

	City of Lee's Summit Law Department Memorandum	
	To:	City Council Rules Committee William Baird, Mayor Stephen A. Arbo, City Manager
	From:	Brian W. Head, City Attorney 
	Date:	September 21, 2020
	Re:	Voting Rights – Mayor as Ex Officio Member of Legislative and Intergovernmental Relations Committee

Question Presented:

May the Mayor vote on items before the Legislative and Intergovernmental Relations Committee (the "Committee") in his capacity as an ex officio member?

Facts:

- The Mayor has historically attended the Legislative and Intergovernmental Relations Committee as an ex officio member of the Committee.
- In the past Mayors have both voted and declined to vote.
- There is no ordinance or code provision that provides that the Mayor is a member of the Committee ex officio or otherwise. However, the Mayor is appointed annually with other Committee and Liaison appointments to serve in this role.
- The Committee only consists of three members instead of four (plus alternate). All other committees have four (plus alternate).
- The Mayor serves along with the Chair of the Committee and the City Manager on the Legislative quick response team.

Discussion:

The Mayor has long served as an Ex Officio member of the Committee and was reappointed on July 7, 2020 to continue in that role. Additionally, the code provides that the Mayor serve as a member of the quick response team as listed above. We find nothing in the code or charter that requires Mayor to serve as a member of the Committee; however, the Mayor is appointed along with other Councilmembers to various council committees.

After reviewing some very anecdotal historical information, it appears that the fact that there are only three members of the committee (instead of the standard four) was intended to allow for the Mayor's attendance and participation. In contrast, the Mayor Pro Tempore, via a code provision, serves as an ex officio member of all committees for the purpose of quorum only and does not have the right to vote.

Additionally, it is important to note that the number of Committee members is significant. If this Committee were to have four regular members plus the Mayor then this would constitute a majority of the entire Council and the Mayor would be required to chair the meetings. Also, any action taken would

then be an act of the Council and not of a Committee of the Council. This is especially important now that the Mayor has the right to vote on items before the City Council.

Generally, an ex officio member of a committee who is a member as the result of holding an office, is afforded all rights and privileges of membership including the right to vote and to count for quorum. We have no rule discussing the rights of ex officio members of a committee, therefore, pursuant to our rules of procedure we are required to look to Robert's Rules of Order for guidance.

Robert's provides the above stated rule with two exceptions:

1. if the ex officio member is an officer of the body and serves as a member of all committees then, absent a bylaw provision to the contrary, that ex officio member would have the right to vote and discuss but not count for quorum. We have an ordinance that provides that the Mayor Pro Tempore serve as an ex officio member of all City Council Committees for purposes of quorum and discussion but may not vote.
2. If the ex officio committee member is NOT a member of the body then similarly he or she would have the right to vote and discuss but not count for quorum. I have attached an explanation related to the treatment of ex officio members from the official website for Robert's Rules of Order (robertsrules.com) below.

Conclusion:

Robert's Rules of Order make clear that the Mayor, as an ex officio member of the Legislative and Intergovernmental Relations Committee, has all rights and privileges of a Councilmember serving as a committee member including the right to participate in discussion, vote and count for quorum.

Recommendation:

If it is the desire of the Rules Committee to clarify the Mayor's participation and voting in the Legislative and Intergovernmental Committee via a rule then we would recommend inserting the following sentence into section 2-60.3(c):

The Mayor shall serve as an ex officio member of the Committee and shall have all rights and privileges including the right to participate and vote and for all purposes shall count for quorum.

The following is a portion of an explanatory faq from: <https://robertsrules.com/frequently-asked-questions/#faqs>

“Ex officio” is a Latin term meaning “by virtue of office or position.” Ex-officio members of boards and committees, therefore, are persons who are members by virtue of some other office or position that they hold. For example, if the bylaws of an organization provide for a Committee on Finance consisting of the treasurer and three other members appointed by the president, the treasurer is said to be an ex-officio member of the finance committee, since he or she is automatically a member of that committee by virtue of the fact that he or she holds the office of treasurer.

Without exception, ex-officio members of boards and committees have exactly the same rights and privileges as do all other members, including, of course, the right to vote. There are, however, two instances in which ex-officio members are not counted in determining the number required for a quorum or in determining whether or not a quorum is present. These two instances are:

1. In the case of the president, whenever the bylaws provide that the president shall be an ex-officio member of all committees (or of all committees with certain stated exceptions); and

2. When the ex-officio member of the board or committee is neither an ex-officio officer of the board or committee nor a member, employee, or elected or appointed officer of the society (for example, when the governor of a state is made ex officio a member of a private college board).

Again, however, it should be emphasized that in these instances the ex-officio member still has all of the rights and privileges of membership, including the right to vote. [RONR (12th ed.) 49:8–9, 50:16.]