



MEMO

Legal Department

To: Mayor Haila, Ames City Council

From: Mark O. Lambert, City Attorney

Date: April 23, 2021

Subject: Legal requirements for suspending the rules of three separate readings at three separate Council meetings for ordinances.

At the March 9, 2021 Council meeting, the Council directed the City Attorney prepare a memo on the legal requirements for suspending the rules regarding multiple readings of an Ordinance prior to its passage.

Historically, the Ames City Council, when wanting to pass an ordinance in one night, has taken its first vote and then if the ordinance passes on that vote, someone moved to suspend the rules, and then the second and third votes were taken by roll call on each.

The Iowa Code states this:

“380.3 Two considerations before final passage — how waived. A proposed ordinance or amendment must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of all of the members of the council....”

This language is reflected in the Ames Municipal Code:

“Sec. 2.21. PROCEDURE FOR ENACTMENT OF AN ORDINANCE OR AMENDMENT. A proposed ordinance or amendment must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of the council members....”

I did some research for relevant case law and found only one Iowa Supreme Court case that seemed to address the issue, *City of Bloomfield v. Blakely*, 184 N.W. 634, 192 Iowa 310 (Iowa 1921). This is a very old decision (1921), but it indicates that there is not a need for a recorded vote on all three readings after the rules have been suspended, citing an older version of the three-meetings requirement:

“Code 1897, § 682, relating to the reading of proposed ordinances, did not require that the fact of three separate readings shall be made a matter of record in the proceedings of the city council, where the rule requiring reading on three different days had been dispensed with.”

My reading of the relevant statute is that after the first reading, if a Motion to Suspend the Rules regarding three readings is adopted by the Council, that is all that needs to be done. Once the rules are suspended, there is no need legally to proceed with additional votes, the ordinance is then adopted. The statute says the ordinance “must be considered and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than three-fourths of all of the members of the council.” The vote to suspend the rules suspends both the number of meetings at which the Council must consider the ordinance, and the number of votes needed for passage.

(Likewise, I think the Council could move to suspend the rules first, and then do the one and only reading and vote on the ordinance, but I think it makes sense and is cleaner to do the first-reading vote before the motion. That way, if the Motion to Suspend the Rules fails, you’ve already done the vote on the first reading and the item simply moves to the next Council meeting for second reading.)

A reminder that it takes a 3/4 vote of the Council to suspend the rules in this situation, which is an affirmative vote of 5 of the 6 Council members.

I emailed other City Attorneys for the large cities in Iowa and found no one indicated disagreement with my determination that taking separate second and third votes was unnecessary once the rules had been suspended. I also found that there are a variety of ways of handling suspending the rules. Two cities

indicated that after voting on first reading, and voting to suspend the rules, one vote takes place for the second and third readings combined. One city indicated that after the first-reading vote and the motion to suspend the rules, a separate vote on final passage is taken (essentially combining the second and third readings into one). One city indicated that as a matter of practice, they only suspended the rules for the third reading (doing it the same night as the second reading, with separate votes), and never suspended both the second and third reading. One city does not do a first reading but considers the Motion to Suspend the Rules first. Once that passes, they consider the ordinance to be adopted.

So, there are a variety of ways to handle this.

I am comfortable given the wording of the statute and the case law, that once the rules are suspended, the ordinance is considered adopted. That means that, after first passage, and passage of a Motion to Suspend the Rules, there is no need to take any further votes. The Motion to Suspend the Rules essentially becomes a Motion for Final Passage.

Another alternative would be that after first passage and passage of the Motion to Suspend the Rules, that a vote be taken on a "Motion for Final Passage."

I note that there are other likely other versions of how to handle this. The Council may wish to place the item on a Council agenda for discussion and to make a decision on how it wishes to proceed.

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