

CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
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DATE: November 11, 2005

MEMORANDUM

TO: **Mayor Dave Cieslewicz, Common Council Members**

FROM: Michael P. May, City Attorney

SUBJECT: **Point of Order - Procedure for Mayor to Address Council**

At a recent Common Council meeting, the question came up on the proper way for the Mayor to address the Council when the Mayor wishes to express a position on a matter pending before the Council.

Robert's Rules of Order, Sec. 42, provides that the Chair "must relinquish the Chair" to participate in debate on a matter. The Council's own rules of procedure, Chapter 2, Madison General Ordinances, do not change **Robert's Rules** (RR) on this point.

The purpose of the rule is to preserve at least the appearance of "the impartiality of the Chair", according to RR. Thus, unless the procedure is waived by unanimous consent of the Council, the Mayor as Chair of the Council should relinquish the Chair to another member of the Council, and then address the Council from a position other than the Chair.

Note, however, that if the Council is to strictly follow RR, several other things follow from such a procedure:

1. Once the Mayor has relinquished the Chair, the Mayor is not to return to it "until the pending main question has been decided." Thus, whoever takes the place of the Mayor as the Chair would have to remain there until the vote on that matter.
2. When the Mayor relinquishes the Chair to participate in the debate, the Chair may only be turned over to a member of the assembly "who has not spoken on the question." RR, Sec. 42. If the President of the Council were to be disqualified by this rule, the Chair should then be offered to the President Pro Tem, and if he or she were similarly disqualified, then to any member of the Mayor's choosing who is not so disqualified.
3. If the above rules are strictly followed, the procedure may create some unusual questions regarding the rights of the alder-chair and the Mayor to vote on a matter. If the alder-chair is considered to have stepped into the shoes of the Mayor, such alder may only vote to break a 10-10 tie, which will never happen with the alder in the Chair. If, on the other hand, the alder is simply considered

as the Chair, RR provides that the Chair may only vote to decide a matter. Could the alder vote to make a 10-9 vote into an 11-9 vote? Could the alder vote to make a 10-9 vote a 10-10 vote, throwing the matter to the Mayor? Can the Mayor vote at all once he or she has left the Chair?

I understand there is some history in these situations of allowing the alder to vote and the Mayor to break any 10-10 tie. Such a practice is not at all clear from RR, Chapter 2, MGO, or the state statutes.

Because of the impacts of **Robert's Rules** on its procedure, the Common Council may wish to consider whether it should adopt a standing rule in Chapter 2, MGO, to modify these rules. There are a number of potential modifications which the Council might wish to consider:

1. Allowing the Mayor to speak from the Chair on relatively non-controversial items, unless a member requests that the Chair be relinquished. This is no different than the Mayor asking for unanimous consent to speak from the Chair. However, this procedure would put the onus on an alder to object, while RR assumes that the Mayor would step down and relinquish the Chair.
2. Does the Council care whether the Mayor returns to the Chair to actually take the vote on a matter?
3. Such standing rules could address the issue of the rights of an alder sitting as Chair, or the Mayor, to vote.

The Council may also wish to consider whether the rules of RR are somewhat quaint when, on almost any issue on which the Mayor desires to address the Council, the Mayor's position is likely well known prior to the matter coming before the Council.

Conclusion

Although the general rule that the Mayor should step down from the Chair to address the Council is established in Robert's Rules, I recommend that the CCOC examine how to codify the details of this rule in Chapter 2, MGO.