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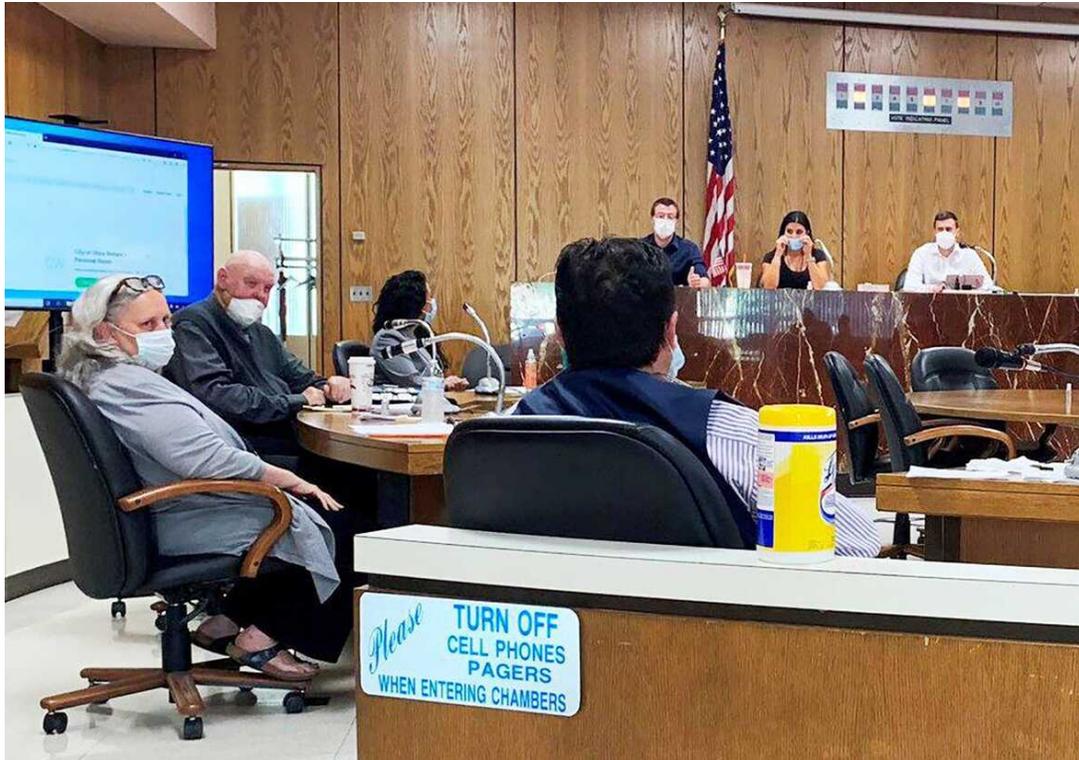
## How Utica Works: The Common Council

At the Federal and State levels, government is divided into three distinct branches: the Legislative Branch, which creates and authorizes laws, the Executive Branch, which carries out and enforces the laws, and the Judicial Branch, which adjudicates and settles disputes about the law. This division of power amongst three distinct and equal branches of government is not an accident. It is built into the very way our system is conceived of from the start. The idea is to prevent any one person or group of persons from exercising too much control or power within government. Governmental power is “balanced” among these three branches, each of which provides a “check” upon the power of the other two. So we have a system of “checks and balances” in which no one part of government exercises too much power over the other or over the lives of the citizens. This form of government stands in stark contrast to an authoritarian or monarchical system, where one person has all the power and is able to wield it without any constraints imposed by other parts of government.

Historically, this theory of government is most closely associated with the early modern English political philosopher John Locke, whose masterpiece of political theory, “Second Treatise of Government” described a democratic form of government constituted by these three branches. Locke argued that these three branches closely corresponded to different capacities of humans: to make rules, to carry out rules, and to make judgments about those rules.

At the local level, this same separation of powers into three distinct branches of

government exists. Here in Utica, the Common Council is the Legislative Branch, the Mayor is the Executive Branch, and the City Courts and Judges are the Judicial Branch. Let's look at how our Legislative Branch, the Common Council, works.



### **Who Makes Up the Common Council?**

The Common Council has ten members. The President (currently Michael Galime) administers the Common Council, and is responsible for running the regular meetings of the Council. Six Ward representatives are elected from each of Utica's six distinct Wards. (Currently, these are Maria McNiel in the First Ward, Bob Burmaster in the Second Ward, Celeste Friend in the Third Ward, Frank Meola in the Fourth Ward, Delvin Moody in the Fifth Ward, and Joe Betrus in the Sixth Ward.) Three Common Council At-Large members represent the entire City, and are also elected for two year terms. (Currently, these are Jack LoMedico, Frank DiBrango, and Mark Williamson.) So, every resident of the City (whether they are eligible to vote or not) is represented by a total of four members of the Common Council: the Ward representative for the specific area of the City in which they live, and the three At-Large representatives. So, there are nine voting members of the Council, each of whom have equal votes, and one non-voting member of the Council. (In the case of a tie vote, the President of the Common Council can vote in order to break the tie.) The nine representatives are elected every two years, and the President every four years.

## **Organizing the Council**

Since every voting member of the Council is elected every two years, the Common Council, as a body, is new every two years. And so, every two years, the Common Council must organize itself. At a meeting very early in January, often on the 2nd, the Common Council holds its organizing meeting. It uses this meeting to settle and vote upon all the important organizational principles by which it will function. These include: appointing the City Clerk; appointing the attorney for the Council (also known as the Council's Counsel); choosing which of its own members will serve on certain Boards within the City, such as the Board of Estimate and Apportionment; choosing a newspaper of record where public notices are placed (the Observer-Dispatch, of course); selecting Majority and Minority Leaders (This is done by the Democrats collectively, and the Republicans collectively). Most importantly, every two years the Council adopts its Rules of Order, which describe both how the meetings are to be conducted (such as order of the agenda and rules for public comment) and how committees be arranged (in 2020, the current Council, over my strenuous objections, decided to do away with all select subcommittees, and instead to use The Committee of the Whole to discuss and develop legislation). All of these organizational decisions have enormous impact on how meetings are run and on how the work of the Council proceeds, and so they are extremely important.

## **How the Council Operates**

Once the organizational principles are in place, then the Council is ready to get to work and perform its essential function: create the legislation that the City (and any city) requires. It does this by introducing, debating, and passing (or rejecting) three types of laws: Resolutions, Ordinances, and Local Laws.

**Resolutions** express the will of the Common Council. Typically, they are laws that do not require any enforcement mechanism beyond that of the Council themselves. Some of these Resolutions are "non-binding", meaning that they only express the will of the Council, and do not force anyone else to do anything. For example, the Council may support an action at a state level and so pass a Resolution encouraging other elected officials or bodies to take a particular course of action. Other Resolutions, however, may direct another body to do a certain thing, such as when a Resolution to appoint a resident of the City as a Commissioner of Deeds, which then authorizes the County to register that person as such. Certain Resolutions authorize the Executive branch to do certain things, such as apply for grants for City projects, and without such authorization, the Mayor cannot follow through on these endeavors. A Resolution can be introduced and passed at any time that the

Council so desires, and needs a simple majority to pass.

**Ordinances** are a more stringent type of law that can be passed by the Council. They are the rules that the Council “ordains” for the City, and which are enforced by the City through its police department, codes department, etc. One example of an Ordinance would be creating “No Parking” areas along our streets, or adding a stop sign to an intersection. Also, the new garbage ordinance which I introduced and the Council passed is an example of this sort of law. Ordinances are changes or additions to the Codes of the City. For an Ordinance to pass, it must pass unanimously if it is voted on during the same meeting at which it is introduced. But after that, it only requires a simple majority to pass.

**A Local Law** is the most stringent and important kind of legislation that the Council can consider and pass. Our local laws, considered together, make up the City Charter. A local law can be passed by a simple majority of the Council. But first it must “lay on the table” in its final form for at least seven days, which itself takes a simple majority of the Council. So a majority of the Council must agree to a specific formulation of a local law, then let it “lay on the table” for at least seven days, and then they can vote on it. If during that seven day window, someone decides that they want to reword or reformulate the Local Law, it will once again have to “lay on the table” for seven days before it can be voted on. If it passes, it then goes to the Mayor for signature. The Mayor can veto a law if she or he disagrees with it, but a supermajority of six votes overrides such a veto. The Mayor is required to hold a Public Hearing before she or he can sign it into Law.

### **Where does legislation come from?**

Legislation can come from one of two places: it might be generated by one or more members of the Council or it might be generated by the Administration. So, for instance, any member of the Council might decide that a specific new Code is needed in their Ward. Maybe on-street parking has become a problem in a particular neighborhood. A member of the Council can then ask the Police Department to study the situation, and if they determine that allowing cars to park on both side of a street is a problem, that Council member can then introduce legislation for an ordinance to make one side of the street a “no parking” zone. If the legislation passes, then the DPW will put up signs to that effect.

Some legislation passed by the Council is pro forma – it simply follows a basic formula, and allows the City to carry on with its normal day-to-day business. For example, many people go to the City Clerk and ask to become “Commissioners

of Deeds”, which then allows them to collect ballot petition signatures from anyone in the City, regardless of political party. (A person can always collect signatures from members of their own party without such a designation.) The Clerk then collects the appropriate paperwork from the applicant and draws up legislation that he or she then passes along to the Council.

The Administration can also draw up legislation and send it “down” to the Council. (The Mayor’s offices are on the second floor of City Hall, and the Council chambers are on the first.) So, although the Council is responsible for passing or authorizing all laws in the City, there is nothing unusual or inappropriate about the Administration drafting the legislation that it wants or needs. And members of the Council can of course approach the Administration with an idea for a law and the Administration can help them to develop it. Some of the legislation that the Administration brings to the Council are also pro forma. For instance, borrowing money through bonds is a normal way in which the City funds certain long-term needs. But such bonds require Ordinances, so once a year, the Mayor drafts a capital plan, and then asks the Council to pass an Ordinance giving the Administration the authority to borrow those funds.

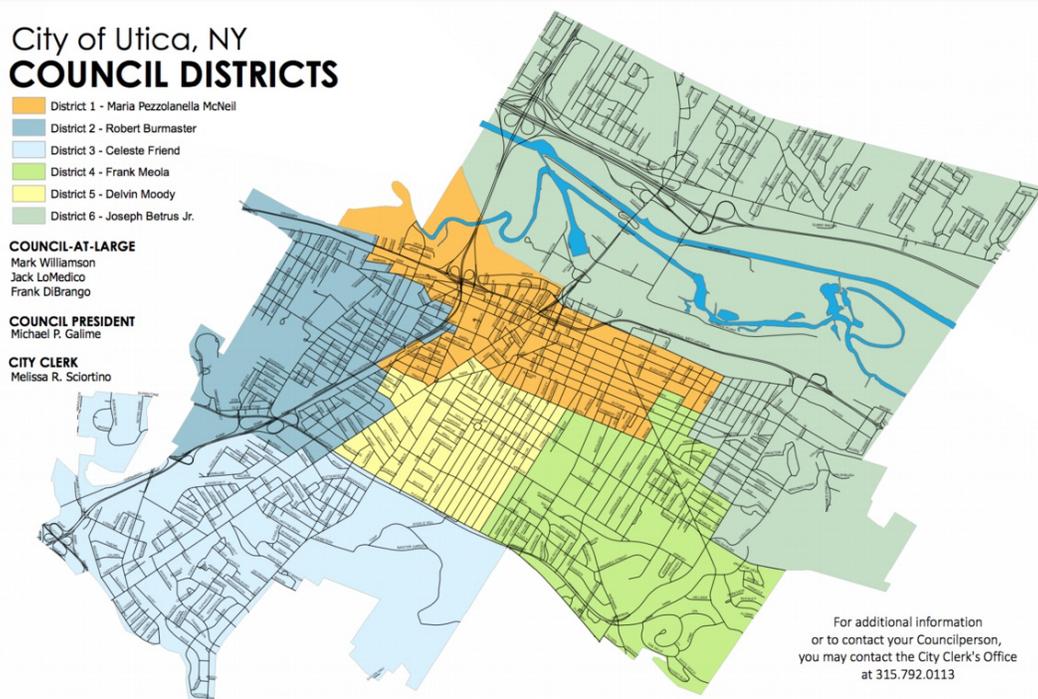
All legislation must be sponsored by a member of the Common Council. Legislation that comes from the Administration is generally (although not always), sponsored by the Majority and Minority Leaders. Legislation that comes from a particular member of the Council, such as creating a “no parking” zone, is likely to be sponsored by that member. Sometimes, when legislation is supported by every member of the Council, even though introduced by one member, (such as my recent Resolution to establish a Facebook page for the Council), that legislation ends up “going Full Council”, meaning that it is sponsored by each member of the Council, and all of their names are listed on the legislation.

### **How do these Resolutions, Ordinances, and Local Laws Get Passed?**

To begin with, either a member or members of the Council or the Administration sends a proposed piece of legislation down to the City Clerk, where she or he then sends it onto the Common Council to be considered in the pre-meeting of the Council that meets just prior to every regular Common Council meeting. The “Thursday Rule” states that it must be sent to the Clerk no later than five full business days before the next meeting of the Council. The Council meets on Wednesdays, which explains the name of this rule. (The “Thursday Rule” ensures that Council members have enough time to digest, research, and discuss the proposed law with Constituents. In early 2020, I insisted on a stricter version of the Thursday rule, with far fewer exceptions, in order to allow for exactly this kind of deliberation. I introduced an amendment to our Rules of

Order and my colleagues agreed to it. We made this change via a Resolution.) This new legislation then gets discussed at the pre-meeting before the next regular Council meeting. From there it may be placed into committee, or if it is simple and consensus has already been reached, or at least enough consensus to pass it, it may be voted on that night (see the exception to this for Local Laws). Or it may go into Committee, so that members of the Council can debate it, fine tune it, etc. If it goes into Committee, it may stay there for a while. If it becomes clear to the Council that we are not going to vote it into law, we may after a while “discharge” it, meaning to take it from Committee and dispense with it. So, at any given meeting of the Council, there is new proposed legislation to be discussed during the pre-meeting, and there are anywhere from a few to many pieces of legislation that are waiting in Committee.

So, there you have it: different branches of government, different types of laws, and the means by which we introduce and pass them. And all of this is simply how it works in a democracy, where we govern ourselves, through law. And that law, although on one level, constrains us, at the same time makes us free and equal, by subjecting ourselves to constraints that we ourselves have a hand in constructing. The great French philosopher famously wrote: “Man is born free, but everywhere is in chains.” Rousseau believed that we were essentially free, but because so many people in his time lived under monarchies, they were no longer free. He believed that we could regain our freedom by constraining ourselves through democracy. In a democracy we are free precisely because we are the ones who make the laws that constrain us.





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