

City of Keene
New Hampshire

CITY COUCIL
RULES OF ORDER WORKSHOP MINUTES

Tuesday, January 28, 2025

6:00 PM

**Council Chamber,
City Hall**

Members Present:

Kate M. Bosley
 Laura E. Tobin
 Michael J. Remy
 Randy L. Filiault
 Edward J. Haas
 Philip M. Jones
 Kris E. Roberts
 Jacob R. Favolise
 Bryan J. Lake
 Catherine I. Workman
 Bettina A. Chadbourne

Staff Present:

Elizabeth A. Dragon, City Manager
 Thomas M. Mullins, City Attorney
 Amanda Palmeira, Assistant City Attorney
 Patty Little, City Clerk
 Terri Hood, Deputy City Clerk
 Kathleen Richards, Deputy City Clerk

Members Not Present:

Robert C. Williams
 Andrew M. Madison
 Mitchell H. Greenwald
 Thomas F. Powers

Jay V. Kahn, Mayor

Mayor Kahn called the workshop to order at 6:02 PM and thanked the executive administrative team for organizing it. He welcomed the Assistant City Attorney, Amanda Palmeira, to walk the Council through its Rules of Order. Ms. Palmeira said this was helpful for her to learn the Rules. She briefly reviewed the agenda.

Civics 101 - The City Council

Ms. Palmeira began with an overview of the City's government structure. NH is not truly a home rule state. The City gets its authorities from specific statutes laid out by the State of NH legislature. Those statutes regulate what the City Council can do and identify the forms of government structures the City can have under the City Charter. The City of Keene has a "City Council - Manager Plan," but other types include a Mayor - Board of Alderman or a Mayor Council. With the City Council - Manager Plan, the chief administrative officer of the City Council is the City Manager. The statute outlines the roles and dynamics between the City Manager and City Council in the City Council - Manager Plan pretty strictly; this is also reflected in the Keene City Charter and City Council Rules. One statute this is outlined in is NH

RSA 49-C, which states that: “The elected body shall act in all matters as a body, and shall not seek individually to influence the official acts of the chief administrative officer, or any other official, or to direct or request, except in writing, the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers of their duties. Any member violating the provisions of this section, as determined through procedures established in the charter, shall forfeit his office.” So, Ms. Palmeira said that this was incorporated into the City Charter from the NH RSA.

Next, Ms. Palmeira described the City Council’s roles and authorities. The NH statute outlines the Council’s three areas of domain: fiscal, prudential, and municipal affairs. She outlined what the statute says the Council should explicitly be doing for each.

1. Fiscal: The City Council has authority over the final adoption of the City’s annual budget and authority to borrow money for the purpose of the City’s powers vested by Statute. The Council has the authority to establish special revenue funds, revolving funds, and trust and capital reserve funds.
2. Prudential: This regulating authority comes from the enabling statutes. Examples include noise, traffic devices, dog licenses, and parking.
3. Municipal: The Council can and should create, regulate, and decide how its own Rules of Order work. Other authorities include removal of the Mayor, other Councilors, and members of City boards or commissions. The Council can also enter into non-public session per RSA 91-A and lay out a procedure to fill a vacancy of either the Mayor or a Councilor. The Council can create and dissolve boards and ad hoc groups. The Council can also approve or reject by vote each nomination of the Mayor to the City’s boards and commissions.

Ms. Palmeira turned more specifically to the Council’s Rules of Order, many of which are informed by the NH statutes. It is important to understand that these Rules apply to the City Council acting as a body as a whole. These powers are not available to Councilors as individuals, and they are not available to Standing Committees.

Ms. Palmeira described the highest bar type of vote the Council might take, which would require a two-third majority of all the *elected* Councilors. The Rules reference both two-thirds of the elected Councilors or two-thirds of the Councilors present. However, the highest bar is two-thirds of the majority of Councilors elected, which is reserved for adopting or amending the Council’s Rules of Order. Short of that, two-thirds of any Councilors present at a Council meeting can do three things: (1) suspend the Rules of Order, (2) call the question (also called moving to the previous question), or (3) extend or limit debate. With a simple majority of Councilors present, however, the Council can do many more things: adopt Council policies, overturn a decision by the Chair, call a matter out of Committee (such as when an issue is on more time), and reconsider a vote (as long as the requesting Councilors follow the procedures in Rule 20. Any other motions that are not in the Rules are presumed to be by simple majority. She talked about how things can get tricky when the Council develops creative things that are not in the Rules that could pose confusion.

This led Ms. Palmeira to discuss the Council's past patterns of practices that were not explicitly in the Rules and how those play out. It is easiest to understand the things that are explicitly in the Rules with clear descriptions. She said the Council had heard the attorneys talk about the preference to do things by pattern and practice instead of turning strictly to either Robert's Rules of Order or another source of parliamentary procedure. The latter sources would provide infinite ways to do something, whereas pattern and practice might already be established. Ms. Palmeira looked at the law in NH found a similar consistent practice in the courts to construe liberally votes of a public body, without regard to any technicalities of parliamentary procedure, or any strict rules and compliance with that. She said any departure from the Rules that the City Council has adopted, or regular parliamentary procedures—as long as they do not violate statute—would not be enough to invalidate any action at the local level. Ms. Palmeira called it comforting to know things work that way, but said that is why she would always advise the Council to start with its Rules and its practices. If the Council needed to develop a new practice, it would start talking about consensus to ensure the efficiency and desires of the body as a whole. It is very important for the public to understand where the Council is coming from as well.

Councilor Jones asked about two-thirds of Councilors present vs. two-thirds of a quorum, because Councilors participating remotely might not be a part of a quorum. Ms. Palmeira said that was correct. She said quorum would just be eight Councilors, so if the Rule is two-thirds of quorum, then it would mean five Councilors, which she called confusing. She did not think there was a Rule referring to quorum, only one referring to two-thirds of Councilors present or elected. So, Councilor Jones said that Councilors participating in a meeting remotely would be included as a part of a two-thirds majority. Ms. Palmeira said that there cannot be a quorum formed solely of remote members, but otherwise, remote members could be a part of a quorum.

Civics 101 - The Mayor

Next, Ms. Palmeira discussed the Mayor's role, as referred to in the City Council - Manager Plan. The Mayor's role does not include administrative operations. Keene's Charter identifies the Mayor as a ceremonial role, with the following authorities: to preside over City Council meetings, speak at all City Council meetings, vote only in the case of a tie, require consideration of any vote at the next regular Council meeting, responsible for any final decision of parliamentary procedure (even if the City Attorney is present or there is a disagreement), preserve decorum and call any member transgressing decorum into order, call a recess of five minutes after two hours of meeting, regulate debate (requiring that a Councilor shall speak no more than once until all Councilors wishing have had the chance, per Section 14), and conduct the business of Council meetings according to the Order of Business in Section 24 (though the Mayor can take things out of order by consensus).

The Mayor also holds the following abilities that are more implicit in the Rules of Order and necessary to carry out the aforementioned functions: call a meeting to order, declare a quorum present, recognize members entitled to speak or entitled to the floor (including discretion to not recognize certain members and not yield the floor to them), recognize and restate motions, decline to accept a motion if the Mayor can tell that it is not in the interest of the rest of the

members, call for a vote, adjourn a meeting, appoint members of Standing Committees, appoint and remove members of boards and commissions, and call a special meeting or workshop.

Councilor Favolise recalled Ms. Palmeira saying that the Mayor has the final decision on questions of parliamentary procedure. Councilor Favolise asked if that is not withstanding an appeal from the ruling of the Chair. Ms. Palmeira said yes, it would be subject to an appeal. So, Councilor Favolise said the Council could overrule the Mayor's ruling or a temporary Chair's ruling on a parliamentary question. Ms. Palmeira said yes.

Councilor Bosley asked—if the Mayor was not allowing a Councilor to participate in a conversation—then could another Councilor yield their time or call a point of order. Ms. Palmeira said Councilors could call points of order and any member could also seek to challenge a Chair's decision—whether or not it is the Councilor whose time is being restricted—and the challenge would be open to a majority vote.

Councilor Favolise asked—if the Mayor is not going to recognize a motion to call the question because other Councilors wish to speak—what was the purpose of the motion. Ms. Palmeira said usually to keep the conversation flowing; the motion to call the question can be useful when people are becoming redundant, and it seems everyone might have exhausted their points. However, she said that if someone calls the question and the Mayor still sees 10 Councilors with hands raised wishing to speak, he would probably be in the right to make sure they have had their chance.

Councilor Filiault said that the call the question motion was not used as much anymore. In the early days of the Council, when meetings went until midnight, he said Councilors would be grateful for someone to call the question and it was used often.

Councilor Remy asked a question off-mic and Ms. Palmeira said she would discuss rank and majority later in the meeting.

Councilor Bosley recalled Councilor Remy calling the question at a recent meeting but said it was not recognized and there was no vote—the meeting was not stopped, and no process followed. So, she asked what to do in that situation; should a Councilor call a point of order? Mayor Kahn said that is what he would expect. Ms. Palmeira said that would make sense. She continued that it is the Mayor's decision what to recognize initially and if that is not what the majority wants, someone could make a point of order or challenge. Mayor Kahn said he had seen that work both ways; if the Chair believes there has been ample conversation and Councilors have spoken more than once, the Chair can allow the question to be called. He agreed that he had also seen it ignored. So, the Mayor said the Chair has that authority to ignore it and the Council has the authority to call the question and points of order.

Ms. Palmeira added that conceptually, any Rule or action that would, in effect, impinge other Councilors' rights to keep debating would always require a two-thirds vote.

Civics 101 - Standing Committees

Ms. Palmeira explained that the City Council's three Standing Committees are a product of the Section 23 of the Rules of Order. While the Standing Committees have delineated subject areas, she said there is a phrase included indicating that for efficiency's sake, matters can be sent to any Standing Committee to accommodate time constraints. Under the City Charter, all of the Standing Committees are deemed advisory, which means that they cannot affect action on their own—they can only make recommendations to the full Council, where the intent of the Standing Committee may be carried out by a full vote. The Standing Committees' responsibilities include creating a report that includes a recommendation on an action. When the report comes up at full Council—per the Rules—the Standing Committee Chair or designee offers a motion to carry out the intent of the Committee report and provides a brief description of the Committee's recommendation. The Rules also explicitly state that the Chair or designee who makes the motion is not restricted to speaking against the Committee's recommendation. Standing Committees can also place items on more time. If an item is intended to be taken off more time at some point, it needs to be taken off and addressed at the following meeting so that notice to the public can be provided. The Council has the ability to call something on more time out of Committee Ms. Palmeira said that Standing Committees are also responsible for proposing any amendments to ordinances.

Civics 101 -The Role, Duties, and Authority of a City Councilor

Next, Ms. Palmeira explained that individual Councilors cannot affect change like the City Council body can, but Councilors do have individual rights and duties. She described Councilors' individual duties and responsibilities according to the Rules of Order:

- Appropriate dress during regular meetings of the City Council shall consist of professional business attire.
- Cell phones are to be silenced while the City Council is in session.
- The Mayor and City Council members are expected to devote their attention to the business of the City Council, and to refrain from the use of electronic devices during City Council meetings not germane to the business before the City Council.
- Any electronic communication by and among members of the City Council during any City Council or Committee meeting which is not capable of being heard or observed by members of the public or other Councilors is prohibited. Ms. Palmeira said that everything needs to be seen and heard by members of the public. Councilors can use their computers to participate because they can be seen and heard by members of the public, but otherwise, communications amongst Councilors during meetings are not permitted. It could raise potential Right-to-Know Law (RSA 91-A) issues regarding what is being conducted out of the public view, or create a records problem.
- Every member shall respectfully address the Mayor or temporary Chair.
- Every member shall confine themselves to the question under debate, avoid personal attacks, and refrain from impugning the motives of any other member's or participant's argument, stated position, or vote.
- Every member shall state their vote on every item, unless they have a conflict of interest.

Individual Councilors also have rights under the Rules of Order, including to: make a main motion, request that a long or complex motion be reduced in writing, debate and speak on all debatable motions (can only be interfered with by a motion a vote of 2/3 majority), make points of order, call upon the City Attorney for an opinion as to the law/ordinances/parliamentary procedure (the final vote is the Mayor's), appeal the ruling of the Mayor or temporary Chair (an appeal is not debatable among the whole body, only between the Councilor making the appeal and the Mayor or temporary Chair), demand a roll call vote for yeas/nays (as long as it is before the vote is actually made or started).

Beyond the duties and rights Ms. Palmeira outlined, she explained some unique situations for Councilors:

- Move to reconsider: A Councilor can only move to reconsider if they are on the prevailing side of a vote and according to the Rule, they must provide notice that they are going to move to reconsider. Notice is also important for a motion to reconsider because the vote requires a majority of the Councilors present.
- Call a special meeting or workshop: To do so, it requires six Councilors, but those six cannot include a quorum of any one Standing Committee. So, two members of each Standing Committee must come together to call a special meeting or workshop.
- Participate in public discussions of Standing Committees: Councilors can attend the meetings of Standing Committees they do not serve on as members of the public and ask questions, but they cannot take part in deliberations (if the Councilor is the petitioner they can answer questions during deliberations).
- Propose amendments to the Capital Improvement Plan (CIP) or Operating Budget: this requires notice in writing.

Mayor Kahn asked about amending the budget. Ms. Palmeira said that Councilors can submit amendments to the proposed operating budget in writing to the Council by 4:00 PM the Tuesday before. Mayor Kahn said that those amendments are exceptions to other amendments that could be made during the Committee process and Ms. Palmeira agreed.

Mayor Kahn said that at times, like during the downtown project, he had wanted to delegate a conversation or decision to a Standing Committee so it could advise the City Manager further on a topic, but he did not think that was allowed. Ms. Palmeira agreed, saying that was not built into the Rules. Only certain things can be sent down to a Committee per these Rules.

Mayor Kahn also discussed directing questions to the Chair. He spoke positively about a tendency at Committee and Council meetings to allow the City Manager, for example, to answer questions they might have already before calling up one of the department directors to answer. The City Manager, Elizabeth Dragon, agreed that she tries to have the answers and would otherwise call up the appropriate staff person to speak on the topic at hand.

Councilor Chadbourne discussed the fact that she had been noticing more frequently—at both Council and Standing Committee meetings—members of the public turning around and speaking to people in the audience when everything should be addressed through the Chair. Mayor Kahn said that before each Council meeting there is a Chairs meeting, and he said he would share that

feedback. As a Standing Committee Chair, Councilor Bosley said it is a very hard situation to be in sometimes when trying to determine the correct boundaries with a speaker, noting that sometimes there are grey areas. She might let something slide the first time but address it the second time if someone speaks directly to staff and not her. Councilor Bosley said it is the Chair's prerogative how much to control the conversation and she said it is important to remind people to address the Chair and be respectful. She recalled the presentation from the Municipal Association about freedoms of speech and what Chairs can censor. The Council learned that Chairs have the authority to contain some speech but cannot stop someone from using the words they want to. So, in many cases, Councilor Bosley said the best choice is to call a recess if something gets out of control.

Councilor Chadbourne explained that she was not concerned about content of speech. In her 14 years as a Councilor, she was thinking specifically about the prior few years, during which she had noticed Chairs letting more of that decorum slide with comments directed to the audience. She was not talking about freedom of speech. She wanted to focus on keeping the conversation flowing through the Chairs, so they keep control of the meetings. Councilor Chadbourne said it was not a criticism of Councilor Bosley, who does a phenomenal job as a Chair. Councilor Chadbourne said that these deviations away from the Chairs are jarring and disrupt the flow of meetings. Councilor Bosley said that she noticed, as a Chair—recognizing that the other two Chairs were not present—that the Standing Committees had been handling a lot of controversial topics and that people play to the audience for reactions sometimes. In those cases, Councilor Bosley said it is important for Chairs to not only address the speaker but the audience too, and to be really clear about what is allowed. Mayor Kahn recalled that a Chair could call a recess to calm the audience.

Councilor Tobin said she appreciated this perspective. She thought it would be helpful to have some consensus among the Chairs so that members of the public could have similar expectations for what to anticipate at the various Standing Committee meetings. She said it could be hard for a petitioner or speaker to know what they are supposed to do. One thing Councilor Tobin had appreciated about the Public Works Director, Don Lussier, during these meetings was that when a member of the public would ask him a question directly, he would direct the question back to the Chair. She found that helpful because it would re-establish the expectation that Mr. Lussier does not respond to the public directly, he speaks through the Chair as well. Councilor Tobin also thought Councilors in the audience speaking at Standing Committee meetings as citizens should avoid asking questions directly to the presenters, to set a good example of directing comments through the Chair. Mayor Kahn thought it was a good point.

To Councilor Tobin's point about inconsistency between Standing Committee meetings, the Mayor said the Chairs had wanted an aspect of inconsistency. Once public testimony has ceased, he asked if debate should be strictly among the Committee or if the public should be able to continue asking questions of the Committee. Mayor Kahn said that the Chairs had appreciated the flexibility of allowing the public to raise those questions, but he wondered if other Councilors had different perspectives.

Councilor Bosley noted that there is no training for Chairs, and she wished there had been when she began in the role. Her understanding of the Rules was that once a motion is on the table, any remaining questions from the public need to relate to that motion. She said that can be tricky. It needs to be a productive process and move forward. Ultimately, Councilor Powers had always advised her that the presiding Chair has the ultimate control to either allow endless conversation or to place a limit. Councilor Bosley agreed with Councilor Tobin that some consensus about how to run Standing Committee meetings would be helpful, but that was never made available to Councilor Bosley as a starting point. Councilor Bosley said it is challenging for three individuals to lead three groups through handling certain topics with members of the public. It is tricky to create a one-size-fits-all.

Councilor Favolise said he thought one of the hard parts about the idea that comments are maybe not acceptable anymore once a public hearing is closed, but questions are, is at what point is a question really a comment. He said he saw it happen during public hearings at City Council because unless Councilors have specialized knowledge, they are not supposed to make a comment, so they will ask a question. He had done so recently, for example, “would you agree?” or, “is it fair to say?” He said those questions could really be construed—depending on the context—as more of a comment. He did not know if there was guidance from the City Attorney for the Committee Chairs, but sometimes Councilor Favolise thought there were questions were right on the line of a member of the public joining the Committee’s deliberation. He did not know if there was a solution. The Mayor asked of the Councilor was speaking about a member of the public giving testimony. Councilor Favolise reiterated that there are ways to ask questions that are really comments and he thought it was fair to ask where a Chair should draw the line if a public hearing is closed. Are the questions being asked by the public really clarifying questions about the motion or more of a comment. Mayor Kahn said he preferred the cleanness of not accepting comments from the public once a motion is on the table.

The City Attorney, Tom Mullins, said this discussion was a part of the pattern and practice that Ms. Palmeira mentioned. He recalled challenges in the past because the public does not see motions in advance. Section 23 of the Rules does state that after a motion and deliberations begin, only members of the Committee can participate. However, the Council has a pattern and practice of—once a motion is made—of allowing the petitioner to ask a question, clarify something, or even comment on the motion because it is their first time hearing it. In the past, he thought there had been challenges with people being caught off guard by motions presented. Mayor Kahn thought that was a strong clarification of who has priority to raise those questions—the *petitioner* vs. the public. The City Attorney said yes, and that was what he had seen the Chairs doing in practice. Still, the City Attorney agreed with Councilor Favolise’s point that someone could pose a comment as a question, but handling that would be a part of the give-and-take of the Chair. Councilor Bosley said if the Chairs did not have to take questions on the motions from anyone but the petitioner, it would save a lot of grief. She said she had a cheat sheet with the order of business that she used during her first few years as a Chair to help with the process. The way she understood her responsibility was to allow the public to speak regarding the petition and then to allow the petitioner and public to ask questions on the motion. She asked if that is not the requirement. The City Attorney said no that is not required. He said

the Chair could instead allow the petitioner to comment after the motion only—not the public—because the petitioner has the immediate interest in the motion.

Councilor Filiault noted that the group could talk about this one item until midnight. Having Chaired many committees over the years, he agreed with Councilor Bosley that the role is not set in concrete, which is why it is good to have an experienced Chair. Councilor Filiault said it would be scary being a new Chair. He said that every Chair would be a little different. He cited a recent example at a Standing Committee meeting when a petitioner was asking questions of the Fire Chief that were not through Councilor Filiault, the Chair, but he allowed it because the exchange was cordial. He cited a different situation when a Councilor was not questioning a petitioner through the Chair and Councilor Filiault stopped it and redirected the conversation through the Chair because the petitioner had become frustrated. He commended Councilor Bosley and the other Chairs. He said experienced Chairs see arguments coming and nip them in the bud. Regarding motions, Councilor Filiault said staff did not used to prepare recommended motions and Committee members would create them during the meetings, so now petitioners do not see that discussion of the motions, which is why they might have questions. Mayor Kahn added that he admired the Clerk's office's preparation of motions in advance of Council and Standing Committee meetings. Councilor Filiault said it was not bad to have the motions prepared in advance, the public just might not know where they come from.

Councilor Chadbourne said she heard from both Councilors Bosley and Filiault that it is a case-by-case basis, and she understood that Chairing a meeting is a difficult role. Councilor Chadbourne recalled the challenges of minute taking during the days before recommended motions because it was easy to document them incorrectly, so she appreciated having them prepared in advance now. She said that three mayors ago, she asked that Mayor and the City Attorney to have a Chairs training. Councilor Chadbourne said at the time, she suggested the training for the whole Council, so everyone would understand how to run a better meeting. She suggested it again for consideration.

Mayor Kahn said this was a good start to get questions on the table. Ms. Palmeira was grateful to hear the questions, noting that the Rules are written for the City Council, and she might be able to offer some guidance on the way they trickle down to the Standing Committees.

Explanations of Certain Rules & Procedures - Motion for the Previous Question (i.e., “calling the question”) – Section 17

Ms. Palmeira proceeded with explanations of specific Rules and procedures. She began with a motion for the previous question or “calling the question,” noting that under Section 17, there was no explanation for how it works. She said that calling the question is something that would potentially infringe on other Councilors rights to debate and continue discussion. Calling the question does require a two-thirds majority vote. Ms. Palmeira said calling the question is not meant to be like a nuclear option that ceases debate entirely and there are a few steps that prevent that: (1) the motion requires a second, (2) the Mayor uses their discretion to determine whether there is anyone waiting to speak, and (3) the two-thirds vote. Those three steps should occur before the debate ends.

Councilor Lake asked if a Councilor needs to be recognized by the Mayor to call the question. Ms. Palmeira said that Councilors are supposed to be recognized before they make motions, so yes, the Councilor would need to raise their hand and be identified by the Mayor to make the motion to call the question. She added that the Mayor has the option to not accept a motion to call the question, but if there is a second for the motion, it would be more indicative that there is interest in the motion.

Councilor Favolise did not want to get too into the minutia of what the language is if the practical outcome is the same, but in this case, he thought it was important. He said that when a Councilor is recognized by the Mayor, the Mayor does not necessarily know what the Councilor is going to say. So, if a Councilor is recognized and calls the question, it struck Councilor Favolise that the Mayor could determine that motion to be not in order, which could lead to an appeal of the Chair's ruling and majority vote. Councilor Favolise did not know if he liked the phrasing that allowed the Mayor to choose not to recognize a motion to call the question. Calling the question was an item that Councilor Favolise had asked to discuss because he had seen it used by Councilors and then the feeling of the Council had been that it should move directly into a vote. He wanted to be sure that this and future Councils know that if a motion for the previous question is made and seconded, that there is an option. He said the Mayor could also try to move by consensus. So, he thought it should be made clearer that a Councilor could object to that. By the same token, he thought it would send a different, more final message to the Council by saying that a Councilor can appeal the ruling and the Council can decide. To Councilor Favolise, it makes it seem like the Chair has more power than they actually do. Ms. Palmeira appreciated that and said her research showed that for the specific scenario of calling the question or limiting debate, the discretion to recognize it or not lives in the world of what is pragmatic to the group. For example, if there are no hands raised and everyone wants the question to be called and the Mayor/Chair does not recognize it, Ms. Palmeira said that may not be an appropriate action on the Mayor's/Chair's part. It should be driven by what is appropriate for the rights of the body. She added that there are built in motivations for the Chair to consider that, because if it is the desire of the body or a portion of the body to call the question, the Chair is risking a challenge.

Councilor Remy said that in the past, one reason he had called the question was because he could feel that a majority of the room had decided what they were going to do but two people were arguing. So, his intent in calling the question had been to move on from bickering, he said himself included at times. He questioned when discretion comes in. If 10 Councilors want to move on because they are sick of something, he asked if that is when the challenge of the Chair would come in. Ms. Palmeira said it goes back to the Chair using their discretion on what makes the most sense for the body. For example, if there are no hands raised and two people are speaking back-and-forth for several minutes, Ms. Palmeira did not think a call to question would be denied.

Councilor Bosley asked—if a Councilor called the question and the Mayor started to move on—could any Councilor second and a vote would ensue. Ms. Palmeira said that would be when the discretion of the Chair would come in if hands were raised and people were still participating; the Chair could choose to not recognize the motion because other members of the Council still

have things to say. Councilor Bosley asked if that was the case even if the motion to call the question had a second and Ms. Palmeira said yes. So, in that case, Councilor Bosley said the Councilor could challenge the Chair's decision, and the Mayor and Ms. Palmeira said yes (ask for a point of order and vote). Ms. Palmeira said that all of these things are hard to keep track of, voice, and to keep clear. Still, these things are intended to work together to get the Council to where it is trying to go.

Councilor Tobin clarified that if a Chair is not going to recognize a motion to call the question, the Council would expect to hear that. Ms. Palmeira said yes, in best practice, the Chair would state why they are not recognizing the motion. She reiterated that traditionally, avoiding that and recognizing the motion would probably be best.

Mayor Kahn said that in the past, he had observed a Councilor speak and at the end of their comments, they call the question. Then, usually the Chair does not recognize it because the person was actually in debate when they were recognized. The City Attorney added some nuance, noting that often Councilors would call the question but not actually make a motion for that with a second. Then the Mayor can gauge the consensus of the body and whether there are Councilors who do not yet want to call the question.

Councilor Filiault wanted to know where it stated in writing in the City Charter that the Mayor could reject a motion with a second to call the question; he had looked and could not find it. Ms. Palmeira said it was implicit in the Chair's duties, like calling the meeting to order. Councilor Filiault said he questioned if implicit Rules are just "kind-of-sort-of." He stated nothing against the Mayor. If they are not in writing, he did not think they should be rules. If this was a true rule that the Mayor could reject these call to question motions, Councilor Filiault thought it should be in writing under Section 17 of Motions, not just assumed. He said that in the years he had been on the Council, he had not seen an acting Chair be able to reject motions that were made and seconded. If that was the case, he thought it would apply to every motion in the Rules of Order. It did not make sense to him that the Mayor could overrule a 15-member Council that has been moved and seconded. The City Attorney interjected to carefully state that what Councilor Filiault was saying was not what Ms. Palmeira said. The City Attorney said that the Mayor can do what Councilor Filiault stated, but whether it works or not is a different question. The City Attorney said that if there is a motion and a second, and a particular Chair does not act on that, then Councilors can challenge that. The body has a process to make sure the action is taken. Mayor Kahn asked if that is a matter of judgement as to fairness. The City Attorney said not necessarily. For example, there could be a tyrannical Chair, who does not recognize a motion that has been made and properly seconded, in which case there is a process for the whole body to take that out of that Chair's control. Mayor Kahn agreed but added that there could be nefarious situations of calling the question every time someone is recognized when there is still debate, and he wanted to prevent that, so everyone has a fair opportunity to speak to a motion.

Councilor Filiault said he was not arguing that particular Rule of Order, he was arguing *any* Rule of Order, as this would open every Rule to say a Mayor (he was not speaking about this specific Mayor) can ignore the Council. He said it implied that any Chair could violate the Rules of Order and he thought it went beyond a majority of the Council challenging to the Chair to overrule

them. Mayor Kahn thought the City Attorney had coached the Council on two points: (1) a body needs to act on the basis of consensus, and (2) the Rules are there to guide the Council. The Mayor heard Councilor Filiault's original point that this was implicit, and it should be explicit in the Rules, which the Mayor called a fair observation. So, the Mayor asked if there was consensus around making it an explicit Rule. By not taking a call to question motion, Mayor Kahn thought that a Chair would be ensuring that (1) everyone has their voice and (2) that the motion is not used to disrupt the meeting and prolong a discussion indefinitely by calling the question repeatedly. Councilor Filiault agreed with the Mayor on that Rule of Order. Still, the Councilor said that if a Chair has a right to overrule one Rule of Order, then that means the Chair has the right to overrule every Rule of Order. He said that most of the time a motion to stop debate is trivial and hardly used and everyone moves on. Councilor Filiault said his point, however, was that if a Councilor makes a motion and it is seconded, and a Chair chooses not to recognize it, a problem will arise with Chairs choosing which Rules of Order they want to or have to follow.

Councilor Favolise said that as he was thinking about this motion and the Chair being able to not recognize it, the only appropriate time he thought of for the Chair to not recognize the motion is when voting on the motion itself would be dilatory because there are no Councilors seeking recognition. In such a case, the natural next step would be calling the question as opposed to taking a separate vote on calling. The Councilor thought that—according to Robert's Rules of Order, which is the backup authority to the City Council Rules—the purpose of parliamentary procedure and Rules of Order should always be to facilitate conversation and move the process forward. Councilor Favolise said it is easy for Councilors—especially those well versed in parliamentary procedure—to weaponize them to bog proceedings down. He thought of an example that would be appropriate and consistent with the spirit for the Mayor to not recognize a motion: as soon as a motion is made, before any debate, a Councilor moves to postpone the motion indefinitely, to postpone to a time certain, or to adjourn immediately; something that is clearly dilatory. Councilor Favolise did not actually think the motion for the previous question would be the most appropriate for the Chair to be exercising that discretion, but for other motions that may be made in bad faith that the Chair believes are being made for a dilatory reason. This is why Councilor Favolise thought the discretion of the Chair was included. Councilor Favolise added his agreement with Councilor Filiault that—whether the Rules say something implicitly or explicitly—the Mayor should not be set up to be more powerful than they are as a default. Councilor Favolise thought the fear was that the Mayor could deny any motion made by the Council. He was unsure the Mayor could divine the will of 15 Councilors from the dais and determine that everyone wants to continue with debate and discussion, so that made Councilor Favolise uncomfortable. Still, the Councilor thought the Chair's power would be important in the case of the other motions he had not mentioned. He was unsure that meant it needed to be written specifically in the Rules of Order as Councilor Filiault suggested because that would make the Council have to question everything else that the Chair has as an implicit power in the Rules of Order. Ultimately, Councilor Favolise's concern was more so with the call to question motion than any other motion.

Councilor Roberts said that this is the City Council, not the US Congress or the State of NH. As he was listening, he felt the group was getting into many minutiae and possibilities that could

happen but never would. He agreed that a dictatorship needed to be avoided so that both sides of an argument always have an opportunity to speak. He said that is why Keene's City Council is a non-partisan elected body. He said there would be times the Mayor would use their judgement to say what they think is important for good government to allow people to speak more before calling the question. If a Councilor disagrees, they can call the question and seek a second, but Councilor Roberts said the Mayor would have done their job, and the public would know who is trying to shut down the other side. Councilor Roberts said that is government to him. He felt like the group had spent 30 minutes discussing something that had only happened two or three times in the 13 years he had been a Councilor.

Councilor Bosley did not think this was about calling the question at all, but rather about process. She thought many Councilors made assumptions that the Mayor's/Chair's seat holds a certain amount of authority or power, and the Council was unsure how to take it back appropriately. She thought that all of the little situations mentioned applied to all of the other possible motions. While the group might have been dwelling on calling the question, she thought it was really asking how to take the authority back. How can the Council accomplish what it wants to with every single one of these motions? She said that by understanding these nuances, the Council would not need to dwell on all of the other motions. Councilor Bosley noted how the Planning, Licenses, & Development Committee talks a lot about consensus when writing text to bring to Council for Rule amendments. She said it is the Chair's responsibility to understand and to try to divine the will of the Council through consensus in a lot of ways. However, when a Councilor feels like they are on the losing end of that, she said there are ways to bring that power back to get an actual answer by asking for a vote. Councilor Bosley wanted to leave this workshop with all Councilors having the same understanding of how to get attention on them when they have concerns. She said it would not always be comfortable to challenge someone's decision. Still, it is important to understand the process, so Councilors are not steamrolled when they speak up. So, she thought it was important to go through some of these scenarios.

Explanations of Certain Rules & Procedures - Motion to Postpone Definitely vs. Motion to Lay on the Table – Sections 17

Next, Ms. Palmeira distinguished motion to postpone definitely and a motion to lay on the table. These are both referenced in Section 17 of the Rules of Order, but they are both for specific circumstances and they have different uses. A motion to postpone definitely can be used to delay consideration of an item until a specific time or meeting. It is only appropriate when the City Council still intends to vote on the item, but just needs another date. A motion to postpone definitely requires a simple majority, it is a debatable question (e.g., which date do we want to put it to?), it is amendable (the date can change), and it is appropriate when there is an urgent need to reshuffle what the Council is working on. Whereas a motion to lay on the table is a temporary pause to be picked up again later in a meeting; it is not debatable or amendable. A good example of something that would be laid on the table that came up recently for the Council was the Jumanji anniversary event that the Mayor tabled until later in the meeting after the downtown project was addressed. Conversely, a motion to postpone definitely would move something to a different agenda on an entirely different date.

Councilor Favolise spoke about this because it came up recently, noting that it felt a little bit different. He said that in spaces where he had used parliamentary procedure before (or been the parliamentarian for bodies), this was a rare example of where he would advise the Chair that they could do something they are typically not allowed to do, which is question the motivation of the member making the motion. He clarified not questioning the motivation in a moral or character kind of way, but to make sure that if a Councilor is making a motion to table, that they understand exactly that it is the correct motion. Typically, he said you can tell from the Councilor's prelude whether the intent is to table it and take it up later in the meeting or postpone it definitely so the Council can have more time to think about it or await new information, whatever the case may be. So, Councilor Favolise asked if this could be a case in which the Chair could maybe seek clarification about the intent of a motion instead of not recognizing a motion. Ms. Palmeira said she could see what the Councilor was talking about, but felt like he was getting into the same conversation as the last agenda item. Generally, Ms. Palmeira said yes, to determine which motion is appropriate, it depends on why. For a clear answer on which Rule to use and which one can be accepted, the *why* is important. For example, that if someone does not want to table until the next meeting and the majority of the Council agrees, what is the answer? The City Attorney said that in this scenario, if a Councilor thought a wrong motion was happening, they could make a point of order to say it should actually be a motion to postpone definitely and not a motion to table. He said that would just be pointing it out to the Chair and not impugning anybody's motivations, so that was the City Attorney's recommendation in that situation.

Councilor Haas asked if Ms. Palmeira would be talking about motions to postpone indefinitely. Ms. Palmeira said it was not on the agenda. Councilor Haas' understanding was that a motion to postpone indefinitely would kill a motion as if it never happened, and it troubled him that it would only require a simple majority and not a 2/3 majority; this would limit debate, subject to a point of order or appeal. Ms. Palmeira said she understood and that made sense. Councilor Remy said he understood it differently as postponed to a non-defined time, not gone entirely. Ms. Palmeira said her understanding of postpone indefinitely was that it would kill the motion as Councilor Haas described.

Mayor Kahn used the City Council's Rule Section 26 that had been tabled to an uncertain date as an example and asked whether the motion at the time was appropriate. The City Attorney thought that went to Councilor Favolise's mention of how to point that out. Councilor Favolise stated that he made a point of order during the meeting at which Section 26 was tabled and raised that, but the Councilor continued to make the motion to table, and the Chair accepted that motion, which ultimately carried. Councilor Favolise was unsure where that left the Council, because it was clear that the intent of the motion was to postpone it until after this workshop based on the minutes, but that was not the motion made. Councilor Favolise reiterated that he raised the issue, and the Council was given an opportunity to consider it but moved forward with that motion to table anyway. He asked about the legal guidance on what the Council could do with that motion now. Ms. Palmeira said that based on her research, when it comes to the legal realm and enforcement, the whole intent of the body would not be harmed in the courts if the wrong motion is used; the courts would defer to what the majority was trying to do as the fail-

safe. In this specific instance, Ms. Palmeira agreed that the motion could have been cleaner, and she apologized for not being more up to speed on that day.

Councilor Bosley said a motion to table is something to pick back up the same day, a motion to postpone would be to a later date chosen, and a motion to postpone indefinitely would make something go away completely. She thought that if the Council is very clear on that, it could use them appropriately in the future. Ms. Palmeira said the only nuance she would add is that a motion to postpone definitely should, by default, be the next regular meeting. Councilor Bosley said she wanted to understand exactly, noting how many times she and the City Attorney had discussed these patterns of practice of the Council. It felt to the Councilor that it was the Council's pattern of practice to allow certain things to happen that do not align with Robert's Rules. So, Councilor Bosley wanted to be really clear coming out of this workshop about what advice the attorneys were giving this body about these motions. Ms. Palmeira said she would take the opportunity to talk about Robert's Rules. Ms. Palmeira wanted to drive home the point that the Council is governed by its Rules of Order primarily to the strongest degree. The second thing the Council is judged and governed by is how it tends to do things regularly, and then, what the body intends in its Rules of Order. Beyond this guidance, Ms. Palmeira said the Council would reach Robert's Rules, adding that they would not even be a clear guide because they contain many ways to do things.

Councilor Bosley said she heard Ms. Palmeira, but that respectfully, Ms. Palmeira had less experience with the Council's pattern of practice than the Councilor's. That made Councilor Bosley feel very uncomfortable with Ms. Palmeira saying she would be advising the Council on how to interpret its Rules that are based on its pattern of practice. Councilor Bosley said that most Councilors did not even know the pattern of practice like others such as Councilors Filiault, Jones, Roberts, and Chadbourne. So, using the term "pattern of practice" made Councilor Bosley very uncomfortable. She mentioned it working from a decorum perspective because it can be challenged. She cited a past example of a Councilor challenging to point out that the Council's Rules state that when those Rules do not cover something, the Council should look to Robert's Rules. Councilor Bosley said she heard Ms. Palmeira that in a perfect world, everyone would know what the Council had always done, but that was not the case. So, the Councilor said there needed to be a baseline understanding of the expectations of these motions. At this point, what Councilor Bosley was hearing from the City Attorney aligned with Robert's Rules and differed from what Ms. Palmeira was saying. So, Councilor Bosley asked for the clear ground rules for these three motions moving forward.

Ms. Palmeira agreed that she had less pattern of practice experience, so she had hesitance as well. That was not to say that she could not read or enforce the Rules of Order. This was how Ms. Palmeira said things were generally supposed to be working and what was guiding her. It would not be the same in every circumstance. Ms. Palmeira mentioned that to the consensus of the body, the Council can write as many Rules as it wants and if it wants to pull some from Robert's Rules, it can; Ms. Palmeira can advise on how Robert's Rules conflict with the Rules Keene's Council has already adopted.

The City Attorney clarified his understanding that a motion to lay on the table and a motion to postpone definitely are not the same thing. He said that a motion to postpone definitely is to a specific date (or the date of the next meeting). A motion to lay on the table has a specific requirement under Robert's Rules to either come up within the next regularly scheduled meeting of the body or within three months, and if it does not come up within three months then it is dead. The City Attorney thought that was the point that Councilor Favolise was trying to point out at that meeting when Section 26 was tabled. The City Attorney questioned whether this should be explicit in the City Council's Rules. He thought part of Councilor Bosley's point was that the end of the Council's Rules default to Robert's Rules when the Council's Rules do not have an answer. Councilor Bosley said she did not want to bring this up to negate the intention of the Council from that meeting regarding the tabled Section 26. Still, she thought the point was that the Council needs to be clear on what the expectation is because if following procedure, the tabled item would have fallen off the table by this date. She said the group needs to understand what happens when making motions and that these three types of motion have very different meanings.

Councilor Favolise said he had the least experience of anybody in the room with the patterns of practice, so he was aligned with Councilor Bosley's concerns. He also wanted to say that it was okay to kind of minimize Robert's Rules of Order in importance—even though they are in the Council's Rules as kind of the default—but then he said the Council's Rules would need to add definitions in for every one of these motions. He said to default to Robert's Rules when there is not something specifically laid out in the Council's Rules or not; it cannot be a pattern or convenience when the Council wants to go to Robert's Rules. Councilor Favolise continued, asking about the process. He thought it was unfortunate to have this kind of confusion over the process with a Rules of Order amendment that was as contentious as it was; he thought it compounded the difficulty of the conversation. If the intent of the Council was construed as a motion to postpone definitely—and Councilor Favolise said he heard Councilor Williams make reference to taking this item up after this workshop—then Councilor Favolise asked if the item would appear as a tabled item on the agenda at the next Council next meeting. The City Attorney said yes. So, Councilor Favolise said a Councilor would need to motion to remove the item from the table at the next Council meeting, which he said would not be consistent with the intent of Council; he said it should be appearing as old business on the agenda if the true intent of the Council was a motion to postpone definitely. Councilor Favolise remarked he was unsure how to treat it partially as a motion to table if there is a motion for it to come off the table, when really the intent of the Council was to postpone definitely. He agreed with Councilor Bosley that the Council should discuss and decide, and should not kill the matter procedurally because of a mistake or misunderstanding with the motion. It seemed to Councilor Favolise that the group was saying that it was not a motion to table for the purposes of allowing it to stay on the agenda past the next meeting, but it was a motion to table because now a motion had to be made to take it off the table. He asked what would happen if a motion to remove the item from the table at the next Council meeting would fail; would it stay on the table forever?

Mayor Kahn said he hoped to resolve this by taking Section 26 off the table and having a motion to postpone indefinitely. His reasoning was because it was the new year, and it would allow any Councilor to come forward with a new amendment.

Councilor Favolise said a motion to postpone indefinitely is an action that the Council takes on an item once in a calendar year. So, he said that Councilor Williams could not reintroduce an amendment to Section 26 again until January of 2026. The City Attorney said the Councilor could also move to suspend the Rules of Order to act upon the same matter again in the same calendar year, which the Mayor said would require a two-thirds majority vote to pass.

Councilor Remy said that if everyone was aligned that the intent of the body was to carry Section 26 until after this Workshop, then he did not understand why the group was still debating this, regardless of the motion made. Everyone had the same intent, so he said it did not matter what words they used. He understood that they should use the right ones, but in this particular case, he thought everyone was aligned on the intent to discuss Section 26 after this workshop.

Discussion ensued to recap on where Section 26 stood. The City Attorney said that at a past meeting, the Council's intention was to postpone Section 26 definitely to a date certain but that was not the motion that was made unfortunately. The purpose of this discussion, from the City Attorney's perspective, was to ensure everyone understood that there is a distinction between the motions to table and postpone definitely. He said that at the time, it would have been appropriate to table the discussion of Section 26 until the next meeting and then at that next meeting, there would have been a motion to postpone definitely to a date certain. When Section 26 was tabled, Mayor Kahn said there was an amendment with it, so when it is removed from the table, he imagined the Council would begin with the amendment since it was counter to the intent of the original motion.

Councilor Favolise asked what the Council would do if the motion to remove Section 26 from the table would fail; would it continue to stay on the table well past the next regular meeting? Councilor Remy said that would not happen. The City Attorney said the body would act on it.

Explanations of Certain Rules & Procedures - Decorum and Communicating – Section 10

Ms. Palmeira reminded Councilors of their responsibility that the limitation of debate during meetings also encompasses refraining from having side conversations. The decorum and direction of what Councilors are responsible for during City Council meetings requires that they devote their attention to what is in front of them, they are not communicating via electronic devices, and they are not communicating outside of the City Council process. That could potentially implicate the Right-to-Know Law about the public's right to have access to the government's functions.

Explanations of Certain Rules & Procedures - Motion to Appeal an Order of the Chair (i.e., a “challenge”) – Section 13

Ms. Palmeira explained that the appeal is the right of the Councilors and was not used to create a conflict. It is instilled in the Rules to enable the efficiency of a meeting and ensure all Councilors' rights are recognized. A motion to appeal an order of the Chair is a fail safe for

anything that seems to be happening incorrectly. Ms. Palmeira said that if an issue is just a matter of process—not affecting someone’s rights—Councilors can easily raise a point of order as opposed to challenging the Chair. Ms. Palmeira referred to a question posed by Councilor Haas as to if the Mayor or Temporary Chair’s ruling is overturned on appeal, what happens to the item in question and is another motion required to address the item?

Ms. Palmeira continued that it really depends on the circumstances and the vote. In most cases she could imagine, she thought a motion would be needed for what would have just been overturned. She returned to the example of the *Jumanji* event: if the Chair decided to hear an agenda item out-of-order, the Council challenged the decision, and the Chair’s decision was overturned, then the Council would default back to the order of business that is already in the Rules of Order. Ms. Palmeira said there could also be an alternative motion to hear items earlier or later. Councilor Haas said that the item would need to be recognized again as a new motion/topic, except for something automatic in the schedule.

Councilor Favolise said he thought this was important because it implicates—again—this idea of the power of the Chair. In the way Ms. Palmeira had just described it, the burden would be on the Councilor to make a motion (or a similar function) challenging the chair. To Councilor Favolise, that was different in practice than the Mayor taking something out-of-order. Councilor Favolise asked if that would not be operating by consensus, and then all it would take is a Councilor to object; does it really require an affirmative action by the Council? He said the PLD Committee had recently discussed how much burden is on an individual Councilor. It seemed to Councilor Favolise that the Mayor had the deference to move anything around on the agenda that he wanted and if someone does not want that, then the Council has to challenge and there needs to be a second. So, Councilor Favolise asked the difference between operating by consensus—where just one Councilor could object and there could be a vote of the Council—vs. the Council having to affirmatively challenge the ruling of the Chair. Ms. Palmeira understood and said in that scenario, she would probably try to pick the easiest example of something that would not require a second motion. So, that would likely just be order of business, meaning a point of order to not take the agenda out-of-order; in that case, there would not need to be a challenge.

Councilor Roberts said this was a really simple one. Regardless of the body, if the presiding officer stated that their intention i.e., “unless there are any objections, I am going to...” this gives any member of the body the right to object.

Councilor Favolise said that objecting does not require a second, so there is less of a burden on a Councilor. Ms. Palmeira said it all really takes the same form as a point of order, which is basically just a Councilor stating that they object to something; the Council does not need to vote on that. Councilor Favolise asked what the next logical step would be if a Councilor objects to a unanimous consent motion. The City Attorney said that if one Councilor objected to the Mayor moving of an agenda item, the Councilor could stand and say that they challenge the Chair’s decision to move the item, and if somebody seconds, the Councilor could argue their point.

For clarification, Councilor Lake asked whether the Chair has the ability to move agenda items or if that would be acting in consensus to table the item until later in the meeting; if the latter and

a Councilor asks for a point of order, would another Councilor need to motion to table the item to actually move it to later in the meeting? Councilor Lake was unsure what would actually be challenged if the Chair would be acting by consensus. Ms. Palmeira said that the Councilor's description aligned with her understanding, except that a lot of the adjustments that the Mayor could take—e.g., in response to a point of order—could also just be the order of business by consensus. Technically, the Mayor could table something by consensus and a Councilor could raise a point of order to say they do not consent by consensus. Ms. Palmeira said the descriptions were getting more outside of the realm of possibility of what the Chair could adjust for in the order of business. The goal of the order of business is efficiency. Mayor Kahn did not envision occasions of moving items on the agenda that would be objectionable.

Councilor Tobin pointed out something in the language that could be confusing to her because she tends to read Rules literally: “unless there is no objection, I plan to do this.” To her, that statement is seeking consensus, but she would not be able to object to anything until there is a ruling; she cannot challenge a ruling if there is no ruling. So, she said that if the Chair is not asking about consensus. Ms. Palmeira said the Councilor's was more of a philosophical question, so she did not have a great answer. Ms. Palmeira's opinion was that when the Chair is acting by consensus, which means there is consent to the body presumed, then it would be up to the body to voice that it does not consent. Councilor Tobin asked if the Chair would have to acknowledge her hand raised if she wanted to object. Ms. Palmeira said yes.

Councilor Bosley tried to also address a question from Councilor Haas later on the agenda: “When is it reasonably practical for a member to not physically be present and allow remote participation?” Councilor Bosley said one example of the Council using “without objection” is when a Councilor attends a meeting remotely and the Chair acknowledges their participation. If someone objected, a vote would be required immediately to determine whether to allow the remote participation, so the Chair could then not make that decision by consensus; the same could be true in the context of moving an agenda item. Mayor Kahn mentioned needing a second and Councilor Bosley did not think a second was needed for an objection. The City Attorney thought the process would be that the Chair would ask for any objections to allowing the remote participation, any Councilor raised an objection, a vote would ensue on whether to allow the remote participation.

Mayor Kahn agreed, adding that he imagined that being more likely to occur relative to items on the agenda that the Mayor would choose to accept as informational or refer to staff; in these cases, he wondered if a Councilor would need to challenge the Mayor. Councilor Bosley thought a Councilor could instead object to accepting the item as informational and require a vote, without challenging the Mayor. The City Attorney said that would be a shorthand way to do it. Councilor Bosley thought a challenge of the Chair would be a simple majority so the terminology would not matter, but she thought that objecting would be appropriate. Councilor Bosley questioned whether the group would be voting on the topic at hand or the Chair's decision on the topic at hand; would there be two votes? The Mayor said yes. The City Attorney said that the Councilor was getting into the minutia. The City Attorney said the collegial way to handle that situation would be to object to the Chair's decision and call for the vote on whether

to accept the item as informational; a more formal process would be to require a motion and a second, with the level of formality depending on the body. Mayor Kahn said it is the Chair's discretion which way to do that, and the City Attorney agreed. The Mayor felt that discretion was important particularly on informational items. Particularly because the agendas are reviewed in advance by a body that determines there is no formal action that this Council can take on certain items and hence recommends the Council considers them as informational. So, the Mayor would seek a challenge to oppose the recommendation of that body.

In response to Councilor Tobin, Councilor Filiault said that is the purpose of Section 13, Right of Appeal, which he had used a few times. He said that Section is not to cause hate and discontent, but it stops the process because sometimes a Councilor needs to object. The Right of Appeal limits debate to the Councilor appealing and the Mayor in advance of a majority vote of the Council. Councilor Filiault said the Right of Appeal can be used when Councilors disagree with how something is going; it is not about anger or malice. It only takes a few minutes and then the group moves on with a decision. He said that sometimes it is worth stopping the process to have your point heard and a vote taken, even if it does not go your way.

Councilor Haas said that—under Sections 13 and 17—an appeal or a challenge to the Chair requires a second, whereas a point of order does not require a second. It seemed to Councilor Haas that both of those could be used either way. He continued that he could make a point of order, which essentially challenges the Chair's decision on something, and would not require a second. Whereas if he phrased it as wanting to appeal the Chair's decision, then he would need a second. Councilor Bosley said that an objection or point of order usually just draws attention and then something has to happen after that. The City Attorney said it is usually procedural. Councilor Haas said the point of order still has to follow through with a vote. The City Attorney and Councilor Filiault said no. Councilor Filiault said the Mayor can ignore a point of order. Mayor Kahn agreed that was how the Rule was written. Councilor Haas said a Councilor could follow that with an appeal.

Explanations of Certain Rules & Procedures - Points of Order – Section 8 & City Charter Section 19

Points of order were discussed above. Councilors can seek the City Attorney's opinion about parliamentary procedure at any time, but it still falls to the Mayor to make the ultimate decision on a point of order. Points of order are more so for process issues, not objections.

Explanations of Certain Rules & Procedures - Rank of Motions – Section 17

Next, Ms. Palmeira highlighted Section 17, which is more of a table than a Rule. She shared her understanding of some undefined terms; if the body had a different take or historic practice, she wanted to take that into consideration. She reviewed the primary terminology:

- Main motion: general term referring to the original motion that started a conversation/topic.
- Subsidiary motion: more mechanical and intended to help address an item and what the Council will do with it.

- **Incidental motion:** anything that is not the introduction of a topic, like a main motion; can be about process—like a point of order, recess, or adjournment—without necessarily being tied to a specific item.

Ms. Palmeira shared some particularly important things to consider in the Section 17 table. Rank is very important in the first table. Not all possible imaginable motions are listed. When dealing with incidental non-ranked motions, ranked motions, or two ranked motions—for example—Ms. Palmeira said that would be murky area and the Chair/Committee would have to go to the City Attorney for advice to navigate. The Council has Rule 17 to the extent possible to help. This example is why the attorneys always recommend making one motion at a time and not making multiple amendments.

Mayor Kahn asked if a rank motion would stop debate. Ms. Palmeira said there are motions that in effect do stop debate: motion for the previous question and motion to extend debate, which both have a two-thirds majority requirement. Mayor Kahn said the other motions do not end debate, but they must be considered. Ms. Palmeira said yes, in the order that they are ranked.

Councilor Favolise asked about this in practice, though he did not know necessarily how likely it is to come up. Although again recently, with Section 26 under consideration, he said there were some questions about precedence of motions. He asked—if two Councilors are seeking recognition and the Mayor calls on a Councilor who makes a motion to amend (lower rank)—would it be in order for the Councilor who was not recognized who intended to make a motion of a higher rank (e.g., postpone definitely) to alert the Mayor to that. Is it in order for the Councilor to alert the Mayor that they are seeking recognition for the purpose of making a motion of a higher rank? Ms. Palmeira replied that the Councilor would have the full right to make the motion—whether they alert the Mayor or not. However, she said it is a matter of trying to work well with the body, so there could be some delicacy around that exact scenario, and a Councilor might want to see how the amendment plays out. The Councilor would still have the right to make the ranked motion, or not let the amendment motion play out in conversation and pull the motion to postpone definitely right away—it is ranked higher, so the body would have to address it.

Councilor Filiault cautioned against stacking amendments and the City Manager agreed.

Councilor Filiault recalled the City Attorney getting the Council out of an amendment stacking situation a few years prior. So, he cautioned newer Councilors especially against amending amendments. Instead, he said to stand up and say why you disagree with an amendment and if it fails, offer a different amendment. Mayor Kahn agreed.

Explanations of Certain Rules & Procedures - Review of Items of Business – Section 26 and Communications – Section 25

Ms. Palmeira discussed Items of Business related to Section 25 and the process discussed earlier in the meeting for agenda review. Both Rules 25 and 26 describe the type of items that would get reviewed by City Council. Section 25 states that, “Communications of a personal, defamatory, or argumentative nature, shall not be accepted by the City Clerk.” Otherwise, communications fall on the Council’s agenda. Section 26 states that: “Items of business determined by the Mayor and

City Manager to be routine City business, or within the purview of the City Manager, or of a nature that investigation by the City would be appropriate or of a nature that the matter should be dealt with confidentially shall be referred, as appropriate, to the City Manager, the City Council, Council Committee, or other appropriate governmental agency for disposition.” Section 26 provides that the sponsor of the item is given notice of its disposition and further states that items of business not resolved to the satisfaction of the sponsor may be placed upon the Council agenda by the Mayor, any member of the Council, or the City Manager. Section 33 also states that items that have already been submitted and acted upon would be placed in Councilors’ mailboxes rather than put on the full agenda.

Explanations of Certain Rules & Procedures - Standing Committees – Section 23

Ms. Palmeira said there had been questions about the form of Standing Committee recommendations. She said the practice and instruction had been for Standing Committees to pose the items to Council in a positive phrasing, regardless of what the recommendation from the Committee is, even if that is fully 0–5 motion. At the full Council meeting, it is the responsibility of the Committee Chair or designee to make the motion, but that does not mean they are required to advocate for that motion; they are fully able to recommend against carrying out the intent. If the Council wants to change this practice or establish different parameters for its recommended motions out of Standing Committees, it can. Ms. Palmeira talked about why Committee recommendations had historically been phrased positively. It helps with consistency, clarity, and transparency. Positive phrasing really helps the Councilors to understand what they are moving and voting on. For example, a motion against an ordinance on a vote 10–5 vs. a motion to adopt an ordinance on a vote of 5–10. She said it helps to be able to consistently read the status of the law being considered. Also, on the Council floor, it should help Councilors to know whether they are voting in support of a positive motion.

Ms. Palmeira added that, “In the absence of the Mayor, a tie vote on any question, which includes the vote of a Temporary Chair shall be deemed to be a nay vote of the question.” She called that unusual—a tiebreaking vote is automatically a no. So, she said that if the Council were to follow the practice of carrying out the intent to the Standing Committee reports in a positive voice, it could be manipulated to automatically get a nay vote because of Section 21. Meanwhile, she said it seemed that Section 21 was written with the intent of a positive motion coming up with an automatic negative if there is no tiebreaking vote. The Mayor added that the Chair would need to vote. Ms. Palmeira said that in the absence of the Mayor, with an even number of Councilors, a Temporary Chair would still be required to vote as a Councilor. Ms. Palmeira continued that even with the Temporary Chair voting, according to Rule 21, that vote would be a “nay.”

Councilor Lake appreciated this context. He asked if a Standing Committee has to pass a vote for a Committee report to be sent back to Council; is a failed vote still a reportable action from the Committee that would not need a follow-up recommendation? Ms. Palmeira said that was correct. Aside from putting things on more time, as long as it gets to Council, any vote of the Standing Committee is fine, regardless of the direction.

Explanations of Certain Rules & Procedures - Order of Business – Section 24

Ms. Palmeira brought this up because there was a question about consent agendas. She pointed out the December 19, 2024, agenda, when the Council used a consent agenda, taking multiple agenda items that do not require debate together for one single vote. She said she did not have information on what and how that works because Keene did not have a Rule on it. The Council would have to consider appropriate times to have a consent agenda, who would be responsible for determining the items that can be grouped together, and a process for addressing the proposed consent agenda, including how to remove things, which could probably be handled by consensus. While the Council had no Rule for it, the Council was not prohibited from having consent agendas.

Mayor Kahn said that as a City Councilor, he had asked to have consent agendas.

Councilor Remy said this question came up because he drafted a letter that he had not yet submitted that would ask the Council to move to consent agendas. He said the Council would probably see it soon now knowing that there was nothing in the Rules preventing consent agendas. He thought it would most likely be the Chair's prerogative with the Council's consent to remove items from the consent agenda. Councilor Remy said the idea behind consent agendas is to prevent time spent on people stating niceties when everyone has other things to do. He said that if a Councilor wants to debate even one part of a Committee recommendation, they can pull it out. Otherwise, he said the Council should not spend time debating 15–0 votes.

Councilor Chadbourne asked if a consent agenda was employed at the December 19, 2024, Council meeting. City staff confirmed. The City Manager said that it is a practice used by cities everywhere and many non-profits. The City Clerk offered a downside that she noticed very little discussion for the public at that meeting, so it could result in lack of transparency in terms of the explanation from the Committee Chairs that night. If the Council chooses to move to consent agendas, the City Clerk thought there should be some minimum explanation of the intent of the Committee. Councilor Remy said he would completely agree if there were not Committee meetings and backup notes from them. Councilor Chadbourne agreed with the City Clerk about transparency because on that evening in December 2024, she felt rushed, and she did not think that was fair to the constituents who might not follow every single Committee meeting. She thought the Chairs should at least take a moment to speak on the items. Councilor Bosley said she tended to agree that while some things are not as controversial (i.e., a festival or donation), some things the PLD Committee does are laws. Without an opportunity to explain those, Councilor Bosley said it could feel a little conniving to her and it could be easy to create a bunch of laws people do not know about. Councilor Remy was content to discuss this another time.

Explanations of Certain Rules & Procedures - Reconsideration – Section 20

Ms. Palmeira mentioned again that the Reconsideration Rule requires a simple majority of Councilors *present*, which could be a simple majority of just over quorum rather than whatever the vote that the Council is trying to reconsider may have originally taken. Councilors are required to provide notice that they are going to be seeking reconsideration.

Explanations of Certain Rules & Procedures - Related: Mayor's Authority to Call for Reconsideration – City Charter, Section 19

Ms. Palmeira pointed out that there is a distinction between a Councilor's (Rules of Order Section 20) ability to seek reconsideration and the Mayor's ability by Charter (Section 19) to ask for reconsideration. The Mayor's ability in the Charter does not require there to be a vote, they can simply call for reconsideration. The Mayor does not need to provide notice that they intend to seek reconsideration.

Councilor Filiault added that for a Councilor to seek reconsideration, they have to be on the prevailing side of the original vote. Ms. Palmeira said that was correct and said that did not apply to the Mayor.

City Council Theater Company: Role Playing & Scenarios

Due to lack of time, the Council did not engage in the role play scenarios. However, Ms. Palmeira said they were very important and asked all Councilors to read through them carefully and direct questions to her.

Q & A

a. Questions from Councilor Haas:

- i. Section 2: When a special meeting or workshop is called, is there a time requirement for the meeting to occur?*

Ms. Palmeira said there was no time requirement she could see, other than that the Council must give at least 48 hours' notice of any such meeting. Also, per NH RSA 91-A, 24 hours' public notice is required.

Councilor Haas said that if a special meeting is called, it does not have to be scheduled within any specific mandatory period of time (e.g., before the next Council meeting or within three months). Ms. Palmeira said not that she was aware of from the Rules. Councilor Remy thought it would depend on the phrasing when the special meeting is called; for example, if it is an emergency meeting. Mayor Kahn thought it would be such a situational occurrence that there was not a Rule.

Councilor Favolise asked a question not about timing but about calling a special meeting or workshop. He recalled that six Council members was chosen in part because it is less than a quorum. So, he questioned: what if he needs to ask nine Councilors before he gets six to sign on. At what point would Councilors be running afoul of RSA 91-A? Ms. Palmeira said she shared the same concern, but it sounded like a lot of conversation went into building this Rule, so she asked for Councilor Bosley's input. Councilor Bosley said she had not gotten into the intimate details of what those conversations would look like. She said she had always felt comfortable in discussing process and not product. She regularly shares with the PLD Committee if their process is going to be changing for some reason, she does not talk to them about the content of the item that has the process changing. So, if Councilors are talking process, she does not think it is a problem. The City Attorney agreed. So, Councilor Bosley advised her fellow Councilors that

if trying to call a special meeting or workshop, to contact their fellow Councilors, tell them the topic, and not talk about the content of the meeting but the process. Mayor Kahn asked if a Councilor could contact nine other Councilors in the effort to seek the support of six to call a special meeting. Councilor Bosley said yes but added she thought it would be rare for a special meeting topic to be so controversial.

The City Attorney said that interestingly, in the context of NH RSA 91-A:2, “for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power,” process is not generally seen like that. It goes on to read that a Councilor cannot use sequential communication to circumvent the intent and purposes of the statute. Still, it seemed to the City Attorney that it would be acceptable for Councilors to call each other and say a special meeting is needed on a specific topic. Councilor Bosley agreed. She recalled that the Mayor has the ability to call a special meeting or workshop whenever they want, and the City Attorney confirmed. Councilor Bosley said that, for example, in an instance in which the Mayor does not agree with the reason to call a special meeting, a Councilor could seek five other Councilors—two from each Standing Committee—to call the special meeting. That would be about the process and the Councilors would not be trying to discuss the details of the topic or convince the other Councilors of how they should vote when the time comes, only to indicate the value of having the meeting. That said, the City Attorney added that it would be ideal to not trigger a quorum of the committees or the public body when seeking that support for the special meeting. The point is that it is just a process to initiate a meeting for the public to participate in.

Mayor Kahn considered the following situation: a Councilor does or says something during a meeting that other Councilors object to in hindsight. The Mayor wondered how those other Councilors could call a special meeting to consider the aforementioned Councilor’s actions. He said it would be a process question but noted the challenges of contacting nine other Councilors to request a special meeting to talk about another Councilor’s statements or behaviors. Councilor Bosley thought it would rely on how the Councilor who wants to create the special meeting would approach it. She said that requesting a special meeting due to disagreement with how a specific Councilor behaved in a prior meeting would be different than treating it more generically, like a personnel matter. She suggested speaking with the City Attorney in advance of making those phone calls to other Councilors to develop the proper wording that would relate to the impetus for the special meeting on process and not specifics. Councilor Bosley compared it to when the Council moves into non-public session and uses more generic terminology related to the topic without divulging it. Mayor Kahn said that was covered in the statute and easily referenced. Councilor Bosley agreed, reiterating that when communicating with fellow Councilors to call a special meeting, the key is to not give details that would trigger an RSA 91-A violation. The City Attorney agreed, stating that once the conversation starts, it can be very difficult to keep it confined. The City Attorney said that in the Mayor’s example, the preference, would be to raise the issue at a Council meeting and decide at that time whether to schedule a special meeting about it. He said that using this option to convene Councilors to call a special meeting should really be reserved for in-between meetings for time sensitive matters.

Councilor Chadbourne recalled when this discussion came up with former Mayor Lane. The City Attorney said it was a complicated Disciplinary Policy that was difficult to implement because it should be difficult to discipline, remove, or censor a member of the body. Councilor Chadbourne thought that was a different process than what the Council was talking about during this workshop.

ii. Section 4: When is it not “reasonably practical” for a member to be physically present such that remote participation is allowed?

Ms. Palmeira said that the Right-to-Know Law, RSA 91-A:2, does not provide explicit reasons like the Council’s Rule, but the Law does pose some explicit reasons that could be reasonably practical. What was listed in the City Council’s Rule came from the City Council, but that list was not exhaustive and what it “reasonably practical” is up to the Council in the moment to modify, remove, or add. She noted that HB80 was pending, which proposed to change the language in RSA 91-A:2 from “reasonably practical” to “unavoidable” absence, which would raise the bar and would change the City’s standard for what Councilors have to prove too.

Councilor Remy noted that “unavoidable” would be determined by the body. Ms. Palmeira said that was true. So, Councilor Bosley said everyone could say what unavoidable means to them.

iii. Section 19: Are motions to adjourn debatable?

Ms. Palmeira said typically no, motions to adjourn are not typically debatable and do not need to be. However, she said there is a Rule in Section 19 that states, “A motion to fix the time to which to adjourn is debatable, only as to the time in which the meeting is adjourned.” So, she said that if a Councilor calls for adjournment made as a motion, it would be debatable, but it would not be automatically debatable if the Mayor calls for adjournment.

Councilor Favolise asked a clarifying question. He thought that “a motion to fix the time at which to adjourn” was different than “a motion to adjourn.” For example, if the group decided at the beginning of the meeting not to go past a certain time, there could be debate about what the right time to adjourn would be (e.g., 8:30 PM or 8:45 PM). He did not think there was any motion that ranks higher in precedence than a motion to adjourn, but it was not on the list of motions, so he could not reference that for whether it was debatable or not. He reiterated that he thought there was a difference between “a motion to fix the time at which to adjourn” being debatable, but he was unsure if that answered the question of whether the “motion to adjourn” immediately is debatable. Councilor Bosley said she interpreted it the same way. She said that at the beginning of a meeting, the Chair could accept debate on when to adjourn the meeting, but when the agreed upon adjournment time would then arrive, no debate about adjournment would be accepted.

The City Attorney agreed with Councilor Favolise that there were two things happening. The City Attorney’s strict reading of Section 19 said that “adjournment shall be in order at any time,” which means that the Mayor can just adjourn, and that is what Keene does. That also aligns with what the City Attorney had experienced with other entities—public and private. He indicated that objections to adjournment are uncommon. However, he said that if the end of a meeting comes

and there is still business or something to be continued, there could be adjournment to a date and time certain, which Section 19 outlines; this is common for the Zoning Board of Adjustment.

Councilor Bosley said the Joint Committee of the Planning Board & Planning, Licenses & Development Committee often adjourns to a date and time certain. However, she said that the way she read Section 19 was literally that a motion to fix the time to adjourn is debatable; so, if trying to create a fixed time to adjourn a meeting, it would be debatable. The City Attorney said he saw the Councilor's point and agreed on the basis of that language.

- iv. Section 21: In the absence of the Mayor, does the Temporary Chair vote as a member? If so, and there is a tie, then is the presumption that the Mayor, if were present, would have voted nay?*

Ms. Palmeira said yes, if there is a tie, the presumption is that the Mayor (if present) would have voted nay. Ms. Palmeira recalled that in the Mayor's absence, if there is still a tie, there is no presumption of what the Mayor's vote would have been.

- v. Section 22: Are special committees created by the Council as a normal item of business? Would majority vote suffice? Or does the Mayor have the right and authority to create special committees?*

Ms. Palmeira said yes, as long as they are agendized appropriately, special committees can arise in a number of ways. Per Section 24, if they come in as a communication, they are agendized that way. If they come in as legislation, they would be proposed as a special item.

Councilor Haas asked if the Mayor has the right and authority to create special committees on his own. Ms. Palmeira said that under Section 22 of the Rules of Order, the Mayor can announce a special committee and can appoint the members, but it is not the Mayor's sole authority to create the committee. The City Council must vote and approve every person appointed to a special committee. So, in that way, that Council has accountability over it. So, Councilor Haas said the Mayor could create a special committee, but it might remain a non-committee until the Council approves all the appointees. Ms. Palmeira pointed out that there are differences between special committees, ad hoc boards, legislative boards, and statutory boards.

Councilor Haas noted that special committees are supposed to expire after one year if not renewed and asked if that was happening. The City Clerk said that was the practice. If a board, special committee, or ad hoc is approaching one year, the Clerk's office contacts the staff liaison to initiate a new communication to extend the timeline. Councilor Haas said he had not had the privilege of seeing those yet. The City Clerk said an exception was the Master Plan Steering Committee, which was not an appointment of the City Council. Councilor Bosley added that when special committees have a charge that takes longer than one year, it might be extended, which she thought was spelled out in the Rule. Councilor Haas agreed, but his concern was for the inactive City committees. Mayor Kahn recalled Ken Kost submitting a letter recommending a special Committee.

Councilor Haas reiterated his concern about City committees that had fallen idle that the City was still maintaining and should be identified. The City Clerk said that in terms of the minute

taking program, if there is an inactive special committee, the Clerk’s office would be reaching out to ensure there are not resources being needlessly devoted. Councilor Haas said his concern was less about the Rules of Order and was something that could be discussed separately. The City Manager said that it depends on the Committee. It might not be a special committee of the Council, there are other committees created that do not fall under these rules, like those created by the City Manager. For example, in the past there was a City Manager’s committee on bike safety rules and an advisory committee on human rights. Councilors can bring questions about any of those special committees to the City Manager. Councilor Haas said his concern was committees listed on the City website that had no listed activity for several years and he wondered why they were still there. The City Clerk said she had asked staff to reflect that those were disbanded except for the Master Plan Steering Committee.

The City Attorney added that Section 2 of the City Code—General Administration—talks about the City Council’s creation of boards, commissions, and ad hoc bodies. So, he said the City Code and Rules of Order work together in that context.

- vi. Section 37: When an election to fill a vacancy is tied between two candidates after two votes, do the two candidates who have tied need to re-file? Or are they automatically entered in the next round?*

Ms. Palmeira said yes, under Section 37.C.5. of the existing Rule, adding that the Council had seen this recently.

Councilor Filiault asked, if there is a tie, is there anything to prevent the Mayor from breaking the tie, like for City Council issues. He asked if there was something specific in the Charter disallowing that, because the Rules of Order could be changed but the City Charter could not. Ms. Palmeira said that as the Rules are written, “The final vote will be conducted and the candidate receiving the votes of a majority of the elected City Council, will be declared the winner.” So, she said according to that statement in the Rules, there is no space for a Mayoral vote. Councilor Filiault reiterated that the Rules of Order can be changed, as opposed to the Charter. The City Attorney cited Section 8 of the City Charter on Vacancies: “The City Council shall elect by a majority vote of the elected Council a qualified person to sit.” So, the City Attorney said it requires that there cannot be a tie.

Outstanding Rules

a. Rule 26 – Tabled from November 21, 2024 City Council Meeting

Mayor Kahn asked, and there was consensus in the room to remove Section 26 from the table at the February 6, 2025, Council meeting. As such, he asked everyone to read Rule 26 in advance of that meeting. In particular, the second paragraph described the issue of contention, which was the process for determining—in advance of the meeting—the intended disposition of items of information or referrals to staff. He asked Councilors to determine whether they were comfortable with the existing Rule and how they had experienced it, and come prepared for discussion.

The City Clerk thought it was important to note that Section 26 as presently drafted did not reflect Council Williams' requested motion that came out of the PLD Committee.

Councilor Bosley said that the handout copy of the Rule the group was looking at was not the version that last came out of PLD. The City Clerk said that was correct. So, Councilor Bosley said that handout was not what the Council would be considering. Councilor Remy said that was not true because at a Council meeting, he amended the Rule language to what originally went into the PLD Committee, and then the Council tabled that amendment. If Councilor Remy's amendment does not pass the Council, the Rule would refer back to what came out of PLD, which was a recommendation to have the City Attorney draft something.

Mayor Kahn thought it was important to walk away from this meeting knowing that at the February 6 meeting, assuming there would be a vote to remove Rule 26 from the table, that the Council would be voting on the amendment brought forward from the Committee. If the amendment would fail, the City Attorney would be asked to draft something indicating that every non-germane item would be considered by the Council. If that language drafted by the City Attorney is adopted by the Council, it would go through the Committee process with public input. If these efforts then failed, Rule 26 would revert to as it existed at the time of this workshop.

Adjourn

Mayor Kahn thanked Ms. Palmeira, who said she was grateful to work with everyone and that it was an educational experience.

There being no further business, Mayor Kahn adjourned the workshop at 9:00 PM.

Respectfully submitted by,
Katriona Kibler, Minute Taker

Edited by,
Patty Little, City Clerk