



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Mathew Quinones, President of Stamford Board of Representatives
From: Dana B. Lee, Esq.
Copy: Kathryn Emmett, Esq.
Date: October 12, 2021
RE: Public Hearing Requirement Re: Adopting/Amending Ordinances

CONFIDENTIAL ATTORNEY COMMUNICATION

ISSUE: Is the Board of Representatives required to hold a public hearing for a proposed ordinance to the Code of Ordinances?

BRIEF ANSWER:

Yes, unless the full Board of Representatives, by vote, agrees not to hold a public hearing.

DISCUSSION:

The Stamford Charter empowers the Board of Representatives with the authority to “adopt and amend Rules of Order.” *Stamford Charter*, § C2-10-8. In exercising that authority, the Board has chosen to adopt Robert’s Rules of Order, Newly Revised, to govern its parliamentary procedures. Board of Representatives. *Rules of Order*, § V (A.).¹

Under Robert’s Rules Newly Revised (“RONR”) the customary practices of the Board of Representatives are treated as “rules” in most circumstances and should be adhered to. Roberts Rules of Order, Newly Revised explains the term “Custom” as follows.

In some organizations, a particular practice may sometimes come to be followed as a matter of established custom so that it is treated practically as if it were prescribed by a rule. If there is no contrary provision in the parliamentary authority or written rules of the organization, the established custom should be adhered to unless the assembly, by a

¹ Section V(A), entitled “Rules of Procedure,” provides: “(T)he Rules of Parliamentary Procedure as contained in ROBERT’S RULES OF ORDER, Newly Revised shall govern the Board in all cases to which they are applicable and are not inconsistent with these Rules.”

majority vote, agrees in a particular instance to do otherwise. However, if a customary practice is or becomes in conflict with the parliamentary authority or any written rule, and a Point of Order (23) citing the conflict is raised at any time, the custom falls to the ground, and the conflicting provision in the parliamentary authority or written rule must thereafter be complied with. If it is then desired to follow the former practice, a special rule of order (or, in appropriate circumstances, a standing rule or a bylaw provision) can be added or amended to incorporate it.

RONR, § 2:25.

Here, in my opinion, the Board or Representative's practice of holding a public hearing at the Committee level to discuss newly proposed ordinances or amendments to existing ordinances is an established custom which should be "treated practically as if it were a prescribed rule." See, *Id.*

The opinion is arrived at for the following reasons. The Board of Representatives has a longstanding actual practice of holding public hearings on proposed ordinances and amendments to existing ordinances at the Committee level that is well documented in the agendas and minutes of the various Standing Committees, especially those agendas and minutes of the Legislative & Rules Committee.

In addition, this practice is acknowledged by the Board of Representatives in its published guide entitled, "Overview of Board Practices and Procedures," which is accessible by the public on the City's website ("Guide").² In discussing the process for enacting an ordinance, the Guide provides that:

Most ordinances are reviewed by the Legislative & Rules Committee, but any committee can begin the process of enacting an ordinance. The committee reviews the matter, approves the language, and makes its recommendation to the full Board to approve the ordinance for publication and public hearing. The Committee then holds a public hearing.

Board of Representatives, *Overview of Board Practices and Procedures*, at p. 8.

Later, the Guide makes clear that:

Approval of ordinances always requires a public hearing. Once the Committee considers the ordinance to be in final form, the Committee will recommend that the Board approve publication of a summary of the ordinance in the newspaper with notice of a public

² See, http://www.boardofreps.org/Data/Sites/43/userfiles/documents/bor-manual_final.pdf. Note, the Overview provides, on its cover page, that the "guide is intended as a summary of the Board's practices and procedures and a guide for interactions with the Board. For more detailed procedures and practices, please consult the City of Stamford Charter and Code, the Rules of Order of the Board of Representatives, the Connecticut General Statutes and Robert's Rules of Order, Newly Revised." *Id.*, at n.1.

hearing to be held by the Committee considering the ordinance. If the Board approves, the committee will hold a public hearing the following month. After the public hearing is held, the Committee will either hold the item for further review, recommend that the full Board approve it for final adoption or recommend that the full Board not proceed with the matter.

(Emphasis in original; footnote omitted) *Id.*

Moreover, this well-documented practice is implied by, and is a likely consequence of the Stamford Charter's guarantee that citizens of the City have "the right to observe meetings and hearings of all City Boards, Commissions and Committees and to make reasonable public comment at public hearings," *Stamford Charter*, Preamble, at ¶ 2; and the Charter's public notice requirement; *Id.*, at C2-10-12³; and the Board's Rules of Order requiring a period for public comment but limiting comments at the Regular Meeting "to any which has not been subject to a prior public hearing of either the Board or a Board committee." *Rules of Order*, Section IV(E)(3)(iii).

Consequently, the custom of holding a public hearing on proposed ordinances and amendments at the Committee level is entitled to be treated as a rule. We have found "no contrary provision" in the Charter, Ordinances or in the Board's Rules of Order. As a result, under Robert's Rules, this "established custom should be adhered to unless the assembly, by a majority vote, agrees in a particular instance to do otherwise." RONR, § 2:25.⁴ The term "assembly" as used in this section refers to the full Board of Representatives, not to any Standing Committee. As the term is used in Robert's Rules, a committee is not an "assembly." RONR §50:1. ("A committee as understood in parliamentary law, is a body of one or more persons, elected or appointed by (or by direction of) an assembly or society, to consider, investigate, or take action on certain matters or subjects, or to do all of those things. Unlike a board, a committee is not itself considered to be a form of assembly.")

Finally, as the issue may come up, the following procedure should be followed if the Board of Representatives desires to hold a vote on waiving the public hearing at the Committee

³ *Stamford Charter* § C2-10-2 provides: "Ordinances and Resolutions shall be introduced into the Board of Representatives only in written or printed form. All ordinances, except ordinances codifying or rearranging existing ordinances, shall be confined to one subject, and the subject or subjects of all ordinances, shall be clearly expressed in the title. Resolutions making appropriations shall be confined to the subject of the appropriations. No ordinance shall be passed at any meeting unless it shall have been introduced at a meeting at least five days prior thereto, and published in an official newspaper at least three days prior to such meeting, but these requirements may be dispensed with in case of emergency by a vote of two-thirds (2/3) of the entire membership of the Board of Representatives. All final reading of such ordinance shall be in full, unless a written or printed copy thereof shall have been furnished to each member of the Board at least eight (8) hours prior to meeting. At the desire of one-fifth (1/5) of the members present, the Yeas and Nays shall be taken upon the passage of any ordinance or resolution and entered upon the journal of the proceedings of the Board of Representatives. The enacting clause shall be: "BE IT ORDAINED BY THE CITY OF STAMFORD THAT..."

level. The procedure is necessitated by the following. The Board has historically treated the public hearing requirement conjointly with the publication requirement set forth in Charter §C2-10-12. That is, when the Board has in the past held votes to waive publication, it was also voting to waive the public hearing. In this situation, the Board has required a two-thirds majority to waive both the publication requirement and the public hearing requirement.

This practice of treating these requirements conjointly also rises to the level of a “custom” under Robert’s Rules. The practice is found in the legislative record; see e.g. <http://docs.boardofreps.org/Minutes/03min/030106.pdf>, at p.12; the date and time of the public hearing is always announced in the standard publication notice; and the Board of Representatives Guide acknowledges it. See Guide, at p. 11, n.6. (Stating, “(t)he public hearing and publishing requirements may be waived in case of emergency by a vote of two-thirds of the entire membership of the Board.”).

This means that the Board must take two votes on whether to follow these customs, where simple majorities can prevail. If the Board wishes to waive the public hearing requirement, it must first agree not to follow the custom of treating the public hearing requirement conjointly with the public notice requirement. If this vote prevails, the Board must then vote on whether to waive the customary practice of holding a public hearing.