



Office of the City Attorney

Michael R. Haas, City Attorney

Patricia A. Lauten, Deputy City Attorney

ASSISTANT CITY ATTORNEYS

Steven C. Brist
Be'Jan G. Edmonds
Lara M. Mainella
Amber R. McReynolds
Marcia A. Paulsen
Adriana M. Peguero
Kevin B. Ramakrishna

Kate M. Smith
Jaime L. Staffaroni
John W. Strange
Doran E. Viste
Brittany A. Wilson
Jennifer Zilavy

City-County Building, Room 401
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703-3345

(Telephone) 608-266-4511
(Fax) 608-267-8715
attorney@cityofmadison.com

LITIGATION ASSISTANT
Patricia V. Gehler

MEMORANDUM

TO: Police Civilian Oversight Board Members

FROM: City Attorney Michael Haas
Assistant City Attorney Marci Paulsen

DATE: January 11, 2021

RE: Special Rules For Board Meetings and Members

This memorandum outlines special rules which the Civilian Oversight Board (COB) may wish to consider adopting for its meetings and members. The agenda for the Board's January 14, 2021 meeting includes an item permitting the Board to discuss and establish special rules for Board members and the conduct of Board meetings.

M.G.O. § 33.01 outlines rules for the conduct of meetings for all City boards, commissions and committees and includes the following provision:

(9)(b) Boards, committees, and commissions may adopt rules of procedure. Such rules may not conflict with ordinances or resolutions of the Common Council. In case the Sub-unit does not adopt rules of procedure, it shall be governed by Robert's Rules of Order, insofar as Robert's Rules of Order does not conflict with ordinances or resolutions of the Common Council. Sub-units shall follow the procedure set forth in [Sec. 2.21](#), MGO, on motions for reconsideration, and shall not modify this rule. A motion to reconsider shall not be in order before any Sub-unit when the matter approved has been partially or fully carried out, including actions by City employees, or by the Council or another Sub-unit of the City, by acting upon a recommendation made to the body. Sub-units shall review and make any changes in rules of procedure every two (2) years, which shall be filed with the City Clerk by July 1 of even-numbered years. Boards, commissions and committees shall not adopt rules of procedure that interfere with the right of breastfeeding as protected by Wis. Stat. §§ 253.165 and [23.37](#), MGO.

The ordinance which created the Oversight Board, M.G.O. § 5.20, includes the following provision:

(7) Board Procedures. With the assistance of the OIM, the Board shall create a policy and procedure manual including, but not limited to, information related to the jurisdiction of the Board, relationship of the Board to the OIM, Board Member roles, required training, and special Board rules and procedures, including any authorized exceptions to the procedures contained in M.G.O. § 33.01. *In creating those special rules, the Board is strongly encouraged to adopt a rule, notwithstanding M.G.O. § 33.01(9)(e), to allow for free-flowing discussion between the Board and community during meetings as a way to encourage and ease community input.* Emphasis added.

The COB may adopt procedural rules that do not conflict with ordinances or resolutions of the Council. Absent the adoption of any special rules, Board meetings are governed by Robert's Rules of Order and any ordinances which modify those rules. Staff recommends that the Board consider the following special rules.

1. Public Comment and Discussion

Through adoption of M.G.O. § 5.20(7), the Common Council encouraged the Board to allow for free-flowing discussion between the Board and community during meetings. This would be a modification of M.G.O. 33.01)(9)(e) which states:

(9)(e) Public Comment. Every Sub-unit, including subcommittees created under Subsection (4)(d), above, shall establish a period for public comment at or near the beginning of each meeting. The public comment section of the meeting allows comments on any matter on the agenda or matters not on the agenda, provided, however, that the Sub-unit shall not take action on a matter raised in the public comment portion of the meeting unless that matter is otherwise on the agenda. The Sub-unit may allow public comment on any agenda item at the time that item is taken up. Members of the public who comply with applicable rules, including registering to speak prior to the Sub-unit beginning discussion on any agenda item, on registration forms established by the City, shall be permitted at least three (3) minutes to speak. If the speaker requires an interpreter, either because of his/her limited English proficiency or because of a disability, he/she shall be allowed no less than six (6) minutes.

Therefore, the default rule for all City boards, commissions and committees is that members of the public may provide comment in a period near the beginning of each meeting. The Board also may, but is not required to, permit the public to speak at the beginning of any agenda item if they have registered prior to the Board's discussion of the item. The Common Council, and most other City bodies, limit speakers to three minutes with the exceptions described above.

Several City committees, including the Ad Hoc Committee on Police Procedures and Policies and the Task Force on Government Structure, adopted the rule described in § 5.20(7) by permitting members of the public to interject comments, when called upon, during the body's discussion of the agenda item. This approach encouraged a more free-flowing discussion between members of the body and the public. The Board may adopt

this procedure as a general rule that applies to all COB meetings, may adopt it at the beginning of each meeting, or may adopt it or exclude it for specific agenda items. There may be some items, such as training that the Board receives, which it decides is not appropriate for the public to comment on during the Board's discussion.

2. Chair's Role

M.G.O. § 33.01(9)(c) states:

Unless authorized by the rules adopted under subdivision (b) above, the chair of a Sub-unit shall not vote unless the chair's vote would affect the outcome of the matter before the Sub-unit and shall not participate in making motions or discussion thereon.

The Board may determine whether the Chair is allowed to vote on all motions and participate in making motions or the discussion. The unique nature of the COB, and the fact that most Board members were nominated by community organizations, may support the Board varying from the default rule in M.G.O. § 33.01(9)(c).

3. Board Member Public Comments

Members of the COB are free to express their opinions publicly and at meetings of the Common Council or other City bodies. When doing so, however, Board members may wish to be aware of, and make clear, when they are speaking on behalf of the Board or on their own behalf. Unless the Board member is discussing or advocating for an action already taken by the Board, the member is likely speaking only for themselves. Because of the high profile nature of the COB's responsibilities, some City officials, the media and the public may mistake a Board member's individual views with a position of the COB.

The Board may wish to consider a rule requiring members to clarify when they are speaking on their own behalf in public settings. This is not a rule related to meeting conduct and enforcement would be difficult, but a rule adopted by the Board would establish expectations for current and future Board members, and could be part of the COB's policy and procedures manual that is required by M.G.O. § 5.20(7).

The Board may also consider any other special rules for its meetings that do not conflict with City ordinances or resolutions adopted by the Common Council. We are available to discuss these issues at the Board's meeting.