

March 26, 2016

To: Ann Arbor City Clerk, steward of the Clerk's Report of Communications

From: Dave Askins, owner of property at 330 Mulholland Ave.

Re: Official Communication to the City of Ann Arbor on Matter of Local Governance: Edition 2

Question: What is the job of an Ann Arbor City Council Member?

Background: Local Officers Compensation Commission

In December 2015, the City's Local Officers Compensation Commission convened to make its biennial determination on Council Member and Mayoral compensation. Under state statute, the Commission meets only in odd-numbered years (to make determinations for the two subsequent years). It was the first time the Commission had enjoyed a full complement of seven members since 2005.

For the meetings in 2007 and 2009, the Commission membership numbered only six. In 2011, the Commission counted only four members, just exactly enough to achieve a quorum. In 2013, the two members of the Commission were not able to hold an official meeting. That's because then-Mayor John Hieftje had declined to make the nominations that would have ensured the LOCC could achieve a quorum.

After Christopher Taylor took office as Mayor in November 2014, his nominations to the LOCC brought the number of Commissioners up to five. Taylor stated at an early-year Council meeting that five members were adequate for the Commission to undertake its work. Taylor was apparently under the mistaken impression that the Commission is a five-member body. But he acknowledged his error at a subsequent Council meeting and made two additional nominations.

None of this somewhat embarrassing history made its way into local media accounts of the 2015 LOCC action. That's due in part to the fact that the collective news judgement of the entity now branded as "The Ann Arbor News" did not cause anyone paid to be a journalist for that organization to attend the meetings of the LOCC and report on the deliberations. That organization's news judgement has persisted for the last decade and a half, so it was common to the actual Ann Arbor News as well.

But if someone paid to be a journalist by the organization calling itself "The Ann Arbor News" had attended the 2015 meetings, it's not just the deliberations on the LOCC's history that could have been included in its reporting. A factual error in that publication's reporting could have been avoided.

Instead of reporting that Council Member and Mayoral compensation would be increasing by just one percent for the whole two-year period from 2016–17, the actual finding of the Commission could have been reported. That finding was that the compensation of Council Members and Mayor should increase by one percent in each year—that is, a two-percent increase for the second year compared to current levels.

A couple of weeks later, an "update" from the publication now calling itself "The Ann Arbor News" admitted no error of its own, but described a mistake in a memo committed by unnamed

staff in the city attorney's office. The assistant city attorney who made the mistake—not just in her memo, but also in the record of the official determination of the Commission—was Mary Joan Fales. Fales somewhat inexplicably serves as staff support for the Commission. (Providing clerical support to the LOCC does not appear to be recorded in the City Charter as a responsibility of the City Attorney.) A corrected determination was filed to ensure that Council Members received the compensation that was actually determined by the LOCC.

Other time constraints, beyond the odd-numbered-year requirement, also affect the LOCC's work. Those include a 30-day post-determination waiting period for enactment, and a 45-day maximum, measured from the LOCC's first meeting until a determination is made. Those constraints would point to mid-October as a reasonable target for the latest time during the year for the LOCC to start meeting. The LOCC's first meeting in 2015 took place in late December.

But who cares? By now, no resident of Ann Arbor harbors any hope that the publication calling itself "The Ann Arbor News" will serve to watchdog local government. So no one expects that publication to ask why the LOCC did not start meeting in mid-October last year and instead waited until late December, a time of year when even hard-core local government geeks are typically not paying attention.

In late December 2015, in addition to its determination on compensation, the LOCC approved two other resolutions. By now, no Ann Arborite will think it remarkable that those resolutions went unreported by the publication calling itself "The Ann Arbor News." One of those resolutions committed the LOCC in 2017 to use best efforts to meet in the first quarter of the year and the other to use best efforts to ensure that its proceedings are captured on video by CTN. Were those resolutions not newsworthy?

The second resolution, somewhat incredibly, did not pass unanimously. Why would someone vote against taking a step towards basic transparency of local government? The answer to that question is one the consumers of the publication calling itself "The Ann Arbor News" will likely never get a chance to read about. That's because no one who is paid to be a journalist by that publication bothered to find out enough about what the LOCC did in December 2015 to be in a position to formulate that question.

The failings of people paid locally to be journalists are not peculiar to Ann Arbor. Many graduates of journalism schools across the country these days don't seem to be well-trained in a core job function: Ask an actual damn question.

But that should not stop the rest of us from asking one.

Asking an Actual Damn Question

At the first meeting of the LOCC in December 2015, one of its members posed an actual damn question: What is the job description of a City Council Member?

It's a beautiful question, because it bears directly on the issue of appropriate compensation for Council Members and Mayor, which is the core of the LOCC's work. When the question was posed at the LOCC meeting, Assistant City Attorney Mary Fales commented that there is no job description for a City Council Member like the one that was a part of the posting for the currently

open City Administrator position. She added that the City Charter describes some responsibilities for Council Members.

It's unfortunate that the LOCC did not pursue the remarks by Fales with two obvious followup questions: (1) What *are* the responsibilities for Council Members reflected in the City Charter? (2) Are there *other* laws besides the City Charter that point to City Council Member job responsibilities?

Instead of pursuing those followup questions, the time-strapped LOCC appeared at its first meeting willing to recommend some small, symbolic increase in compensation without meeting again. But ultimately the LOCC wanted to appear to have taken its responsibility seriously. So the LOCC decided to meet a second time and asked Fales in the interim to poll Council Members about the time they spend on activity related to their Council work. The determination to implement an increase came at the second meeting of the LOCC.

But the 2015 edition of the LOCC never truly grappled with the basic question: What is the job description of a City Council Member?

Answering an Actual Damn Question

Had the basic question confronting the LOCC been reported by any professional local news source, it might have prompted an animated community-wide conversation that could have set an interesting stage for local election season.

One way to arrive at a partial job description of a Council Member and the Mayor would be to extract systematically the provisions in the City Charter that are related to Council and Mayoral job responsibilities.

The Charter's first mention of the Council is the following:

Section 1.3(a) The City shall be divided into five (5) wards, but no more than five (5) wards, the boundaries of which **shall be determined by action of the Council** ...

Determining ward boundaries is an opportunity that typically arises only with every decennial census, so it's not a frequent part of the job. It would be understandable if that job responsibility were not a crucial factor in the minds of voters when they choose between City Council candidates.

Choice of Council candidates occurs annually. But who determines whether candidates for City Council are actually eligible to serve on the Council? It's actually a responsibility assigned by the City Charter to the Council itself to judge:

Section 4.1(c) The **Council shall be the judge of the eligibility**, election, and qualification of its members.

In spring 2014 some residents wondered why the City Council itself did not weigh in explicitly on the question of whether Bob Dascola was eligible to serve on the City Council. Instead of the Council, it was apparently the City Attorney who judged that Dascola was not eligible, which

resulted in a federal lawsuit. The City lost the lawsuit and was forced to place Dascola on the ballot. The monetary cost totalled more than \$35,000 in legal fees paid to plaintiff's counsel by the City.

If the City Charter were firmly fixed in the community's collective concept as a document that defines a Council Member's job, the City of Ann Arbor might have saved the significant monetary cost, not to mention the considerable time and effort logged by the City Attorney's office.

Does the Mayor have any special job responsibilities? It is commonly known that one of the few differences between Mayor and City Council Member in Ann Arbor's Council-Manager system of governance is the Mayoral power to make nominations to various boards and commissions. Less commonly known is a duty associated with many of those nominations, which is codified not in the City Charter, but rather the City's Code of Ordinances:

Chapter 8 1:171(2) Notice of appointment. The **Mayor shall notify Council at least 30 days prior to the expiration date of the term of office of any person** serving on a board or commission. The mayor shall place on the table the name of all reappointments no later than 60 days after the expiration date of the term of office.

Does the Mayor actually fulfill this City Code requirement to notify the Council? Who knows?

Election Season Questions

The kind of election season questions posed to City Council and Mayoral candidates might have a much different focus, if the starting point were job descriptions of these offices as defined by City Charter, the City Code, and various state statutes.

Consider the difference between these two questions, based on the background: The deer cull was effectuated in part by a Council Resolution that altered the impact of a City ordinance concerning possession and discharge of weapons in public places.

- (1) If elected as a Council Member or Mayor will you vote for a deer cull in the future?
- (2) If elected as a Council Member or Mayor will you vote for alterations of City Ordinances via Council Resolutions, which are not ever compiled as a part of City Code?

Underpinning Question (2) is a City Charter requirement that is laid out as part of the Council's legislative power:

Section 7.3 (f) An ordinance may be repealed, revised, altered, or amended **only by an ordinance** passed in the manner provided in this section.

What are some other questions for Council and Mayoral Candidates that arise naturally from considering the basic question: What is the job description of a Council Member?

Each of the following questions is grounded in a responsibility reflected in the City Charter, the City Code or a state statute.

- In your professional life, have you ever participated in the dismissal of an employee under your direct supervision? What evidence from your life experience would you offer that demonstrates you have the ability to dismiss an employee if necessary?
- In your professional life, have you ever participated in the evaluation of an employee under your direct supervision? What evidence from your life experience would you offer that demonstrates that you have the ability to evaluate fairly and provide feedback to an employee under your supervision?
- In any part of your life experience, has a lack of funds led you to a decision to forgo an expense, even though the expenditure would have brought about a deeply important benefit? Describe that experience. What are some advantages of employment in the public sector for highly trained professionals who might earn higher wages if employed in the private sector?
- Which of the City of Ann Arbor millages are required to be levied at a specific level? Which are specified as “up to” amounts? For those millages on which the Council has flexibility, how would you decide what amount to levy?
- How is the ability of a Downtown Development Authority to *capture* taxes regulated? Is that the same or a different mechanism from the way its ability to *expend* captured taxes is regulated? With regard to planned future expenditure of DDA funds, what documentation would you like to see from the DDA?
- What specific data would do you consider to be important for evaluating the success or failure of the LDFA?
- How does tax-increment financing work? Give three examples of TIFAs in the geographic confines of the City of Ann Arbor. How would you evaluate whether the result of establishing a TIFA turned out to be a benefit to the public?
- How is CTN funded? Would you be willing to consider altering the ordinance governing the expenditure of revenue that is currently tapped to fund CTN?
- When is the end date for the lease on CTN’s facility on South industrial Highway? What factors will you weigh in deciding whether to extend the South Industrial Highway lease? What general factors are important to consider when evaluating a decision to rent or to own? Are these factors different for private individuals as compared to public entities?
- How many pieces of real estate can you name in which the City has an interest? Which, if any, City owned properties should the City think about liquidating?
- How does the state’s fire protection grant system work (for state-owned facilities)? Why could it reasonably be described as a “fair” approach?

That’s obviously not an exhaustive list of questions.

Making a Damn List

The above set of questions is not exhaustive, partly because it didn’t start with a comprehensive list of Council Member and Mayoral job responsibilities as reflected in the City Charter, City Code and various state statutes.

In 2017, when the LOCC meets again, it’s possible that the Commissioners might tackle that task. If they adhere to the resolutions they approved in December 2015, they will have plenty of

time to undertake that effort, and their deliberations will be accessible to the public in an unprecedented way.

In the meantime, it would be useful this election season for any prospective candidate for City Council or Mayor (including incumbents) to make a list of basic job responsibilities that are attested in the City Charter, the City Code and various state statutes. That exercise would surely make them better at their jobs, if they are elected.

And that exercise would make anyone—candidates, elected officials, or rank-and-file residents—better able to participate constructively in the community's civic life.