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TO: The Honorable Board of Estimate and Contract

FROM: Brian G. Johnson, First Assistant Corporation Counsel

SUBJECT: November 1, 2016 Special Board of Estimate and Contract Meeting
Actions Taken and Analysis

DATE: November 3, 2016

(THROUGH THE OFFICE OF THE MAYOR)

The purpose of this memorandum is to address several procedural matters, missteps and inquiries that arose out of the November 2, 2016 Board of Estimate and Contract [Board] special meeting and to opine as to the legal sufficiency of the actions taken therein.

The Board is composed of the Mayor, the Comptroller, and the City Council President. Its powers and duties are laid out in Article VII of the Charter of the City of Mount Vernon. By statute, it is a public meeting and the Mayor serves as President of the Board [President]. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. (New York State Public Officers Law Article 7, §103 (1)). There were three recordings made of the November 1st, 2016 Board meeting- one made by the Clerk's office; one made by the Mayor's conference room recording device; and one made via video and uploaded for public viewing to www.facebook.com/mayorrichardthomas. Timestamps noted in this memo refer to the video uploaded to Facebook [FB Live].

Recitation of the actions at the meeting

A. The Agenda

Prior to the special meeting being called to order, the President presented the Board with an agenda [Agenda] which contained the following three items:

- (1) A resolution fixing the date for a public hearing for the proposed 2017 budget;
- (2) A resolution authorizing the Mayor to enter into an agreement with the Police Association of the City of Mount Vernon; and
- (3) Retaining the law firm of Smith, Buss & Jacobs, LLP for various legal matters.

There was significant and substantive discussion on each item on the Agenda. The discussion on item #2 on Agenda – the resolution authorizing the Mayor to enter into an agreement with the Police Association of City of Mount Vernon – centered around whether or not the item must be passed by the City Council prior being presented to the Board of Estimate. The President indicated that he was relying on §71 of the City Charter which states that the Board shall have the authority to fix the salaries or compensation. (FB Live at 17.26). The Clerk acknowledges that the President had a right to place items on the agenda. Board Member Maureen Walker [Walker] also acknowledged that the resolution was on the agenda. (FB Live at 29.29). The President banged the gavel and the Agenda was declared the official agenda of the Board meeting for November 1st, 2016.

Subsequently, the City Clerk (“Clerk”) attempted to distribute an alternate agenda which contained only one item. That item was the same as number one (1) from the previously approved Agenda. Item number one is a resolution fixing the date for a public hearing for the proposed 2017 budget. The President informed the Clerk that the alternate proposed agenda that the Clerk handed out was not the approved agenda for the Board meeting. The President proceeded to read the three (3) items Board of Estimate agenda into the record.

Opinion:

It should be noted that, unlike the City Council, the Board has not adopted any rules and procedures governing its meetings nor its agendas. In the absence of formal rules, it is general practice that Robert’s Rules of Order prevail. The notion that the Board is unstructured and follows no procedural rules or is wildly inaccurate. The Law Department reiterates its legal opinion that Robert’s Rules of Order prevails.

Historically, the Board’s agenda has been prepared by the Law Department and delivered to the Clerk for distribution. The items placed on the agenda have been a combination of items previously passed by the City Council that also need Board of Estimate approval and items independently added on by the President of the Board. In instances where the other members wanted items to be placed on the agenda, it

was usually done so in agreement and/or in consultation with the other members of the Board prior to the meeting and as a courtesy. Once an agenda has been formally adopted, there is no ability to place additional items on the agenda unless the President calls for it and the item is added as new business.

It should be noted that, pursuant to Robert's Rule of Order, Chapter XV, §47 under *Duties of the Presiding Officer of the Assembly*, item 2) it is the duty of the presiding officer of an assembly to announce in proper sequence the business that comes before the assembly or becomes in order in accordance with the prescribed order of business, agenda, or program, and with existing orders of the day. (Robert's Rules of Order, 10th edition, page 434).

In conclusion, the President sets the agenda for the Board.

B. Refusing to Consider Item #2 On the Agenda

Item #2 under the Agenda was "A resolution authorizing the Mayor to enter into an agreement with the Police Association of the City of Mount Vernon". The President of the Board made a motion to consider the item. Board members Maureen Walker and Marcus Griffith refused to consider the motion, claiming it was not within the purview of the Board to consider.

Opinion

Article VII, §71 of the Charter of the City of Mount Vernon grants the Board of Estimate and Contract the "authority to fix the salaries and compensation and determine the positions and numbers of all City officers and employees". It was well within the scope of power of the Board to consider the item in question. The agreement set salaries and compensation for members of the Mount Vernon Police Department. The agreement should have been considered.

C. Moving Through the Board of Estimate Agenda

At 9:11AM, the President called the special meeting of the Board to order. The Clerk read the first item on agenda. The President entertained a motion on the first item. Board Member Marcus Griffith moved the item and Board Member Maureen Walker seconded the motion. The Clerk indicates that there was a change in the document that corresponded to item 1 on the agenda from the document presented at the November 1, 2016 Regular Meeting. He indicated that he received a summary page. The President acknowledged the changes and indicated, on the record, that there were revised allocations to the Veteran's Affairs line.

After some more discussion among the members, the President stated “I’ll take a roll call for the vote please.” At which time Board Member Maureen Walker voted, “Nay” and Board Member Marcus Griffith voted “No.” The President voted, “Yes.” The President acknowledged that the first item on the agenda did not pass. He then attempted to proceed through agenda by calling out “Retainers” (indicating item 3 of the Board of Estimate agenda as previously discussed.)

At which point the Clerk indicated that he had another item on his desk entitled, “Annual Summary.” The President indicated that he did not call for new business. He further indicated that he was ready to proceed through the agenda and move onto item #3. At this point, Board Member Maureen Walker attempted to take the role of the President and reopen the previously voted on agenda item – Item #1. Board member Walker stated “We are calling for a motion to set the date on a revised budget.” (FB Live, at 51.04). Board Member Marcus Griffith said “So moved.” (FB Live, at 51.04) Board Member Maureen Walker said “Second.” (FB Live, at 51.04). At this point the President called a “Point of Order.” (FB Live, at 51.35)

The President stated that we have to stop because we had a retainer on the Agenda and that we were supposed to go to the retainers next. (Fb Live, at 51.55). He advised that the Board to entertain item #3 on the Board of Estimate agenda.

Ignoring the President’s direction, board members Maureen Walker and Marcus Griffith again directed the Clerk to call for a vote. (FB Live, at 52.47) The Clerk then tried to force to the President to entertain the motion. The Clerk further advised that the order of the agenda has been modified by the Body. The President reminded the Clerk that he did not recognize either Board Member Maureen Walker not Marcus Griffith. He further indicated that he had called a point of order and after that was dealt with he would go on to new business. After some discussion with the other board members about holding the item, the President then proposed calling for an adjournment of the meeting. Board Member Marcus Griffith indicated that the agenda was not finished with and ordered the Clerk to read the proposed new annual summary into the record.

The President again reminded the board that there was still a point of order and that he did not recognize either of the other board members. He made clear that the new proposed item could be dealt with in new business, and if not, if the other members insist, he would hold the item. Board Members Maureen Walker and Marcus Griffith again, asked the Clerk to call for a vote. The President indicated that the new item was held. The President adjourned the meeting and banged his gavel.

The other board members attempted to continue the special meeting, post-adjournment, as the Clerk proceeded to call a roll call. The President again indicated that the meeting was functionally out of order, adjourned, and banged his gavel again.

Opinion:

Based on the above scenario there seems to be two prevailing issues that need to be addressed. First, what are the duties of the President of the Board? Second, how motions are properly brought before the assembly under Robert's Rules of Order and whether the actions taken Board Member Marcus Griffith, Board Member Maureen Walker and Board of Estimate Clerk George Brown properly passed the resolution to fix the date of the new proposed annual summary.

As previously stated above, Chapter XV, §47 under *Duties of the Presiding Officer of the Assembly*, outlines the duties of the Presiding Officer of an assembly as follows:

- (1) To open the meeting at the appointed time by taking the chair and calling meeting to order, after having ascertained that a quorum is present;
- (2) To announce in proper sequence the business that comes before the assembly or becomes in order in accordance with the prescribed order of business, agenda, or program, and with existing orders of the day;
- (3) To recognize members who are entitled to the floor;
- (4) To state and to put to vote all questions that legitimately come before the assembly as motions or that otherwise arise during the course of the proceedings and to announce the result of each vote; or, if a motion that is not in order is made, to rule it out of order.
- (5) To protect the assembly from obviously frivolous or dilatory motions by refusing to recognize them;
- (6) To enforce the rules relating to debate and those relating to order and decorum within the assembly;
- (7) To expedite business in every way compatible with the rights of members;
- (8) To decide all questions of order, subject to appeal;
- (9) To respond to inquiries of members relating to parliamentary procedures or factual information bearing on the business of the assembly;
- (10) To authenticate by his or her signature, when necessary, all acts, orders, and proceedings of the assembly.
- (11) To declare the meeting adjourned when the assembly so votes or—where applicable—at the time prescribed in the program, or at any time in the event of a sudden emergency affecting the safety of those present.

The vast majority of the actions taken by the Clerk during the November 2 special meeting infringed upon the rights and duties of the President to conduct an organized productive meeting. They were in direct violation of the rules that govern the Board.

It is the legal opinion of the Law Department that the special meeting of the Board of Estimate and Contract was formally adjourned when President Thomas said the meeting was “out of order”, ordered it adjourned and gaveled out. The subsequent actions taken by Board Members Maureen Walker, Marcus Griffith and Clerk Brown to add another item to the the agenda was out of order and in clear violation of Robert’s Rules of Order. The President was within his rights to protect the Board by refusing to recognize the motion as per §47(3). The President also had the right to protect the Board from obviously frivolous or dilatory motions by refusing to recognize them (See §47(5)). It should also be noted that the President called for a point of order on at least two (2) occasions and the matter was never addressed. Thereby, curtailing the President’s right to decide all questions of order as well established under §47(8) and (11). It should also be noted that the President never recognized new business or called order for the motion.

Chapter I, Section 4 of Robert’s Rules of Order clearly details the six essential steps in the ordinary case that must occur before for an item is to be brought before the assembly, and in consideration of the motion. In order for an item to be normally brought before the assembly, the following three (3) steps must occur:

- (1) A member *makes* the motion.
- (2) Another member *seconds* the motion.
- (3) The chair *states the question on the motion*.

Robert’s Rule advises that “neither the making nor the seconding of a motion places it before the assembly; the only the chair can do that, by the third step (stating the question). When the chair has stated the question, the motion is pending, that is, “on the floor.” It is then open to debate. (See Robert’s Rules of Order, 10th Edition, page 31.)

Once a main motion has been brought before the assembly through the first three (3) steps as outlined above, there are three other steps basic steps by which the motion is considered:

- (1) Members debate the motion (unless no member claims the floor for that purpose).
- (2) The chair, not the Clerk, puts the question (that is, puts it to a vote).

(3) The chair, not the Clerk announces the result of the vote.

None of the steps above occurred thereby further making the attempt of the Board Member Maureen and Board Member Marcus Griffith to introduce a new item after the meeting was adjourned null and void.

Conclusion

Based on the above, it is the conclusion of the Law Department for the City of Mount Vernon that no annual estimate has been passed by the Board of Estimate and Contract. The Department advises the members of the Board to call for another special meeting to pass an annual estimate and fix the date for a public hearing.