



CITY OF RAPID CITY

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MEMORANDUM

TO: Patsy Horton

FROM: Carla Cushman, Assistant City Attorney

DATE: July 10, 2013

RE: RCMC 2.68.040 – attendance of HPC members at meetings

You asked me to look into the options for changing the attendance requirement of HPC members which currently renders a seat “vacant” if the member has missed three consecutive meetings. *RCMC 2.68.040*. Based on the following, it is my recommendation that (1) the ordinance be amended by the Common Council to remove the language concerning consecutive vacancies, and (2) that the bylaws be amended by the HPC to change the attendance standard to remove the reference to justifiable absences.

Current rules

The city ordinance concerning vacancies on the HPC includes the following language: “If a member of the Commission fails to attend 3 consecutive meetings, his or her seat on the Commission shall be termed vacant.” *RCMC 2.68.040*.

The HPC bylaws provide a different attendance standard. Article II Section 3 states that “[i]f any member is absent three consecutive regular meetings without justifiable cause as determined by the Historic Preservation Commission, such shall be reported to the Mayor.” This provision is different from the ordinance in three ways: (1) it states only “regular meetings” are to be considered in determining the three consecutive absences; (2) it would excuse an absence if the HPC determines it was with “justifiable cause”; and (3) the offending member is to be “reported to the Mayor” instead of his/her seat being rendered “vacant.”

If there is a conflict between the ordinance and the bylaws, the ordinance controls. In the case that both state law and city ordinances are silent on an issue, the bylaws can decide the general

rules of a body such as the HPC, such as organization of the body, structure of the meetings, and attendance requirements of the members.

Changing the ordinance

The HPC can recommend to Council an ordinance change regarding the three-absence provision found in RCMC 2.68.040. It can either change the language to alter the standard for what level of absences compromises a member's seat, or it can remove the language altogether. Removal of the provision would mean that the bylaws would be controlling over this matter.

I reviewed the ordinances concerning other committees and boards to see what requirements, if any, they had for their member's attendance and what provisions they had regarding removal of members.

Here's how other boards/commissions handle member attendance and/or removal of a member.

- The Human Relations Commission and the Civic Center Board have identical language to the three-absence provision found in the HPC ordinance. *See RCMC 2.64.090 (HRC); RCMC 2.76.060 (Civic Center Board).*
- *Parks and Recreation Advisory Board*: "Members may be removed for cause by the Common Council. Cause shall include, but not be limited to 3 consecutive unexcused absences from regular meetings." *RCMC 2.89.060(C).*
- *Planning Commission*: The Mayor with the confirmation of Council "shall after public hearing have authority to remove any member of the Planning Commission for cause which cause shall be stated in writing and made a part of the record of the hearing." *RCMC 2.60.040.*
- *Compass Committee*: "The City Council may remove any member of the Audit Committee prior to the expiration of their term by majority vote." *RCMC 2.95.010(A)(13).*
- *Building Board of Appeals*: "Continued absences of any member of the Board from regular meetings of the Board shall, at the discretion of the Mayor, render that member liable to immediate removal as a member of the Board." *RCMC 15.04.110(E).*
- *Zoning Board of Adjustment*: "The Common Council shall have the power to remove any member of the Board for cause upon written charges and after a public hearing." *RCMC 17.54.010(B)(1).*

Option 1:

Remove the language in the HPC ordinance related to three absence provision and do not replace it with any alternative language. The bylaws would then be the authority on sanctions for a member's failure to attend meetings, giving the HPC itself the authority to regulate and oversee this matter.

Option 2:

The ordinance could be amended to adopt the standard found in the bylaws: “If any member is absent three consecutive regular meetings without justifiable cause as determined by the Historic Preservation Commission, such shall be reported to the Mayor.” This gives more discretion to the Mayor because it does not make removal mandatory upon three absences. However, I would remove the reference to “regular meetings” and instead just say “meetings” so a HPC member’s attendance at all meetings of the HPC can be considered.

Option 3:

Taking from another ordinance, the HPC ordinance could be amended to mirror the language for the Building Board of Appeals – “Continued absences of any member of the Board from regular meetings of the Board shall, at the discretion of the Mayor, render that member liable to immediate removal as a member of the Board.” *RCMC 15.04.110(E)*. This language puts members on notice of the danger of continued absences while also giving the Mayor some discretion to decide whether the conduct is sufficient to warrant removal of the member from his/her position.

Option 4:

If the HPC feels a numeric value is important to include in the ordinance in order to decrease the discretion or uncertainty of the provision, then a percentage of attendance could be used. For example: “If any member of the Board is absent from more than 70 percent of the meetings over one calendar year, that member’s seat shall be deemed vacant.” The absence percentage could also be evaluated on a biannual basis, calculated from January to June and from July to December if you believe it’s important to have a shorter timeframe to address problems before many months have passed.

Changing the bylaws

A conflict between an ordinance and the bylaws should be avoided. Therefore, if there is an attendance provision existing in the ordinance, then the bylaws should either have identical language related to member attendance, or they should remove any reference to a member attendance provision.

If the ordinance is changed to remove the three-absence language, I would recommend changing the bylaws as well. There isn’t a legal reason to distinguish between regular meetings and special meetings, from my perspective, and I also would prefer to avoid the HPC having to determine whether a particular member’s absence is “without justifiable cause.” Possible ways to change the bylaws are listed below:

- Delegate the determination of absences as “justifiable” or not to the Chair.

- Adopt one of the absence provisions discussed above as language to be added to the ordinance (Options 3 or 4).
- Adopt a different standard after discussion as a commission about the level of attendance the HPC would wish from its members.

If you have any additional questions, please let me know.