can't do that. So, you know, maybe I will go shopping another day, or I will take the kids to the park another day, the next day, whatever. And I think a copy that letter should be in the office of the chief of staff so that the council and the mayor have notification of it ahead of time also so it doesn't blindsides us up here on dais.

So that's the reasoning that I'm trying to say we should amend this ordinance a little bit to make it so that all of us are better informed and know what's going on before it kind of comes up to us.

And as I say, I don't think the changes that the council wanted to make on the ordinance are meant to be punitive. They are meant to enable us as a council to receive the best and most complete information from all of our appointed board members and commissioners that we can get before we make decisions on issues that come before us. I think that that's important.

But I don't want to be the teacher with the whip here, with the stick, because that's not the -- that's not the intention of this at all. So I just wanted to make that very clear. Thank you.

Mayor Ortega: Let's go to city attorney and then Councilwoman Whitehead.

City Attorney Scott: Mayor, my apologies, I turned my button on and I forgot to turn back off.

Mayor Ortega: Okay. Let me give a little filler here. The situation with item 18, and item 19, the specific case with Mr. Fakhri, as I said, was handled consistently with the knowledge and discussion that ensued in this discussion for 19, and it -- the option to resign, it was never a mandatory thing.

[Time: 00:47:24]

In the same way that the actions of person who may have been absent too many times precipitated the question to begin with. It's not a demand. It's not mandatory.

The question that is being pushed tonight, how can this be clarified better, and if so, is the. Going to be reduced or changed substantially beyond the three misses in a row and four out of six. If we don't have a conclusion of that discussion, such as you get two more misses or we just restart the clock again, if that question is not answered, then it leads to, in my opinion, more confusion for the 120 commissioners who will say, gee, I guess more misses are possible and who is really enforcing the whole thing?

So part of what Councilwoman Littlefield, we are more notifying. Every commissioner gets a digital copy, a week or ten days before they know where they are supposed to be on such-and-such a date. Every commissioner's minutes say you were absent or so-and-so was absent the previous two meetings. It's very clear, because the clerk's job is very clear. They record who is there.

So this is not a question of whether or not somebody is a valuable and so for the. This is a question of whether or not the panel is complete and this is why the subject will be revisited on some of the rules as scheduled on December 8th.

That's the way we're going to roll with this, and it's not -- I -- in no way do I have unilateral power that wouldn't be occurring as a full council. And that's why this also is come forward. Councilwoman Whitehead and then I need to clarify if there are some modifications on the published ordinance. Go ahead, Councilwoman Whitehead.

Councilmember Whitehead: I think we have added bureaucracy without clarity at the end of the day and I seconded the motion to get this on tonight's agenda, but we have a new mayor, and a new council relatively, and some very old rules with a lot of holes in them, a lot of uncertainties.

[Time: 00:50:28]

So I guess my preference would be to wait for the December 8th meeting. We need to clarify. We had questioned on another commissioner previously, so I think we need to clarify the rules and once those rules are clear and the notifications of our commissioners have been restated and we have consistent process that we all agree on, then we consider whether or not to add this bureaucracy. Should we all be notified?

I agree with Councilwoman Littlefield and I think council woman Janik said it, yes, we need to be in the loop, so we are not blindsided. But in the rules are clear and the rules are good, then I don't see a need -- I'm with Councilwoman Littlefield. I have a feeling, we will not be here again with this problem but we'll want to have a more efficient way of dealing with it, but I don't want to hodgepodge this process. I think I want to wait until 12/8. I'm not going to support this.

Mayor Ortega: Do I hear that as a motion to continue because I would second that motion to continue this and wrap it into the December 8th, when there are a host of other issues regarding membership. So I -- I second.

Is there any discussion about a continuance or do you -- would you -- I'm fine. I was the person who seconded this item to get on tonight's agenda, I think I'm comfortable saying this is getting a little more complicated and I think there's a lot of support, and I will continue this to 12/8.

Mayor Ortega: I have a motion and a second by myself. Any other discussion on -- to continue

this for more fact finding?

Councilmember Littlefield: Are we continuing item number 18 or 19?

Mayor Ortega: Just 19.

Councilmember Littlefield: Just 19. Okay.

Mayor Ortega: Okay, Vice Mayor Caputi and Councilwoman Milhaven.

Vice Mayor Caputi: I want to reiterate, I don't think this is making anything complicated at all. If everyone has read my motion, I'm simply asking that we all get notified, rather than a board and commission member that says Mayor Ortega asks that you resign, I would simply like, just like we do with every other mayor and council item, I would just have liked Ben to have called us.

This is something that came up, would you like to see it on the agenda. That's all. This is consistency. This is the only carve out we have on this one time. I'm not asking for details or how many misses. I'm asking it to be brought in line with every other item that we do. That's all. It's not bureaucracy. Less bureaucracy.

Mayor Ortega: Okay, Councilmember Milhaven and then Littlefield, Whitehead.

[Time: 00:53:43]

Councilmember Milhaven: So if I'm understanding, the mayor wants to reserve the right to threaten board and commission members between now and December with an email that says resign or risk public humiliation, which saddens me when I read the rules of procedure and the ordinances around boards and commissions, I had a lengthy conversation with the city attorney, where the procedures say may schedule for consideration, I interpreted that to mean poll the council to see if we want to talk about it in a public meeting.

The city attorney said, no, her interpretation was that that -- the mayor it sole discretion to put it on the agenda and our only resource on the council was to clarify the ordinance. And that's what I see here. I don't think we're over complicating anything. The only way any councilmember can put something on the agenda is if four of us agree to do that and that's simply what we are doing here.

If we need to make some other changes, that's fine. I think but by continuing this, we are endorsing the mayor threatening citizens who have dedicated their time and talent to this community. I take great offense that the email says you must resign or be brought up --

Councilmember Janik: I would like to call the question.

Mayor Ortega: Thank you. We have -- we will call the question. All in favor. There's no need for

discussion. That would end the -- no, call the question is to end the debate and not discuss whether --

Councilmember Milhaven: She's asking what is she calling?

Mayor Ortega: Call the question.

Councilmember Milhaven: On what? Can you restate the motion?

Mayor Ortega: The motion to continue.

Councilmember Milhaven: Thank you.

Mayor Ortega: The motion to continue because there's so many loose ends on this thing. And I believe you are mischaracterizing what was said. So we call the question. There's no discussion. All in favor of calling the question, which is meaning that we will have a vote on the continuance. Okay. The question is approved.

We will now vote on the motion to continue to December 8th, when the boards and the commission issues will be decided. You will now place your vote to continue this to the said date as scheduled. Five yeses, two no. And with that, we will move on to our next -- excuse me, our next discussion, is whether or not there are any mayor or council items. Are there any mayor and council items? Councilwoman Littlefield.

Councilmember Littlefield: Yes, I'm sorry, mayor. I'm confused. We voted to continue the discussion for the ordinance, and has 18 been voted on?

Mayor Ortega: Oh, yes. He's continuing on his -- he was.

Councilmember Littlefield: Okay. So that's done.

Mayor Ortega: Yes, correct. Okay. Seeing none of mayor and council items, I will next move to public comment which is the opportunity for someone to come forward. I see none. I hear none, therefore, I will close public comment.

ADJOURNMENT

[Time: 00:57:43]

Mayor Ortega: Well, we will move to study session next. So at this time, I will entertain a motion to adjourn. I hear one from Councilwoman Littlefield. Second, if you wish to adjourn, please register your vote. Thank you. Very well. We are adjourned and we will reconvene as a study session in ten minutes. Thank you.