NEW ALDER ORIENTATION

APRIL 15, 2019

1. Information on the Office of the City Attorney
2. The Legislative Process
3. Being a Good Consumer of Legal Services
4. Ethics
5. Robert's Rules of Evidence
6. Open Meetings and Public Records
Mission

The City Attorney will provide professional legal representation to the City of Madison as an entity, including ordinance enforcement, legislative counsel services and general counsel services.

Goals and Objectives

As the City’s lawyers, the Office of the City Attorney engages in three major activities.

- First, we prosecute violations of the City’s laws, enforcing ordinances adopted by the Common Council.
- Second, we provide legislative counsel, drafting and revising the City’s code of ordinances and advising the Common Council and City Boards, Committees and Commissions on the meaning of legislative enactments.
- Third, we provide general legal counsel and representation to the City, drafting documents, advising City officials and managers on compliance with the law, representing the City in court, negotiating on the City’s behalf, and otherwise using legal procedures to support and defend the lawful decisions of City officials and agencies.

City Attorney

- Statutory office pursuant to sec. 62.09(12), Wis. Stats.
- Attorney is to “conduct all the law business in which the City is interested.”
- Appointed by the Mayor and confirmed by the Common Council.
- Five year contract, renewable.
Attorney Staff In OCA

- One Deputy City Attorney, who has full authority to act on all matters entrusted to the City Attorney.
- Fourteen Assistant City Attorneys.
- Five ACAs serve primarily as prosecuting attorneys for ordinance violations, from parking and traffic to building inspection to health to alcohol. They are in municipal court every day. One serves as lead prosecutor and supervisor.
- The OCA does not prosecute criminal cases. All convictions result in a fine or forfeiture.
- Other ACAs are assigned duties related to City agency functions and legal areas of expertise that cut across City agencies.
- All ACAs are supervised by the City Attorney. All are under the Madison civil service.

Non-Attorney Staff In OCA

- Assisted by 4 legal secretaries, one of whom acts as office manager.
- One litigation assistant / paralegal.
- One legal office assistant
- One ordinance revision specialists.
- One receptionist.
- Student law clerks.

Role of the OCA

The City Attorney does not give general legal advice to the public. The City is the client. Alders seeking ordinance amendments are requested to use the form available.

Updated April 2019
Request to City Attorney

TO: Michael P. May, City Attorney

FROM:

SUBJECT: Request for:  
- Legal Opinion [ ]
- Legal Advice [ ]
- Assistance [ ]

Please include background information which you consider necessary or helpful. Attach separate sheet if necessary.

Documentation: Please attach documents and papers necessary or which may be helpful in responding to your request. Comments, if any:

Other Agencies: Please indicate any other agencies which may be involved in the subject of your request.

Time: Please state when response is needed. Please indicate any related scheduling.
Request for Amendment to the Madison General Ordinance

TO: Michael P. May, City Attorney

Proposed/Current Section No. _______________________

FROM: 

Please draft the following ordinance:

Note: Is this ordinance exempt from the provisions of Section 2.05(6)?

☐ Yes
☐ No. The signature of the Mayor or the Alderperson who will sponsor this ordinance is provided below.

Date to be Presented: _______________________

Referral(s): _______________________

Fiscal Note: _______________________

Sponsor(s): _______________________

When completed:

☐ Send DRAFT to: _______________________

☐ Send copy to: _______________________

☐ Submit directly to Common Council.

If request is to rezone property, the following additional information must be furnished before the ordinance can be drafted.

Rezone following property:

Address: _______________________

From: _______________________

District: _______________________

Aldermanic District: _______________________

To: _______________________

District: _______________________

Has this property previously been rezoned? ☐ Yes ☐ No

If yes, please give the following information:

Ord. No.: _______________________

Date: _______________________

Sponsorship Approval:

Signature of Mayor/Alderperson/Dept. or Div. Head _______________________

Date _______________________

(original will be held until otherwise notified)
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<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Areas of Law</th>
<th>Agencies Primarily Served</th>
</tr>
</thead>
</table>
| Michael P. May | City Attorney | Office Administration  
Government Operations  
Council & Committee Procedures  
Constitutional Law / First Amendment Litigation | Mayor  
City Clerk  
Common Council  
Finance  
Treasurer |
| Patricia A. Lauten | Deputy City Attorney | Office Administration  
Personnel & Employment  
Labor Agreements  
Arbitration  
Discrimination / Harassment  
Government Operations  
Worker's Comp  
Tort/Risk Management / Outside Counsel | Human Resources  
Finance (WMMC, Worker's Comp. and Risk Management)  
Personnel Board |
| Roger Allen | Assistant City Attorney | ALRC (Advisor) Liquor Reg.  
Public Records  
Open Meetings  
Madison Arts Commission Information Technology (including City Channel)  
CDBG/OCS (Including Child Care) | City Clerk (ALRC)  
Madison Arts Commission  
CDBG/Community Services  
Information Technology/City Channel  
Deferred Comp (457) Comm. |
| Jennifer Zilavy | Assistant City Attorney | Community Prosecution  
Major nuisance violations  
Special Prosecutions (ALRC)  
Halloween  
Neighborhood Resources  
Teams Liaison | Police Department  
Building Inspection  
Neighborhood Resource Teams |
| Lara Mainella | Assistant City Attorney | Contracts  
Intergovernmental Agmts. Street Use / Parades  
Special Events  
Street Vending  
Signs  
First Amendment  
Muni. Adm. Appeals/certiorari | Equity Core Team  
Finance (Purchasing)  
Building Inspection/Zoning (signs)  
Contracts (except public works and employee/labor)  
OBR (Vending)  
Parks (Street Use)  
Admin. Review Bd. |
<table>
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<tr>
<th>Name</th>
<th>Position</th>
<th>Areas of Law</th>
<th>Agencies Primarily Served</th>
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<tbody>
<tr>
<td>Steve Brist</td>
<td>Assistant City Attorney</td>
<td>Clerk’s Office (Lobbying, Elections, Ethics Code) Library</td>
<td>City Clerk</td>
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<td></td>
<td></td>
<td>Senior Center Monona Terrace Special Prosecution (PFC) I.P. (Trademark, Copyright) Housing Policy, and Ch. 32 Landlord-Tenant Ethics Code</td>
<td>Traffic Engineering (Railroad) Library Senior Center Monona Terrace CDA Ethics Board</td>
</tr>
<tr>
<td>Jaime Staffaroni</td>
<td>Assistant City Attorney</td>
<td>Tax Litigation Delinquent Personal Prop. Foreclosures Treasurer Bankruptcies Unemployment Compensation</td>
<td>Assessor Treasurer Board of Review</td>
</tr>
<tr>
<td>Name</td>
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<tr>
<td>John Strange</td>
<td>Assistant City Attorney</td>
<td>Planning, Zoning, Boundary &amp; Annexation, Subdivision Regulations, Metro Transit, Transportation</td>
<td>Planning, Zoning, Real Estate, Metro, MPO, Transportation Planning</td>
</tr>
<tr>
<td>Kevin Ramakrishna</td>
<td>Assistant City Attorney</td>
<td>Bonds, Tax Incremental Financing, Economic Development, Surety &amp; Letters of Credit, Real Estate Development, Public Works Contracts, Parking Utility</td>
<td>Finance (TIF Financing / Purchasing / Bonds), CDA (Development), Engineering / Public Works, CEDU (Development), CDBG (Real Estate Only), Real Estate, Parking Utility (Finance)</td>
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**PROSECUTION / ORDINANCE ENFORCEMENT TEAM**

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Areas of Law</th>
<th>Agencies Primarily Served</th>
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<tbody>
<tr>
<td>Adriana Peguero</td>
<td>Assistant City Attorney</td>
<td>Lead Prosecutor, Traffic, general ordinance Violations, Civil Rights (EOC, AA and CPD) including AA Contract Compliance, Second-hand Dealers/ Pawn Shops</td>
<td>Police, DCR: EOC, AA, DRC, Equity Core Team, Appeals Board - SBE</td>
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<tr>
<td>Lana Mades</td>
<td>Assistant City Attorney</td>
<td>Traffic, general ordinance Violations, Building Inspection, Special Prosecution (Dane County), CDA Evictions/Section 8 Noise</td>
<td>Police, Building Inspection - Noise, CDA – Evictions and Advises</td>
</tr>
<tr>
<td>Kate Smith</td>
<td>Assistant City Attorney</td>
<td>Traffic, General Ordinance Violations, Health Code Long Forms, Fire Code Long Forms, SBE Appeals, VOC Prosecutions, HIPPA</td>
<td>Police, Department of Civil Rights - SBE, Appeals, Health, Fire</td>
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<td>Name</td>
<td>Responsibilities</td>
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<tr>
<td>Amber McReynolds</td>
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<tr>
<td>Assistant City Attorney</td>
<td>Traffic General Ordinance Violations; Taxis/Public Passenger Vehicles; Micromobility (bikes, scooters); House Parties</td>
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<td></td>
<td>Police Traffic Engineering (Taxis/Micromobility)</td>
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<tr>
<td>Brittany Wilson</td>
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<tr>
<td>Assistant City Attorney</td>
<td>Traffic General Ordinance Violations; Parking;</td>
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<td>Police Parking Enforcement Transportation (Parking Division)</td>
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<td>Pat Gehler</td>
<td>Long Form Complaints</td>
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<td>Litigation Assistant</td>
<td>Discovery Requests</td>
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<td>Contract Review</td>
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<td>Document / Exhibit Prep</td>
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<td>General Legal Research</td>
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<td>Worker's Comp</td>
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<tr>
<td>Diane Althaus</td>
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<tr>
<td>Ordinance Revision Specialist</td>
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<tr>
<td>Sue Mautz</td>
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<td>Legal Secretary 3</td>
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<tr>
<td>Patti Mendez-Smith</td>
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<td>Legal Secretary 2</td>
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<tr>
<td>Jean Phelps</td>
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<td>Legal Secretary 2</td>
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<tr>
<td>Vacant</td>
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<tr>
<td>Legal Secretary 2</td>
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<tr>
<td>Rebecca Braselton</td>
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<tr>
<td>Legal Office Assistant</td>
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<tr>
<td>Marie Berman</td>
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<tr>
<td>Receptionist</td>
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</table>
**Personnel and Employment Practice Group**

Patricia Lauten  
Roger Allen  
Michael P. May  
Marci Paulsen

This team meets as necessary to coordinate legal advice on grievances, discrimination, affirmative action, Americans with Disabilities Act (ADA), employee discipline issues and general employment law, i.e., Family Medical Leave Act (FMLA), Fair Labor Standards Act (FLSA), etc.

**In-House Training Group**

Roger Allen  
Steve Brist  
Michael P. May

This team meets as necessary to coordinate in-house CLE training for attorneys.

**Contract Group**

Lara Mainella  
Michael P. May  
Kevin Ramakrishna  
Doran Viste  
Marci Paulsen  
Pat Gehler

This group meets quarterly with City staff responsible for contracting within their Departments. Representatives of Finance, DCR, Risk, Purchasing, Public Works, IT, and City Clerk attend meetings. Meetings include training and review of contracting practices, templates, and issues.
1. Resolutions and Ordinances.

Resolutions generally deal with discrete individual matters (approval of contracts, setting internal city policy, etc.). Any staff member may draft them.

Ordinances generally deal with rules that will affect the general public. Only the City Attorney may draft them.

Any resolution or ordinance, with specific exceptions, must have a member of the Common Council as a sponsor. Any resolution or ordinance must be given a legislative file number which is to be used on all agenda.

2. Introduction.

Unless it suspends the rules, the Common Council will introduce a resolution or ordinance at a meeting and not consider it until a later meeting. For any matter to be introduced as part of the agenda and make it into Legistar, it must be to the Clerk’s office by noon on Wednesday preceding the Council meeting. A resolution or ordinance may also be introduced and referred from the floor of the Council, and must be placed into the legislative process after the meeting.

3. Referral and Committee action.

Nearly all resolutions and ordinances are referred to one or more of the City’s boards, committees and commissions (BCC). The first BCC listed is the lead referral. Other BCC (secondary referrals) are to review the matter before the lead referral and recommend action and any suggested changes to the lead referral. The lead referral reviews those suggestions and makes its own recommendation and any changes to the ordinance or resolution. The recommendation and changes (if any) of the lead referral is normally the action recommended to be taken by the Common Council.

If the lead referral changes the item so that the lead sponsor of the item no longer wishes to sponsor it, then something else may be moved from the floor of the Council.

The rules for operation of most BCC are set out in chapter 33 of the Madison General Ordinances, but some BCC have special rules by ordinance or statute. Also, BCC may establish their own rules that are not in conflict with the MGO.

In preparing agenda in Legistar, remember that all agenda must also be sent to the Clerk’s office (CL Meetings) in order to be posted in compliance with the Open Meetings Law. Failure to do this may result in the cancellation of your meeting.
1. **Substitutes and Alternates and Amendments.**

A Substitute is created for any change in the proposed ordinance or resolution that is both supported by the original lead sponsor and occurs at or before the time the lead referral takes final action on the ordinance or resolution. Multiple substitutes indicate that multiple changes have been made.

An Alternate is a change either (a) created by the lead sponsor after the lead referral has acted but before the item reaches the Council, or (b) created by the lead referral when its changes are not acceptable to the lead sponsor.

An Amendment is any change made on the Council floor.

As a result, you may have the Council approve an item that is an Ordinance, an Amended Ordinance, a Substitute Ordinance, an Amended Substitute Ordinance, an Alternate Ordinance, or an Amended Alternate Ordinance. The same titles may be given to Resolutions, and if there is more than one substitute or alternate created, they will be given numbers.

All official versions of an item are to remain in Legistar as attachments, regardless of which version is recommended to the Council. Documents related to the proposal also must be included as attachments.

5. **Fiscal Notes.**

All ordinances and resolutions must have a fiscal note from the Comptroller’s office. The fiscal note identifies the likely fiscal impact of the item, such as increased revenues, increased costs, deduction from the contingent reserve fund, etc. When substitutes or alternates are created, they also need a fiscal note.

6. **Public Hearings.**

Some items are required by law to be preceded by a “public hearing” before they may be adopted. Most of these items are Plan Commission rezonings, ALRC licenses, and Public Works assessments. The public hearing portion of the Council meeting is a separate agenda item.

7. **Super Majority Votes.**

In order for any item to pass the Common Council, it must get at least 11 votes. This is regardless of how many members are present. Any time the Council makes an “appropriation” that was not included in the annual budget, it requires a ¾ majority or 15 votes. An “appropriation” takes money from one place or agency and gives to another, with the exception of expenditure of grant funds that have no contribution from the City. Some other items require a 2/3 majority vote, or 14 votes, to pass (usually land use matters, charter ordinances, or procedural matters governed by Robert’s Rules). The City Attorney and the Comptroller currently are reviewing our practice as to what constitutes an “appropriation” and may be issuing revised guidelines.

M. P. May
City Attorney
THE LEGISLATIVE PROCESS IN MADISON

May, 2017
Michael P. May
City Attorney

Legislative Process: What We Will Cover Today
• 1. Overview of Legislative Process
• 2. Substitutes and Alternates
• 3. Committees and Sec. 33.01, MGO
• 4. Legistar Issues (Lisa Veldran)
• 5. Your Questions or Issues

Legislative Process Overview
• Resolutions v. Ordinances
• Drafting, Fiscal Notes and Sponsorship
• Introduction
• Committee Referral Process
• Substitutes, Alternates and Amendments
• Public Hearings
• Approval and Effective Date
Resolutions v. Ordinances

- Resolutions generally deal with an individual matter, such as approval of a contract, setting internal City policy, or approval of an expenditure. Any person may draft a resolution. They only are reviewed by the City Attorney upon request.

Resolutions v. Ordinances, cont.

- Ordinances generally deal with rules that affect the general public. The zoning and building codes, permits, traffic and other offenses that may involve a forfeiture are examples.
- Only the City Attorney may draft an ordinance.
- Codified in the Madison General Ordinances (MGO).

Drafting, Fiscal Notes and Sponsorship

- Resolutions may be drafted by anyone.
- Contract approvals must include legal name of other party, authorize named City officials to sign, include purpose and amount of contract.
- See Contract Training on CA website.
- Committees must include name, purpose, membership, appointment and end date.
- Standing committees to be by ordinance.
Drafting, Fiscal Notes and Sponsorship, cont.

• City Attorney to draft ordinances.
• All ordinances and resolutions must have a sponsor. Mayor or alderperson except as provided in Sec. 2.05(6), MGO. BPW, Plan and CA.
• After drafting, must go to Finance Department for a fiscal note. Plan enough time for that.
• Find a sponsor before drafting.

Introduction of Legislation

• General rule is that ordinance or resolution must be introduced at one Council meeting and then considered at a later meeting.
• Council may suspend this rule by a 2/3 vote and act at the same meeting as introduced.
• Must be to Clerk by Wednesday before a Tuesday meeting.
• Introduction from the floor.

Committee Referral Process

• Nearly all items are referred to a Board, Commission or Committee of the City.
• If multiple referrals, the first Committee listed is the “lead referral.” Others are “secondary referrals.”
• Process works best if secondary referrals act before lead referral. They may make suggested changes in the proposal.
Committee Referral Process, cont.

- Council may act without referral, and, with a few exceptions (Plan Commission), need not wait for a committee to act.
- Sec. 2.05(1)(a), MGO, tells committees to act within 45 days of referral.
- Action of the lead referral is normally the proposed action on the Council floor. Lead referral examines other suggestions.

Substitutes, Alternates and Amendments

- Will examine in detail in next segment
- Basic rule: Any change in the legislative proposal after introduction must be made by a person with authority to sponsor legislation. Will be given a different name depending on who sponsors the change and when it occurs.

Public Hearings

- Members of the public are allowed to speak to any item on the Council agenda that is up for consideration.
- Members of the public may speak at Committee meetings on agenda items or anything else. Committees may not act on a new item if not on the agenda, but may ask questions.
Public Hearings, cont.

- Three-minute limit on regular Council agenda items.
- Five-minute limit on “Public Hearing” items.
- By statute, some things (zoning change, special assessments, new liquor license) must be preceded by a public hearing, which is why they appear that way on agenda.

Approval and Effective Date

- All matters must get the vote of 11 Council members, regardless of number voting.
- Some matters require 2/3 (14 votes) or ¾ (15 votes).
- Mayor may only vote in the case of a 10-10 tie.
- Mayor’s right to veto; a 2/3 vote to override the veto.

Approval and Effective Date, cont.

- After meeting, Clerk prepares “proceedings” of the meeting.
- Mayor signs proceedings. This usually is a day or two after the meeting.
- Legislation goes into effect one day after the proceedings and summaries of legislation are published in the official newspaper. Usually within a week or so of the meeting.
Substitutes, Alternates and Amendments

• See the City Attorney memo of May 15, 2009.
• An attempt to bring some order to what was a sometimes haphazard process.
• If the lead sponsor desires changes in the ordinance or resolution prior to the time it reaches the Council floor, a Substitute is created. Multiple Substitutes create numbered Substitutes, e.g., Second Substitute Resolution.

Substitutes, Alternates and Amendments, cont.

• If an Alderperson or the Mayor want changes prior to the time the proposal reaches the Council floor, and the lead sponsor does not support those changes, then an Alternate is created. Multiple alternates may also be numbered.
• Committee staff should check with the lead sponsor (and other sponsors, as a courtesy) to see if they support suggested changes.

Substitutes, Alternates and Amendments, cont.

• Substitute or Alternate ordinance proposals must be drafted by the City Attorney.
• Committees may also make recommendations that show up in the legislative history, and even without a Substitute or Alternate, these may be considered on the Council floor.
• Any change to a proposal made on the Council floor results in an Amendment to the proposal.
Substitutes, Alternates and Amendments, cont.

- Thus, we may end up with an Amended Second Substitute Ordinance, or Amended Third Alternate Resolution, etc.
- Prior versions of the proposal should be kept in Legistar as an attachment.
- Substitutes or Alternates must have a Fiscal Note.

Substitutes, Alternates and Amendments, cont.

- The preferred legislation on the Council's agenda normally will be the version recommended by the Lead Committee. Other versions will be an attachment to the preferred proposal.
- Do not confuse our use of "Substitute" in the Legislative Process with a special type of amendment which may be offered on the Council floor under Robert's Rules and called a substitute amendment.

Committees and Sec. 33.01, MGO

- See the current form of Sec. 33.01, MGO.
- The result of a long process to bring order to Boards, Committees and Commissions. Most of these Sub-units are now in Chapter 33.
- Ad hoc committees are created by resolution or written order of the Mayor or Common Council President.
- See the template for Committee creation.
Committees and Sec. 33.01, MGO, cont.

- Standing or permanent Committees are to be codified in the MGO.
- Committees must have a name, duties and powers, membership and appointment process.
- Ad hoc committees must have an ending date or event.

Committees and Sec. 33.01, MGO, cont.

- Committees make recommendations to the Council.
- Boards or Commissions have some power to act without further approval of the Council.
- Sub-committees made up of members of the Committee may be created by the Committee.
- Role of Alternates defined in Sec. 33.01.

Committees and Sec. 33.01, MGO, cont.

- Common Council may not amend appointments without the Mayor’s consent.
- Normal terms are 3 years; 2 years for Alderpersons to coincide with term.
- 12 year term limit unless 2/3 of Council says otherwise.
- 15 minute rule.
- Majority vote of quorum and attendees.
Committees and Sec. 33.01, MGO, cont.
- Rules of Procedure and role of the Chair.
- Council participation.
- Dates not to meet.

Legistar Issues
- Discussion of Legistar Issues with Lisa Veldran.

Your Questions or Issues
- Any other related questions or issues?
Thank You!

• Call us if you have other questions!
• Michael P. May, City Attorney, 266-4511
  – Patricia Lauten, Deputy City Attorney
  – Roger Allen, Assistant City Attorney
  – Diane Althaus, Ordinance Specialist
• Lisa Veldran, Common Council Administrative Assistant, 266-4074
MEMORANDUM

TO: Mayor Cieslewicz
All Alders
All Agency Heads

FROM: Michael P. May, City Attorney

RE: Revised Procedures for Substitute or Alternate Ordinances or Resolutions

This memorandum explains the procedures for preparation and consideration of substitute and alternate ordinances or resolutions. This direction is needed because of some confusion as to how the process is to work, and the need for some clarifications since the City began to use the Legistar process.

The procedures set out in this memorandum have been developed with input from the Mayor’s Office, the City Clerk’s office and the Common Council Organizational Committee. Please note that the changes set out in this memorandum will require some corresponding changes in APM 3-1 and the related documents identifying the nature of a Substitute, Alternate or Amended ordinance.

These new procedures should be used for all drafting done after the May 19, 2009, Common Council meeting.

Definitions

Sponsor: Alder(s) or Mayor who sponsor legislation. The lead sponsor, that is, the member who first requested that the resolution or ordinance be prepared, should be the first name listed on the legislation. This is a change. In the past, sponsorship often was listed alphabetically or the Mayor was placed first even if the Mayor was not the lead. Section 2.05(6) of the Madison General Ordinances defines sponsorship requirements and also outlines the provisions that are exceptions. (MGO Section 2.05(6)(a) through (6)(i)), and section 2.05(7), attached to this memo). Among the common exceptions are Common Council by Request and Common Council by Petition. The Plan Commission may also sponsor ordinances related to zoning matters, sec. 28.12(10)(b)2., MGO.

Lead Referral: Lead committee/commission/board whose recommendation will be on the floor for Council action unless another version is moved. If the Lead Referral’s recommendation is to adopt legislation, it must have a sponsor. If the legislation is modified by the Lead Referral, the modified legislation must be sponsored and will be either a Substitute or an Alternate.
Secondary Referral: Other committee/commission/board that reviews legislation, proposes changes to legislation and reports their recommendation(s) to the Lead Referral.

Substitute Ordinance/Resolution: Any change in the ordinance or resolution that is approved by the Lead Sponsor prior to consideration on the Council floor. This includes changes to resolutions or ordinances sponsored by a body such as the Board of Public Works.

Alternate Ordinance/Resolution: Legislation proposed by a member of the Council that is an alternate to and is not approved by the lead sponsor prior to consideration on the Council floor.

Amended Ordinance/Resolution: Any change approved on the Council floor proposed by a member of the Common Council, whether made to the lead referral’s recommendation, a substitute, or an alternate.

Proposed Changes from Secondary Referral Agencies

- Staff person for the committee requesting the change enters the recommended changes in their MINUTES (Action Note field). This information returns with the action to the Lead Referral. Keep the lead referral staff person informed.

- The Lead Referral should then consider the recommended changes at its meeting.

- If the Lead Referral approves the changes AND the lead sponsor approves the changes, a Substitute should be drafted as a result of the Lead Referral’s recommendation. The lead sponsor is the first sponsor listed in the legislative file. As noted below, the drafter should assume that the Lead and other Sponsors will continue to sponsor legislation until informed otherwise. The drafter should keep the Lead and other Sponsors informed of any changes to the legislation.

- If the Lead Referral approves the changes AND the lead sponsor DOES NOT approve the changes but another sponsor is willing to support the changes, an Alternate should be drafted as a result of the Lead Referral’s recommendation. The lead sponsor is the first sponsor listed in the legislative file.

- Any changes proposed by the Secondary referrals should be added as an attachment to the legislative file.

NOTE: Secondary Referrals cannot authorize the drafting of a substitute. If, however, the Lead Referral or the Lead Sponsor refuse to approve suggested changes from the Secondary Referrals, and another Sponsor is found, an Alternate may be presented by that Sponsor.

Proposed Changes from Lead Referral Agencies/Committees

- Staff person for the Lead Referral enters the recommended changes in their MINUTES (Action Note field).

- All changes to the text file of legislation approved by the Lead Referral should be entered by the original drafter/preparer of the legislation (can be found in the Extra Information sheet tab of the legislative file; all ordinance drafting must be done by the City Attorney).
• Before any changes are entered into the text file, the Lead Referral staff person must determine if the new version is going to be a Substitute or an Alternate (see above under Proposed Changes from Secondary Referral Agencies). The Lead Sponsor will be notified with a presumption they approve and that the change will result in a Substitute, unless they say otherwise within a specified time or unless they already contacted the staff person. If the Lead Sponsor is not willing to offer the Substitute, the Lead Referral must find another sponsor, and the change will be called an Alternate. Drafters of legislation also will assume that all Sponsors will remain sponsors unless notified otherwise. Staff should keep the Lead Sponsor and other Sponsors informed of changes in a substitute.

• The original (or previous) version of the legislation MUST be added as an attachment in the legislative file (use the Master Generic report and attach the original or previous version as a PDF) by the drafter that is preparing the substitute or alternate. This will keep a record of versions of the legislation in Legistar.

• After the recommended changes to the text are entered, the fiscal note process must be followed. The drafter/preparer needs to obtain the fiscal note approval by the Comptroller’s office. The drafter/preparer should notify the Clerk’s office that the fiscal note has been approved, so the file can be placed on the Common Council agenda.

• The staff person should take their action in their minutes on the new version that has been created by the drafter.

• Any legislation must have a sponsor to be considered by the Council. A Lead Referral’s recommendation to place on file or refer legislation may be considered by the Council even if the lead sponsor disagrees with that recommendation.

• The sponsors have many opportunities to remove themselves as sponsors up to the point it is on the Council floor for final approval. Sponsors wishing to be removed or added to legislation should contact the Clerk’s Office, the Council Office or, for ordinances only, the City Attorney. An Alder may move to adopt the original legislation or an Alternate version of the legislation on the Council floor.

NOTE: If there is a change to legislation that is editorial in nature (misspellings, punctuation errors, minor corrections to sentence structures), then a substitute should NOT be drafted. The original drafter should just make the correction(s).

Proposed Changes Outside of Committee Action

• In some instances, the Lead Sponsor wishes to make changes to an ordinance or resolution outside of consideration by the Lead Referral. These changes may occur prior to the Lead Referral’s action or after the Lead Referral’s action. Any proposed change sponsored by the Lead Sponsor made prior to action on the Council floor should be presented as a Substitute. Changes made on the Council floor will result in an Amended resolution or ordinance.

• The Lead Sponsor may propose a Substitute to be considered by the Lead Referral. Any Sponsor
May 15, 2009
Page 4

may propose an Alternate to be considered by the Lead Referral.

- All changes to the text file of legislation proposed by the Sponsor should be entered by the original drafter/preparer of the legislation (can be found in the Extra Information sheet tab of the legislative file; all ordinance changes must be drafted by the City Attorney).

- After the recommended changes to the text file are entered, the fiscal note process must be followed. The drafter/preparer needs to obtain the fiscal note approval by the Comptroller’s office. The drafter/preparer should notify the Clerk’s office that the fiscal note has been approved, so that the file can be placed on the Common Council agenda.

- The sponsors have many opportunities to remove themselves as sponsors up to the point it is on the Council floor for final approval. Sponsors wishing to be removed or added to legislation should contact the Clerk’s Office, the Council Office or, for ordinances only, the City Attorney. An Alder may move to adopt the original legislation or another Alternate version of the legislation on the Council floor.

**Amendments on the Council Floor**

- Any changes made to an ordinance or resolution on the Council floor will result in an Amended ordinance or resolution. The City Clerk will make the changes in Legistar as part of the proceedings of the Council.

**Information**

- Multiple versions of a file cannot be listed on a Council agenda in Legistar. So the previous versions of legislation MUST be included as attachments in the corresponding legislative file and the version as recommended by the lead referral will be the version that appears on the Council agenda.

cc: Maribeth Witzel-Behl
    Janet Piraino
    OCA Staff and Attorneys
2.05 INTRODUCTION OF BUSINESS.

(6) Unless otherwise provided in these ordinances, no ordinance or resolution shall be introduced unless it is sponsored by a member of the Common Council or the Mayor or both. Use of a Common Council member's name as sponsor must be with his or her knowledge and consent. This provision shall apply not only to ordinances and resolutions, but also to all substitutes and amendments. The provisions of this subsection shall not apply to the following:

(a) Recommendations of the City Attorney or Risk Manager relating to claims.

(b) Recommendations and advice of the City Attorney relating to litigation in which the City is or is going to become involved.

(c) Changes to ordinances and resolutions which may be mandated by state or federal law.

(d) Recommendations of the Personnel Board relating to the classification of positions.

(e) Changes to ordinances and resolutions which may be required by the adoption of the annual City Budget.

(f) Petitions for direct legislation pursuant to the provisions of Section 9.20 Wis. Stats.

(g) Ordinances and resolutions necessary to implement Public Works projects previously approved in the annual City Budget or allowed under sub. (2) of this ordinance.

(h) Zoning map or text amendments allowed under Sec. 28.12(10)(b), MGO, to be sponsored by the Plan Commission or Planning Division.

(i) Changes to ordinances recommended by the City Attorney which are intended to correct errors, omissions or inconsistencies therein.

(7) For any matters not sponsored by a member of the Common Council, the sponsoring officer or body shall be indicated by name. (Cr. by ORD-07-00194, 12-20-07)
HOW TO BE A GOOD CONSUMER OF LEGAL SERVICES

Michael P. May, City Attorney

I. INCORPORATE LEGAL ISSUES IN AGENCY PLANNING

A. In planning a project, try to spot legal issues early. Ask your legal questions as early as possible in your project planning process.

B. In negotiations, do the same. The closer you are to concluding the “deal,” the harder it is to change the terms when one or more of the already agreed-upon provisions turn out to raise legal issues.

C. Always attach the appropriate form contract to a request for proposal.

D. Don’t change the City’s form contract without consulting the City Attorney. Always begin negotiations with the City’s form, never with the Contractor’s form.

II. PLAN AHEAD FOR LEGAL SERVICES, AS YOU WOULD FOR OTHER SERVICES

A. Anticipate drafting needs.

B. Keep track of recurring issues and request a training or question and answer. A member of the City Attorney’s staff will tailor a training session for your needs.

III. WHEN YOU CONSULT WITH ATTORNEYS, PROVIDE FULL INFORMATION

A. Correct legal advice requires complete and accurate facts.

B. Legal advice can be furnished more quickly when attorneys don’t have to spend time digging for facts.

IV. LITIGATION: WHAT TO DO WHEN YOU ARE A DEFENDANT OR A WITNESS, OR IF YOUR DEPARTMENT OR WORK UNIT IS INVOLVED IN LITIGATION

A. Don’t destroy documents.

B. If you receive a summons and complaint, a subpoena, or other legal-looking document, report it to your supervisor at once. Your statutory right to legal defense by the City depends on prompt reporting of claims or suits.

C. If a document is formally “served,” that is, delivered to you by a sheriff’s deputy or
VI. WHAT TO DO WHEN YOU RECEIVE A SUBPOENA

A. Remember to record in writing the circumstances under which you receive a subpoena. See IV-B above.

B. How to respond to a Subpoena

1. You may not ignore or lose a subpoena. A penalty could be imposed and it is not a penalty the City is allowed to pay for you.

2. The fact that you have been served with a subpoena does not mean that you are required to talk to the person who served it, either in person or on the phone.

3. The fact that confidential records are requested by means of a subpoena does not change their status as confidential. The subpoena is merely a legal mechanism to bring the confidentiality issue before a court. You should not disclose confidential records voluntarily just because you receive a subpoena.

4. Unless you receive subpoenas frequently, and know exactly what to do, you should notify the City Attorney’s office immediately as soon as you receive it. In some cases, the City Attorney will need to see a copy of the subpoena.

5. If the City Attorney or insurance counsel concludes the records should not be produced, a motion to quash the subpoena can be filed.
### Ethics Rules for Public Officials

- A Summary of Ethics Rules for Public Officials and Employees
- Prepared by: Michael P. May
  City Attorney
  Madison, Wisconsin
  October, 2018

### Public Ethics Codes

- Public officials and employees are subject to a number of codes governing ethics in government.
- Ethics codes generally regulate in three areas: conflicts of interest, influence peddling, and personal gain by public officials.
- Apply the "smell test."

### Legal Sources of Ethics Rules in Madison

- Sec. 3.35, Madison General Ordinances, (Madison Ethics Code)
- Sec. 19.59, Wisconsin Statutes
- Chapter 946, Wisconsin Statutes, Crimes Against Government
Purposes of Laws

- Fair treatment on the merits.
- Public as master of the public servant.
- "Clean" government.
- See policy stated in sec. 3.35(1), MGO

Policy Statement in 3.35

- "Independent, impartial, and responsible to the people."
- "Decisions and policy be made in the proper channels of government."
- "Public office not be used for personal gain."
- "Public have confidence in the integrity of its government."

Key Definitions

- "Incumbent": Elected official, employee, or member of any committee or board.
- "Associated": You or family member are an officer or director or have a 2% interest in the organization.
- "Immediate family": Spousal equivalent, relative by marriage, adoption or lineally (if provide support).
- "Economic, financial or personal interest": Anything more than nominal.
An Incumbent May Not:

- Use or attempt to use office for financial gain for self, family or associated organization.
- Accept, and no person may offer, anything of value if it could be considered as a reward or may influence action.
- Take action or use office on a matter in which they, family or associated organization has an interest, or which might produce a benefit for them.
  - Sec. 3.35(5)(a)

An Incumbent May Not: (cont.)

- Use city property for advantage not available to the public. 3.35(5)(b)
- Have outside employment that appears to impair judgment. 3.35(5)(c)
- Receive anything of value, except as allowed under sub. (6). 3.35(5)(g).
- Represent private interests before the City (limited for Board members and employees). 3.35(5)(h).

Grassroots Lobbying

- New sec. 3.35(5)(b)3.
- No employee is to use City resources to solicit grassroots support of city residents for a matter before the City, unless approved by a resolution.
- Does not apply to elected officials.
Soliciting Funds

- Ruling by Ethics Board that generally not to solicit funds from those you deal with.
- Under limited circumstances, may solicit funds if approved by the Common Council. Sec. 3.35(5)(a)2., MGO

Post-Employment Limits

- Incumbents generally may not appear before City entities for 12 months following ending of position with the City (limited for Board members and employees).
- May appear on own behalf on a non-commercial matter, or on own behalf on a policy matter. Sec. 3.35(5)(l)

Receipt of Honoraria or Expenses: 3.35(6)

- May retain things of value if totally unrelated to City position.
- May not retain expenses or the like (from the City or others) on behalf of the City unless arises out of work for the City and is of primary benefit to the City.
- No honoraria unless nominal; actual expenses for honoraria may be reimbursed by outside entities. See Formal Opinion 2017-001.
Honoraria/Expenses (cont.)
- If receive anything of value related to City employment, allowed under this section, must report it to the Clerk and to Finance Director if a reimbursement of expenses.
- If receive anything of value not allowed under this section, give it back.

Disclosure & Recusal
- If a conflict of interest, must disclose "nature and extent", unless recuse. 3.35(5)(f)
- If conflict rises to the level of a disqualification ("reasonably be expected to impair ... independence of judgment"), must recuse self and take no part in consideration or action. Consider leaving the room.
- Err on the side of disclosure.

Disclosure & Recusal (cont.)
- New sec. 33.01(9)(f), MGO, requires an agenda item on disclosures and recusals.
- Financial, family or personal interest requires recusal.
- More tangential relationship requires disclosure.
Statements of Interest
- Annual Statement of Interests to be filed with Clerk by candidates, elected or appointed officials, and some employees. 3.35(9)
- Please file timely! Removal from office if do not respond.
- City employees may be subject to forfeiture action in Muni Court.

Fair Treatment: 3.35(7)
- Limitations on both applicants and incumbents in the hiring process, especially as it relates to family members.

Political Activity: 3.35(8)
- No employee while on duty may wear campaign material or do any campaigning.
- Employee may not use position or indicia thereof in campaigns.
- No campaign solicitations or retaliations.
- No use of city property or uniforms.
Ethics Board: 3.35(10)-(13)
- Citizens appointed by the Mayor and confirmed by the Council.
- May issue advisory opinions.
- May receive and hear complaints.
- May recommend sanctions, including removal from office or position.
- City may prosecute and seek fines.

State Ethics Law: Sec. 19.59
- Relates to local officials; other provisions govern state employees.
- Similar prohibitions as local ordinance, but not as encompassing. Does not cover most employees or committee members.
- Opinions issued by State Ethics Board.
- Enforced by District Attorney or Attorney General.

State Criminal Code: Ch. 946
- Sec. 946.10: Bribery.
- Sec. 946.12: Misconduct in public office; intentional failure to carry out duties.
- Sec. 946.13: Interest in public contract. May not bid or seek a public contract over $15,000 if officer has the authority to participate in approval.
- Enforced by the District Attorney.
Examples

- May I use a city vehicle to move items for the Boy Scouts? What if I pay the City?

- At a trade show, companies doing business with the City offer me pens, magnetic clips, and letter openers. May I keep them?

Examples, cont.

- I serve on the Board of a local nonprofit organization. We want to obtain city funds for a worthwhile project. May I testify in favor of it before City bodies?

- At a trade show, a company that wins low bids from the City wants to buy me dinner. May I accept?

Conclusion

- Read sec. 3.35, MGO.
- Seek advice from OCA or Ethics Board when needed.
- Keep your nose clean.
- Err on the side of safety.
- Apply the "smell test."
Thank You!

- Michael P. May, City Attorney
  266-4511
  Assistant City Attorney
  Steve Brist
Robert's Rules of Order

Michael P. May
City Attorney
Madison, Wisconsin
Updated November, 2014

Sources

- Robert's Rules of Order (11th Ed.): 700 pages
- Robert's Rules Abridged: 200 pages
- Chapter 2, and sec. 33.01, MGO

Who is Robert?

- General Henry M. Robert (1837-1923), distinguished engineer.
- Now edited by Henry M. Robert III.
Purposes of Robert's Rules

- Run meetings efficiently.
- Protect the rights of the majority, the minority, individual members and absent members.
- A careful balance to allow action, and in some cases to halt action.

Meeting Agenda.

- Governed by Wisconsin's Open Meeting Law (sec. 19.81, et seq., Stats.) and sec. 3.71, MGO
- Agenda items must clearly apprise the public of the matter to be considered.
- No action if not on agenda and properly noticed (normally 24 hours):

Chapter 2, MGO

- Chapter 2 constitutes the standing rules for the Common Council.
- Except as modified by Chapter 2, Robert's Rules govern Council meetings. Sec. 2.32.
- Standing Order of Business, sec. 2.04.
- Introduction of Business at a prior meeting, secs. 2.05, 2.24 and 2.25, with exceptions.
Ch. 2, MGO (cont.)

- Majority vote of all members, sec. 2.18.
- ¾ majority to change budget, sec. 2.19.
- Reconsideration, sec. 2.21.
- Time limits on speaking, sec. 2.29.
- Rules often (always?) suspended by 2/3 vote to take out of order.
- Use of the Consent Agenda.

Sec. 33.01, MGO

- Governs City Boards, Committees and Commissions. Revised in 2009.
- 15 minute rule on quorum. Quorum normally is a majority of authorized members (note: 14 alders for Council), Sec. 33.01(8).
- May establish own rules (except for reconsideration), otherwise apply Robert’s Rules. Sec. 33.01(9)(b).

Sec. 33.01, MGO (cont.)

- Reports to record votes; time limit on response (normally 45 days per sec. 2.05), Sec. 33.01(11).
- Counting majority for vote: 33.01(8)(d); MGO
- Must be a majority of members in attendance.
- Must also be a majority of the quorum.
- “Abstain” or “present” does not destroy quorum; absence does.
- Example: 3 ayes, 4 abstentions on 7 member body.
Sec. 33.01, MGO (cont.)

- Committees must allow Council members to participate in committee meetings under sec. 33.01(9)(d), MGO.
- May ask questions and participate in debate, but may not vote or make any motions.
- Does not apply to quasi-judicial proceedings.

Role of the Chair

- Obligation to run an orderly meeting.
- Recognizes members.
- Rules on votes, subject to call for roll.
- Rules on procedure, subject to appeal to body.
- Generally, not to vote except when vote decides outcome, and not to participate in debate. Committees may change by rule.

Proceed by Motion!

- The most basic rule of Robert's Rules: proceed by motion.
- No magic words: "I move that __" "I move adoption of __", "Move referral."
- Matters before Council usually have a recommendation which becomes the motion.
- Teach chair to ask for motions.
Classes of Motions

- Main motion. Underlying matter before the body.
- Subsidiary motions. To do something with or to the main motions (e.g., amend, refer).
- Incidental motions. Procedural matters related to the main motion that take precedence (e.g., point of order, suspend the rules).
- Privileged motions. Limited number that take precedence (recess, privilege, adjourn).
- See Robert’s Rules, Secs. 5-6.

Fifteen Common Motions

- Robert’s lists at least 84 different types of motions, Table III.
- Adjourn. Not debatable.
- Adopt.
- Amend. Normally no more than two levels of amendment allowed. Robert’s, Sec. 12.
- Division of Assembly/Roll Call. Granted when asked, not debatable.
- Division of Question/Separation. Separates votes on different issues or paragraphs. Requires a second, but is not debatable.

15 Motions (cont.)

- Lay on Table/Take off Table. Temporarily delay taking action. Not debatable.
- Place on file. Use by Council and some committees, is equivalent of a motion to delay or postpone indefinitely. Non-adoption without voting it down.
- Point of Information. An incidental motion to gain information before taking further action. No second required, a member simply states “Point of Information”, and is recognized.
15 Motions (cont.)

- Point of Order/Procedure. Another incidental motion, no second required. It raises a question about the procedure being used. The Chair rules on the point, subject to an appeal (which does require a second) to the full body.

- Point of Privilege. A privileged motion, no second. Relates to a personal matter.

- Previous Question. Ends debate and proceeds to an immediate vote. Requires a second, not debatable and requires a 2/3 vote.

- Recess. A privileged motion. The length of the recess should be stated. Not debatable.

- Reconsideration. Asks that a matter be reconsidered. Must be made at the same or next meeting by a member who voted for the winning side or had an excused absence.

- Referral. The matter is referred to another body or a later meeting of the same body. Commit in RR.

- Suspend the Rules. Requires a 2/3 majority.

Consent

- Use of unanimous consent is a way to quickly move through non-controversial items.

- "Is there any objection to _______?"

- Council uses an extensive consent agenda.
Precedence of Motions

- See Robert's Rules Sec. 5 and Chart I.
- A motion is not in order when a motion with higher precedence is under consideration. The motion with precedence must be disposed of before the other motion is allowed.
- Following charts show precedence; a motion is not in order if it has a higher number than the pending matter.

Undebatable Motions

- 1. Adjourn.
- 2. Recess.
- 4. Lay on the Table.
- 5. Previous Question
- 6. Limit or Extend Debate.

Debatable Motions

- 7. Postpone to a definite time.
- 8. Refer or commit.
- 11. Main motion.
Incidental Motions

- Incidental motions are not included in the list of precedence because they are subject to individual rules. Generally, whenever an incidental motion is in order, it takes precedence over all other matters. Key incidental motions are Point of order or information, Suspend the Rules, Division of the Assembly or the Question).

“May’s Manual”

- Available on the City Attorney’s web page.
- http://www.cityofmadison.com/attorney/
- Contains a “Cheat Sheet” on common motions.

Questions?

- Call us at 266-4511
- Michael May, Patricia Lauten or Roger Allen who are familiar with Robert’s Rules and city procedure.
MEMORANDUM

TO: Mayor Dave Cieslewicz, Common Council Members

FROM: Michael P. May, City Attorney

SUBJECT: Point of Order – Changing Vote in Order to Move Reconsideration

As you are well aware, in order to move for reconsideration, an Alder must either have voted with the prevailing side on a motion, or have been absent from the meeting. When a motion is about to fail by one vote, Alders sometimes change their votes so that they are on the prevailing side, allowing them to bring a motion for reconsideration.

There is nothing wrong with such a change in vote. However, I was asked to prepare a memorandum noting that such a change in vote should take place before the result of the vote has been announced by the Chair.

The Common Council has no rule with respect to changing a vote. Therefore, the rule is governed by Robert’s Rules of Order.

Robert’s Rules of Order, Sec. 45, provides in part as follows:

CHANGING ONE’S VOTE. A member has a right to change his vote up to the time the result is announced; after that, he can make the change only by the unanimous consent of the assembly granted without debate.

The vote is considered to have been announced when the Chair announces the vote and whether the motion has passed or failed.

Under these rules, members of the Common Council should take care to change their vote, if desired, prior to the Chair announcing the result. After that, changing a vote is only allowed with unanimous consent of the body.

cc: Tammy Peters
Lisa Veldran
MEMORANDUM

TO: Mayor Cieslewicz
    Common Council Members

FROM: Michael P. May, City Attorney

SUBJECT: Point of Order - Motion for Reconsideration

From time to time, issues may arise relating to procedure before the Council for which I think it appropriate to give advice to the members on proper procedure. When I do so, these will be in a "Point of Order" memorandum.

Recently, a question arose as to the proper manner of making a motion for reconsideration of a matter which had previously been approved by the Council.

Chapter 2 of the MGO, Standing Rules for Government of the Common Council, provides as follows at Section 2.21:

2.21 **RECONSIDERATION OF QUESTION.** It shall be in order for any member who voted in the affirmative on any question which was adopted, or for any member who voted in the negative when the number of affirmative votes was insufficient for adoption to move a reconsideration of such vote, at the same or next succeeding regular meeting of the Council. It shall be in order for any member who was, due to an excused absence, not present at the time the question was considered to move reconsideration of such vote at the next succeeding regular meeting of the Council. A motion to reconsider having been lost shall not be again in order. A motion to reconsider shall not be in order when the same result can be obtained by another motion. (Am. by Ord. 5188, 10-20-75)

Section 2.32 of the MGO also provides that Robert's Rules of Order govern any matters not covered by the Council's standing rules.

Sec. 36 of Robert's Rules of Order governs the making of a motion for reconsideration. It makes several points. First, the motion must be made either at the same meeting in which the original motion was made, or, in meetings of more than one day (like conventions), on the following day. This portion of Robert's Rules is modified by Sec. 2.21 of the Council's Standing Rules, which allows a motion to be made at the next succeeding Council meeting.
Second, Robert's Rules also makes a distinction between the making of the motion and the time of consideration of the motion. This is significant because of constraints imposed by the Wisconsin Open Meeting law.

Based upon the above, we advise Council members and the Mayor that motions for reconsideration should be made as follows:

1. A motion for reconsideration of any matter is in order if made at the same meeting in which the matter was adopted. The motion would be considered at that time.

2. Pursuant to Sec. 2.21, MGO, a motion for reconsideration may also be made at the "next succeeding" meeting of the Council. Due to the requirements of the Open Meeting law that any matter to be taken up must be noticed, a motion must either (a) be placed on the agenda for the next succeeding Council meeting, in which case it would be made and considered at that meeting; or (b) if made from the floor at the next succeeding Council meeting, it will not be considered until the following Council meeting. That is, the motion will be treated as a matter introduced and referred to the following Council meeting.

3. Pursuant to Sec. 36 of Robert's Rules of Order, the "effect of making a motion to reconsider is the suspension of all action that depends on the result of the vote proposed to be reconsidered ...." Thus, a motion to reconsider means that the matter previously passed is not effective until the motion to reconsider is taken up by the Council.

4. A motion to reconsider must be distinguished from a motion to rescind. See Sec. 2.26, MGO. A motion to rescind assumes that the action taken by the Council is effective, and asks that it be rescinded. Under Sec. 2.26, such a motion must be made at a prior Council meeting, except for emergency situations requiring a two-thirds vote of the Council. Moreover, a motion to rescind cannot be considered after publication of the legislation sought to be rescinded.

Thus, if any Council member wishes to ask for reconsideration of a question, the motion should be:

- Made at the meeting at which the question was considered, in which case the motion for reconsideration would be considered immediately at that time; or
- Made at the next succeeding Council meeting, in which case the motion would be considered at the meeting if it had been placed on the meeting agenda and noticed, or would be treated as being a matter introduced at the meeting and referred to the next Council meeting for consideration.

If you have any questions on this, please contact me or Assistant City Attorney Roger Allen.

Michael P. May
City Attorney

MPM:ph
DATE: November 7, 2007

MEMORANDUM

TO: Mayor Dave Cieslewicz, Common Council Members

FROM: Michael P. May, City Attorney

SUBJECT: Point of Order – Motion to Adjourn: Non-Debatable

Both Robert's Rules of Order, §21, and the standing rules of the Common Council, Sec. 2.10, Madison General Ordinances, provide that a motion to adjourn is always an order. Moreover, under Robert's Rules, the motion to adjourn is not a debatable motion.

This has raised some concern among Alders that a motion to adjourn might be made and approved when there were important items left on the agenda to consider. Since the motion is not debatable, it might be impossible for members of the Council to be aware of those pressing issues.

However, despite the labeling of a motion to adjourn as not debatable, Robert's Rules makes several specific exceptions. Robert's Rules provides in §21, page 230 (10th Ed) as follows:

Although the privileged motion to Adjourn is undebatable, the following parliamentary steps are in order while it is pending:

- To inform the assembly of business requiring attention before adjournment;
- To make important announcements;
- To make (but not to take up) a motion to reconsider a previous vote;
- To make a motion to reconsider and enter on the minutes;
To give notice of a motion to be made at the next meeting ... where the motion requires previous notice ... and to move to set a time for an adjourned meeting if there is no meeting scheduled for later within the same session.

Because *Robert's Rules* does allow members of the assembly to point out agenda items that require immediate attention, or to make other important announcements, this information could be brought to the Common Council prior to voting on a motion to adjourn.

If a member of the Council needed to bring such information to the attention of the Council prior to voting on a motion to adjourn, the members should rise either to a point of order or a point of information, and be recognized by the Chair. It is important to note, however, that providing such information is not to turn the motion to adjourn into a debatable item.

Michael P. May  
City Attorney

cc: Assistant City Attorneys  
Lisa Veldran
Five Things to Know About the Open Meetings Law, Wis. Stats. §19.81, et seq.

1. Applies to "Government Bodies" which includes subunits and other formally constituted bodies.

2. Requires 24-hour notice of time, place and items to be considered at the meeting. City posting is to be done through the Clerk's Office. Agenda should be specific. Cannot consider anything not on the agenda. City ordinances require that any meeting that does not have a quorum within 15 minutes of posted start time is to be adjourned without taking any action other than setting a new time to meet.

3. Closed meetings only for specified reasons, which normally must be noted on the agenda. Must be a roll call vote to go to closed session. Unless noticed, cannot return to open session for 24 hours.

4. A "meeting" is any gathering of quorum or negative quorum (see City Attorney Opinion #04-001), other than a chance social meeting.

5. Penalties: Forfeitures and possible invalidity of action. Call us if you have questions.

Five Things to Know About the Public Records Law, Wis. Stats. §19.31, et seq.

1. Presumption that all records are open. Must have a specific reason to deny access.

2. Record includes all items containing information related to your position, including emails, whether on City equipment or personal equipment. Drafts not shared with others and personal notes are not records.

3. Must respond to requests within a reasonable time, normally a few days.

4. Specific exceptions set forth in the statute and some developed by common law. Law sometimes requires notice to a person mentioned in the records.

5. Should coordinate all responses with the Office of the City Attorney.
Principles of Open Government

ACA Roger A. Allen
City of Madison

The Foundation of Open Government

Public Records Policy

A representative government is dependent upon an informed electorate... All persons are entitled to the greatest possible information regarding the office... and the official acts of government. Further, providing persons with such information is an essential function of a representative government and an integral part of the effective exercise of governmental authority. [Wis. Stats. §19.31] Public documents [are] shall be considered in every instance with a presumption of complete public access, considering the conduct of governmental business. [Ch. 197 in an exceptional case may access be denied. Wis. Stats. §19.31]

Open Meetings Policy

A representative government of the American type is dependent upon an informed electorate, it is the policy of this state that the public is entitled to full and complete information regarding the affairs of government as is compatible with the conduct of governmental business. Wis. Stats. §16.11(1)
Public Records for Public Body Members

- Record - anything upon which information is recorded or kept by a public employee or official in the course of his duties (whether on paper, film, electronic or in any other medium or format).
- Protection states - privacy, confidentiality, and legal privilege.
- Preservation of Openness - every public record is open to public inspection unless declared confidential by a court or state statute.

How to Comply

- EMAIL YOUR PERSONAL ACCOUNTS - forward each to your public body's staff person.
- REQUESTS FOR RECORDS - immediately notify your public body's staff person & forward the request to them, preserve a copy of the request.
- PRESERVE ALL RESPONSIVE RECORDS - no matter where they may exist and forward a copy to your public body's staff person.
- COOPERATE IN A TIMELY MANNER - the City is obligated to process these requests as soon as practicable and without undue delay.

City Staff Processes Public Records Requests

- Screen Request for Provenance & Reformatting of Appropriate Data
- Due Diligence Assembly and Review of Responsive Records (DCAR)
- Provide Appropriate Exemptions (Public Employee Discipline Records)
- Deliver Records As Soon As Practicable And Without Undue Delay
- Your Cooperation Is Gratefully Acknowledged
- Failure To Comply Of Up To $1,000
- WIS. STAT. (44.72) Disruption with public records and notices, "Whoever with intent to disrupt or disturb makes, removes or conceals any public record is guilty of a Class B felony"
OPEN MEETINGS COMPLIANCE

Administering Meetings vs. Open Meetings Laws

- Open Meetings Laws set minimum requirements for convening a Public Meeting
  - Failure to abide by these rules can result in personal liability and removal of
  - Reminders can be enforced by an approved citizen, Dane County DA, and
  - City has adopted Robert's Rules of Order for conducting meetings
  - Additional rules: Chapter 25 Madison City Ordinance; these rules are
  - City of Madison adopted Robert's Rules of Order
  - City of Madison adopted Robert's Rules of Order for conducting meetings

Legal Requirements - Agenda

- Must have a Notice and Agenda (APM 3-2)
  - Agenda items: calls the general items, new items, past business
  - Must be posted 30 hours in advance of meeting
  - Must be approved by the Chair's Office no less than 48 hours in advance
  - Must be posted no earlier than 24 hours
  - City of Madison City's Office of the Mayor
  - NO MEETINGS (beaucoo of the unexpected)
Legal Requirements - Access

- Must Be Open To Public - facility large enough to accommodate expected turnout
- Must Be Accessible - including language excellence
- Must Be Converted In Open Session (Closed Session Only If Statutes Allow & DCA Approved)
- Teleconferences - Staff to coordinate per APA 3-2, Agenda must identify Person Participating by Phone/ Video
- Conducted By Robert's Rules Of Order - records the body adopts & files written notes w/Clerk

What Is A "Meeting"?

- A gathering (either in person or virtually) where the business of the public body is conducted or discussed. A sufficient number of members must be present such that they can determine the course of the public body's business.
- Sufficient Number of Members
  - Quorum (one third more than half of the populated membership)
  - Negative Quorum – though members that if they vote together they could form a majority of quorum (difficult to determine who cast votes in secret)
  - Viable Quorum – some of discussion (presumptions by phone, but even email) such that they create a quorum or a negative quorum

Conducting Public Body's Business

- Includes simple discussions or information gathering
- Includes administrative tasks (agenda, work groups, etc.)
- Applies when attending another public body’s meeting
- Does not include social gatherings, chance meetings where the body’s business is not discussed

PRESENCE OF A QUORUM TRIGGERS A LEGAL PRESUMPTION OF A MEETING
Closed Sessions

- Must be convened in an open meeting; must state closed session on agenda.
- Requires explicit motion (include statutory citation) and recorded vote.
- Chairman makes announcement & closes room.
- Must be for a reason permitted under Wisconsin statutes.
- A 2/3rd's quorum of designated an agenda item.
- Requires explicit motion (include statutory citation) and recorded vote.
- Other purpose - case files, civil suits, personnel problems or public records.
- Only if establishing financial records, audit or personnel policies or disciplinary rules involving a specific individual.
- Staff must consult with OCA prior to placing on agenda.
- OCA will seek closing cannot exception.
- Relying on OCA advice prevents imposition of penalties.

Penalties

- May be enforced by the City Attorney, District Attorney, Attorney General or an appellate court.
- Fines: $5-500 plus court costs (City cannot reimburse you).
- A court may void any actions taken during an illegal meeting.
- Public humiliation.
Social Media —

- Facebook, Twitter, Instagram, LinkedIn, YouTube, Flickr, Snapchat, Pinterest, Tumblr, Vine, QQ, WeChat, Weibo, LinkedIn, Instagram, Muck Rack, MeWe, Meetup, Gaana, TikTok, Soul, WeChat, Reddit, Reddit, Bloglovin', Viber, VSCO, Weibo, Telegram, Medium, Skift, Meetup, Academia.edu, Coudi, Flipboard, and others

- blogging apps (WordPress), Medium, Ello, Medium, Amara, WriteAloud, Tumblr, Foursquare, Vine, WeChat, Twitter

- beavers' tool kit

- privacy, money, noise, aggregation

- Open Meetings and Public Records Laws Apply Regardless of Format of Meeting

- Full Amendment Rights Apply Also Apply

- OCC has a Social Media Policy — Failure to Follow Has Consequences

SUMMARY

- You are conducting the PUBLIC'S Business, the Public Has the Right to
- Observe the Process As Well As the End Product
- Staff is Assigned to Assist You and Ensure Compliance With These Laws
- Forward Any Email That Could Constitute a Record to Staff
- Avoid Discussing Public Body Business With Other Members Outside of a Properly Notified Meeting
- Review Police Closed Meetings With OCA Staff
- When in Doubt — Consult Staff / OCA

Office of the City Attorney

Attorney General Compliance Guide

Thank You
raten@cityofsd.com