

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: November 10, 2010

MEMORANDUM

TO: Department and Division Heads
Committee Staff

FROM: Michael P. May, City Attorney

RE: New Provision in Ethics Code on Disclosure and Recusal

On November 9, 2010, the Common Council approved Legislative File No. 19335, amending the City's Ethics Code to require that each sub-unit have an agenda item regarding required disclosures and recusals under the Ethics Code. The Legistar file can be found here:

<http://legistar.cityofmadison.com/detailreport/?key=21402>

As soon as possible, all Boards, Committees and Commissions subject to chapter 33 of the Madison General Ordinances should include such an item on your agenda. We suggest it be placed right after the Public Comment section. We will ask the City Clerk to standardize the language, but we suggest the following:

Disclosures and Recusals.

Members of the body should make any required disclosures or recusals under the City's Ethics Code.

As a general rule, sec. 3.35(5)(a), MGO, requires that persons serving on City sub-units not take any official action that provides a personal financial gain or other privilege for him or herself, their immediate family, or an organization with which they are associated, or take any action if such persons or organizations have a financial interest in the matter. These situations create a conflict of interest and the member of the body should recuse (disqualify) him or herself.

Sec. 3.35(5)(f), MGO, states that the test is whether the matter involves those interests "to the extent that such interests conflict or appear to conflict with her or his official duties or would impair or reasonable be expected to impair her or his independence of judgment or actions." In those circumstances, recusal would be proper.

If the member recuses him or herself, they should abstain from voting or participating in the debate, or otherwise taking any action to influence the outcome of the matter. Under sec. 3.35(5)(f)3., the member who has disqualified him or herself may be asked to leave the room during consideration of the matter.

If there is a limited relationship that does not meet the above tests, the member should disclose the nature of the relationship at the meeting. Disclosure does not require any further action by the member, who may act on the matter at hand.

For example, as a disclosure, a member might announce: "Agenda item 4 is a contract with ABC Architects. ABC did some work for my company several years ago, but we have no ongoing relationship and that prior work will not influence my vote."

Another member might announce a recusal: "Agenda item 4 is a contract with ABC Architects. I will be recusing myself on that item and should be recorded as abstaining." When a member recuses, the member may but need not announce the reason (e.g., perhaps they work for ABC Architects). The member must not participate in the discussion or vote or attempt to influence votes in any other way.

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

CC: Mayor Cieslewicz
All Alders