

From: Ben Martig <Ben.Martig@northfieldmn.gov>
Sent: Monday, June 23, 2025 11:45 AM
To: Lance Heisler
Subject: FW: No Quorum Present Jan. 7th

fyi

From: Ben Martig
Sent: Thursday, March 13, 2025 7:13 PM
To: Lance Heisler <lheisler@heislerlawoffice.com>
Subject: FW: No Quorum Present Jan. 7th

Here is a good email chain that provides the background for the charter commission.

From: Ben Martig
Sent: Monday, January 27, 2025 4:14 PM
To: David DeLong <daviddelong157@gmail.com>
Cc: Lance Heisler <lheisler@heislerlawoffice.com>; Erica Zweifel <Erica.Zweifel@NorthfieldMN.gov>; Peter Dahlen <Peter.Dahlen@northfieldmn.gov>; Chris Hood <cmhood@flaherty-hood.com>
Subject: RE: No Quorum Present Jan. 7th

Dear Mr. DeLong,

Thank you for sharing your additional concerns regarding the January 7th City Council meeting and for your analysis of the relevant Charter sections. As in the past, I appreciate your ongoing dedication to ensuring that our processes align with the Charter's intent.

As you noted, the Charter specifies that newly elected members, including the mayor, must be sworn in as the first order of business at the first meeting in January. It also states that current members continue to serve until their successors are elected and qualified. I consulted with The City Council's legal counsel, Chris Hood, and he agreed the procedures were appropriate to meet the intent of the charter completed the swearing in immediately at the beginning of the meeting. The following is an excerpt from an email response provided on this topic (and he is copied on this email):

Good afternoon,

After our brief discussion last evening (01/21/25) in reference to David DeLong's recent emails, I wanted to follow up on several points regarding the administration of the oath of office and actions taken at the January 7, 2025 City Council meeting.

Factual Background

As background, the procedural status of the City Council in reference to the beginning of the January 7, 2025 City Council meeting was that there were four newly elected members in attendance that evening; Mayor-elect Zweifel, Councilor-elect Dahlen, Councilor-elect Beumer,

and incumbent Councilor-elect Ness. The incumbents remaining on the City Council in attendance at this meeting were Councilor Holmes and Councilor Peterson White. Incumbent Councilor Soukup was absent from the January 7 meeting. As a result of this absence, there were only three currently elected members, counting Councilor Ness, present at the beginning of the meeting, along with the three newly elected members. Thus, a total of six members were present for the meeting. Accordingly, quorum was also not established at the beginning of the meeting yet pending administration of the oath of office to the four newly elected members by the City Clerk.

Mayor-elect Zweifel called the meeting to order at approximately 6:00 p.m. Such an action was appropriate given the foregoing attendance in order to take the procedural step to begin the meeting and administer the oaths of office as required by Charter to the four newly elected members in order to then thereby establish quorum and thereafter conduct City business as provided in the agenda for the January 7, 2025 City Council meeting. Immediately following the Mayor-elect calling the meeting to order, City Clerk Peterson administered the oaths of office to each newly elected member. Having thereafter received and taken the oath of office each member then having qualified to serve commenced their respective terms of elected office. Each qualified Council member then immediately took their seats at the dais and commenced City business as provided in the agenda for the January 7 meeting. No votes on any City business matters were taken prior to proper administration of the oath of office by the City Clerk to the four (4) newly elected members. All members were legally and properly qualified to take their respective elected offices following administration and taking the oath of office.

Oath of Office

Administering the oath of office is typically routine and often done ceremonially. It is nonetheless an important legal prerequisite to newly elected persons qualifying for office and beginning their terms. Such is the case in Northfield and all other elective offices in the United States. Administering the oath of office is a legal qualification, but is also a procedural step not intended to prevent the functioning of a government entity, but instead to facilitate and implement the functioning of a government entity. It is a necessary element for the transition of government. City Charter, Sections 3.3, 4.1 and 15.2, require the administration of the oath of office to newly elected persons as a prerequisite to such persons commencing their elective terms. See operative highlighted language below:

Section 3.3. - Council Composition and Election.

The council shall be composed of a mayor and six (6) council members who shall be qualified. To qualify for elective office a candidate must be qualified to vote, be at least twenty-one (21) years of age on the date he or she would assume office, and be a resident of the city and of any ward he or she seeks to represent, or will become a resident therein at least thirty (30) days before the election. If elected, candidates must further qualify for office by taking and filing an oath of office. One (1) council member shall be elected from each of four (4) wards and two (2) council members shall be elected at large. Each council member and the mayor shall serve for a term of four (4) years and until a successor is elected and qualified. Two ward council members and one council member at large shall have terms that expire at the end of each even numbered year. A person who is sworn in as mayor while holding a council seat thereby vacates the council seat.

Section 4.1. - Council Meetings.

At its first meeting in January, the council shall meet at the usual place and time for the holding of council meetings. At this time any newly elected members of the council including the mayor

shall, as the first order of business, be administered the oath of office and shall assume their duties. Thereafter, the council shall meet at such time as may be prescribed by resolution. Such a resolution shall remain in force until modified by the council. The mayor or any three members of the council may call special meetings of the council upon at least twelve hours notice to each member and such public notice as shall be prescribed by ordinance in compliance with the laws of Minnesota. Public notice of all meetings of the council and its committees shall be given as prescribed by ordinance, and any citizen shall have access to the minutes and records thereof at all reasonable times.

Section 15.2. - Oath of Office.

Every elected or appointed officer of the city, before entering upon the duties of the office, shall take and subscribe an oath of office as required by the laws of the State of Minnesota.

Present Question

David DeLong has raised a concern that the meeting was not properly called to order establishing a quorum in order to give the oaths of office to the newly elected members and that subsequent actions thereafter may be invalid as a result. He has suggested that a former member of the Council (Mayor Pownell, Councilor Reister, or Councilor Zuccolotto) would have needed to be present at the beginning of the meeting in order to and for the sole purpose of calling the meeting to order to establish quorum for the administration of the oaths of office to the newly elected members. Getting beyond the procedural and logistical difficulties that could be presented by such a process as suggested by Mr. DeLong, the concerns are not well grounded. However, in the event that the Charter Commission believes that clarification of the Charter is needed in light of the circumstances presented at the January 7 meeting, the Charter Commission, in its judgment and discretion, has the authority to review the current provisions of the Charter and recommend and propose changes to the City Council.

Analysis

Charter Section 4.1 states in part that: "At its first meeting in January, the council shall meet at the usual place and time for the holding of council meetings. At this time any newly elected members of the council including the mayor shall, as the first order of business, be administered the oath of office and shall assume their duties."

Robert's Rules of Order provides that a government entity may hold a meeting without having established quorum for limited purposes only, but may not take votes until a quorum is established. The reason for the quorum requirement, according to Robert's Rules of Order, is to prevent a minimum number of members who may be present from conducting substantive business taken with votes not representing a majority of the governing body. Administering the oath of office is not business that requires voting and is not the business of the former governing body to implement, initiate, facilitate, delay or prevent. Administering the oath of office cannot be prevented by the former governing body whether former members attend the meeting at which the oath is administered or not. Calling the January 7 meeting to order was merely a procedural step necessary for purposes of administering the required oath of office. In short, someone needed to open the meeting for this purpose, which Mayor-elect Zweifel did as the soon to be sworn in presiding officer.

Mr. DeLong's premise would argue that Charter, Section 4.1 requires the former city council to be present at the first meeting, but section 4.1 does not state that. It merely states the "council shall

meet". One could simply conclude the reference to council meant the new council not the old and that reasonable interpretation makes far more logical sense than requiring the former council to appear for the 30 seconds needed to call the meeting to order. Further, both City Charter, Section 4.3 and City Code, Section 2-56 provide that the City Council sets its own Rules of Procedure/Business. City Code, Section 2-56 provides in part that: "The provisions of this division, except as required by the charter and state law, maybe temporarily suspended ... by consent, evidenced by lack of objection." Thus, without objection, the Mayor-elect calling the meeting to order was also within the Council's discretion regarding their Rules of Procedure/Business.

As stated, business requiring voting cannot occur until a quorum of the members of the governing body is present. There is no vote associated with or required for administering the oath of office. Therefore, quorum is not necessary or required to administer the oath of office. After the oath of the office was properly given on January 7, a quorum was thereafter established, and the newly qualified Councilors had the authority to take votes and conduct City business.

The above quoted Charter language is clear and mandatory from the standpoint that newly elected members including the newly elected mayor "shall" be administered the oath of office at the first meeting in January. There is no discretion on this action. There is no requirement for quorum. The City Clerk is required to administer the oath of office at the first meeting. There are no grounds or legal authority to delay giving the oath of office and seating the newly elected members having thereafter qualified to serve.

The premise of Mr. DeLong that the procedural step of calling the meeting to order can prevent the administration of the oath of office because a quorum of the former city council was not present, or quorum was not otherwise established, is without support and would run contrary to both the Charter and the functioning of our democracy. The language in Section 4.1 of the Charter is somewhat internally inconsistent. It does not however require establishment of a quorum in order to open the Council meeting. It does not prevent the Mayor-elect from calling the meeting to order pursuant to City Code, Section 2-56. It further does not require establishment of a quorum for the City Clerk to fulfill her legal obligation to administer the oath of office to each newly elected member. The intent of Section 4.1 of the Charter is clear that the purpose of the first item of business at the first meeting in January is, exclusive of all other business, required to be administration of the oath of office and immediately thereafter seating the new City Council so that they can expeditiously undertake the business of the people of Northfield as duly elected and qualified members of the City Council.

The only other argument that could possibly be made is that the first item of business should be the administration of the oath prior to calling the meeting to order. The City Council could have also proceeded in that regard had it chosen to do so. This too would have been a reasonable interpretation of the Charter and a process that a future City Council could consider.

Under the present circumstances on January 7 and in compliance with the Charter, the Mayor-elect properly and without objection opened the meeting pursuant to City Code, Section 2-56. The City Clerk then the immediately administered the oath of office to all four newly elected members as the first item of business. The new City Council was thereby established with quorum to then subsequently consider all of the matters on the January 7 agenda and vote on the same. The actions taken on January 7, 2025 were proper and in compliance with the Charter, City

Code, and Robert's Rules of Order. The formality of calling the meeting to order does not prevent administration of the oath of office by the City Clerk as required by Charter or prevent or delay the seating of the newly elected and qualified City Council.

The minutes of the January 7, 2025 meeting should reflect the foregoing facts and proceedings from the January 7 City Council meeting.

As I noted in the prior email, I agree that this situation highlights an area where the Charter's language could benefit from clarification to prevent similar concerns in the future. Specifically, I think there is value in revisiting:

1. The sequence of calling the meeting to order and administering the oath of office; and
2. Defining procedures for situations where quorum issues arise due to outgoing or incoming members.

To that end, I have again included Charter Commission Chair Lance Heisler in this discussion to consider adding this topic to a future item at the Chart Commission. A Charter amendment could help ensure clearer procedural guidance moving forward.

Thank you again for bringing this matter to our attention. Your input is invaluable as we work toward ensuring transparency and accountability in our processes. Please don't hesitate to reach out with any further questions.

Sincerely,

Ben Martig

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City Administrator

City of Northfield

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Northfield, MN 55057-2598

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From: David DeLong <daviddelong157@gmail.com>

Sent: Friday, January 17, 2025 10:05 AM

To: Ben Martig <Ben.Martig@northfieldmn.gov>

Cc: Lance Heisler <lheisler@heislerlawoffice.com>; Erica Zweifel <Erica.Zweifel@NorthfieldMN.gov>; Peter Dahlen <Peter.Dahlen@NorthfieldMN.gov>; Chris Hood <cmhood@flaherty-hood.com>

Subject: Re: No Quorum Present Jan. 7th

CAUTION: This email originated from outside of the organization.

I apologize if this is a bit long but it has been said that I can go a little long and I've been trying to be more concise in speaking and emails.

But apparently I need to expand on my comments.

First let me clear up the misconception that the City would never be able to call a meeting to order. My comments mention qualified members not "active" members. As to the inaccurate assertion that the City could never call a meeting to order, I point you to Charter Section 3.3 - *Each council member and the mayor shall serve for a term of four (4) years and until a successor is elected and qualified.*

Northfield is not without a Mayor or Council Members during the days between the end of a calendar year and the first meeting of the new year. Members who were up for election all still serve until a successor is qualified by taking and subscribing to an oath of office. Charter Section 15.2.

Section 15.2. - Oath of Office. *Every elected or appointed officer of the city, before entering upon the duties of the office, shall take and subscribe an oath of office as required by the laws of the State of Minnesota.*

Rhonda Pownell is/was still the Mayor at the start of the meeting until Erica Zweifel takes an oath of office. A Mayor elect is no more authorized to perform official duties than an ordinary citizen.

Current Charter language is clear and unambiguous and has been followed up until now, when apparently based on a discussion with legal counsel Chris Hood the process has been changed. I don't know what version of the Charter Attorney Hood was referencing when he suggested this opinion on the process or where in the Charter the official duties of a Mayor elect are outlined.

The current Charter language I used.

Section 3.3. - Council Composition and Election (Ord. No. 739, § 3.3, 11-6-2000; Ord. No. 781, 3-17-2003)

Section 4.1. - Council Meetings (Ord. No. 739, § 4.1, 11-6-2000; Ord. No. 781, 3-17-2003)

Section 15.2. - Oath of Office.

I don't know the reason why Mayor Pownell didn't attend the meeting. It really doesn't make a difference. When the Mayor is not present, The President Pro Tem presides. (Section 3.9. - President Pro Tem)

President Pro Tem Kathleen Holmes was present and in the Mayor's absence should have presided. This did not happen.

At the scheduled first meeting on January 6th 2025 the serving members were -

- 1.) President Pro Tem Kathleen Holmes who is in the middle of her term was present.
 - 2.) Council Member Brad Ness whose term was up but as per Charter he was still serving until his replacement was sworn in, which was himself.
 - 3.) Council Member Jessica Peterson White who is/was in the middle of her term was present.
- Members absent
- 4.) Council Member Davin Sokup, who is in the middle of his term.
 - 5.) Council Member Jami Reister, was still a Member under Charter Language.
 - 6.) Council Member George Zuccolotto, was still a Member under Charter Language.
 - 7.) Mayor Rhonda Pownell, still Mayor under Charter Language.

With only 3 out of 7 qualified members present, there was not a quorum. If there is no quorum, then there are no official actions.

I would be interested in Attorney Hood's justification for thinking it was the proper way to proceed and "clearly it was legal and the appropriate way to do it under the current language of the Charter."

I think the Charter is clear in setting out the end of term responsibilities and that a Mayor elect is no more authorized to perform official duties than is an ordinary citizen. The authority to act as an official only comes after being qualified by being properly sworn in to office. (Charter Section 15.2)

Since it was not a legal meeting, I might suggest that out of abundance of caution a properly constituted council called to order by Mayor Pownell or Mayor Pro Tem Holmes and 3 other qualified and still serving members, repeat the swearing in process properly, due to some technical problems and then entertain some kind of resolution that says the council confirms or re ratifies the actions taken at the Jan. 6th Meeting.

David DeLong

The following are excerpts of minutes, showing that past Mayors, Administrators and City Attorneys had followed Charter guidelines concerning who should preside at the first meeting in January until their elected replacement had been sworn in.

From January 8, 2013

Call to Order

At 7: 00 p.m. outgoing Mayor Rossing called the meeting to order.

A roll call was taken of members present and a quorum was declared.

Swear In Members

City Clerk Little administered the Oath of Office to Mayor Dana Graham, Council Member Second Ward David DeLong, Council Member Third Ward Erica Zweifel and Council Member At -Large David Ludescher.

The new members were seated.

From January 5, 2009

Presentation

Mayor Lansing made a statement thanking board and commission members and highlighting achievements of the previous year.

Call to Order

At 7:07 p.m. Mayor Lansing called the meeting to order. A roll call was taken of members present and a quorum was declared.

Swearing In of New Members

City Clerk Little conducted the swearing in of newly elected members. Mary Rossing, Rhonda Pownell, Erica Zweifel, Betsey Buckheit and Kris VoHS read the oath of office and took their seats at the dais.

From January 3, 2005

Call To Order

At 7:00 p.m. Mayor Covey called the meeting to order. A roll call was taken of members present and a quorum was declared.

Finance Director /City Clerk Karl Huber administered the Oath of Office to the following newly elected officials:

Lee Lansing Mayor

Kris VoHS (Re- elect) Councilmember -At Large

Scott Davis Councilmember- Second Ward
Arnie Nelson Councilmember -Third Ward

Dana Graham, CC Linstroth and Keith Covey stepped down from the table.

January 2, 2001

- 1) At 7:02 p.m. Mayor Rossman called the meeting to order.
- 2) A roll call was taken of members present and a quorum was declared.
- 5) Finance Director /City Clerk Huber administered the Oath of Office to the following newly elected officials:
Keith Covey Mayor
Dana Graham Councilmember- Second Ward
Kris Vohs Councilmember -At Large
CC Linstroth (Re- elect) Councilmember -Third Ward

These elected officials then took their respective seats in order to conduct business at the meeting to follow. The outgoing members stepped down.

JANUARY 2, 1998

MEMBERS PRESENT: Newly elected Mayor William Rossman, outgoing Mayor Paul Hager, Councilmembers Peg Prowe, David Garwood - DeLong, outgoing Councilmember Greg Colby
NOT PRESENT: Councilmembers Ken Brackee and Nancy Gruchow

Mayor Hager called the meeting to order. His first order of business was to read a letter from William Rossman submitting his resignation as Councilmember First Ward effective upon being sworn in as Mayor.

Mayor Hager next asked Finance Director /City Clerk Huber to administer the Oath of Office to the following newly elected officials:

William Rossman Mayor
Phillip S. Hansen Councilmember -At Large
Robert P. Stangler Councilmember -Third Ward

These elected officials then took their respective seats in order to conduct business at the meeting to follow. The outgoing members stepped down.

The list could go on but I hope my point about members serving until a successor is elected and qualified has been clarified.

On Mon, Jan 13, 2025 at 3:53 PM Ben Martig <Ben.Martig@northfieldmn.gov> wrote:

Thank you Mr. DeLong for sharing your concerns and your perspective.

I did discuss this issue in advance of the meeting with legal counsel Chris Hood and followed the process consistent with his advice on the calling to order. Following your logic on only calling the meeting to order with "active" City Council members, if we had four new City Council members with a Mayor and 3 City Councilors (which didn't happen this year but could) then we'd never be able to call a meeting to order. So, it was followed the best we could to implement according to the language. But, we believe clearly it was legal and the appropriate way to do it under the current language of the Charter.

However, this is something the Charter Commission could review for language to see if it can be enhanced. I am aware that the appointment process is different than statutes so I think it would be good to see if the Charter Commission wants to add to their review list not only on the issue of calling the meeting to order but also reviewing when the term starts and how to see it that can be improved. I have included the Chair Lance Heisler in the email for his interest/advisement on behalf of the Charter Commission since that is their sole focus is Charter Amendments.

Thanks.

Ben Martig

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City Administrator

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From: David DeLong <daviddelong157@gmail.com>

Sent: Monday, January 13, 2025 12:52 PM

To: Erica Zweifel <Erica.Zweifel@NorthfieldMN.gov>; Peter Dahlen <Peter.Dahlen@NorthfieldMN.gov>

Cc: Ben Martig <Ben.Martig@northfieldmn.gov>

Subject: No Quorum Present Jan. 7th

Good afternoon, I have concerns regarding the legality of the January 7th 2025 City Council meeting. There was not a qualified quorum present. I believe this brings into question official actions that occurred at this "meeting".

I did send an email regarding the fact that as per our City Charter the Oath of Office needed to be the first thing on the agenda. I did see that was changed on the published agenda, however it wasn't till this weekend that I was able to review the video replay of the Council meeting and was surprised to see that the meeting was called to order not by not Mayor Pownell, or in her absence the president pro tem, but by Erica Zweifel who had been elected but was not yet fully qualified. (Sec. 3.3) *If elected, candidates must further qualify for office by taking and filing an oath of office.* She had not taken the Oath of Office yet. Further the Charter also states (Sec.15.2) - Oath of Office. *Every elected or appointed officer of the city, **before entering upon the duties of the office**, shall take and subscribe an oath of office as required by the laws of the State of Minnesota.*

The only qualified members in attendance were Councilpersons Holmes, Jessica Peterson White and Ness. (Sec.3.3) *Each council member and the mayor shall serve for a term of four (4) years and until a successor is elected and qualified.* With Councilmember Sokup absent only 3 qualified members of the Council were present, not enough for a quorum. No quorum, no business, no actions.

I would like to see the Mayor elect start her term off right and I don't feel this is her fault in any way, but there is a correct way to do things as outlined in our City Charter. I think this situation needs to be fixed.

I've included Councilperson Dahlen since he has been part of the Charter Commission.

Thank you for your attention to this matter.

David DeLong