

CITY OF MADISON
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DRAFT REPORT OF THE CITY ATTORNEY
TO THE
COMMON COUNCIL EXECUTIVE COMMITTEE
ON THE APPLICATION OF
ADMINISTRATIVE PROCEDURE MEMORANDA
TO MEMBERS OF THE COMMON COUNCIL

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A. INTRODUCTION.

This Report is divided into three sections. The first section lists the APMs that might possibly be applied to Alders, with a link and brief summary of each. The second section discusses a possible disciplinary process to apply to alders. The third section includes information on removal of an alder from office, and also provides a link to my prior formal opinion on APMs and Alders.

B. LIST OF APMS POSSIBLY APPLICABLE TO ALDERS.

A complete list of the Administrative Procedure Memoranda may be found here:

<https://www.cityofmadison.com/mayor/apm>

The list includes 26 APMS that alders likely are subject to, if only due to finance or staff approvals necessary. Items with a * need further definition or discussion. Items with the notation (BCC) at the end are APMS that might apply to members of Boards, Commissions or Committees.

1-4: Purchasing policies

Link: <https://www.cityofmadison.com/mayor/apm/1-4.pdf>

This APM covers the policies for purchase of materials, supplies and services by all City agencies. It would apply to any such purchase made by the Council office, and presumably would cover any purchases made from an Alder's account.

1-5: Travel at City Expense

Link: <https://www.cityofmadison.com/mayor/apm/1-5.pdf>

This APM covers the policies for reimbursement and rates of reimbursement for expenses incurred when traveling on city business.

2-12: Employee Assistance Program*

Link: <https://www.cityofmadison.com/mayor/apm/2-12.pdf>

This APM relates to providing assistance to City employees to deal with personal, behavioral, medical or work-related problems. I believe it is available to alderpersons now, although the language of the APM does not indicate so.

2-13: CARS policies (if use City Cars)*

Links: <https://www.cityofmadison.com/mayor/apm/2-13.pdf>

<https://www.cityofmadison.com/mayor/apm/finance/2-13attmt.pdf>

These rules apply to city employees used city-owned vehicles. To the extent and alders use City vehicles, the same rules should apply.

2-22: Workplace Accommodations

Link: <https://www.cityofmadison.com/mayor/apm/2-22.pdf>

Policies for compliance with the Americans with Disabilities Act.

2-32: Employer Health Insurance Contributions (If covered for health insurance)

Link: <https://www.cityofmadison.com/mayor/apm/2-32.pdf>

Because the payments all go through Finance, this necessarily applies to Alders.

2-33: Rules of Conduct* (BCC)

Link: <https://www.cityofmadison.com/mayor/apm/2-33.pdf>

This is one of the most significant set of rules to assure a civil workplace. Alders should read this carefully and consider how to apply it or some of it to themselves.

2-37: Change in Address or Telephone

Link: <https://www.cityofmadison.com/mayor/apm/2-37.pdf>

Basic stuff.

2-44: Volunteers/Unpaid Interns

Link: <https://www.cityofmadison.com/mayor/apm/2-44.pdf>

This would almost necessarily apply because HR must approve the use of interns. Like many of the APMs, however, it does not appear to apply to the Council by its language.

2-46: Prohibition of Weapons*

Link: <https://www.cityofmadison.com/mayor/apm/2-46.pdf>

It would seem clear that the same prohibitions that apply to employees would apply to Alders, but the APM does not explicitly say so.

2-47: Form I-9 verification

Link: <https://www.cityofmadison.com/mayor/apm/2-47.pdf>

I am not sure if Alders are required to provide an I-9 before receiving their salary, but I would assume that is the case.

2-50: Lactation Policy for Breastfeeding Employees and Visitors

Link: <https://www.cityofmadison.com/mayor/apm/2-50.pdf>

This policy requires the City to accommodate employees who are breastfeeding their babies.

3-1: CC, BCC Meeting Dates and preparation of reports

Link: <https://www.cityofmadison.com/mayor/apm/3-1.pdf>

This is a detailed APM on rules and procedures for meetings of the Common Council and Boards, Commissions and Committees. In practical effect, it already governs the Council. Some parts of it come straight from the Council's rules in Ch. 2, MGO.

3-2: Meeting Notices

Link: <https://www.cityofmadison.com/mayor/apm/3-2.pdf>

As with APM 3-1, this APM already effectively covers the Council, and it or the Council ought to say so.

3-5: Prohibited Harassment*(BCC)

Link: <https://www.cityofmadison.com/mayor/apm/3-5.pdf>

This is one of the most important APMs, and a policy such as this is required by law. It prohibits discrimination, harassment or retaliation against any employee based upon the employee's membership in a protected class. It has been controversial when proposed to apply to Alders, although on its face, it already has some limited application to Alders.

3-6: Records Management

Link: <https://www.cityofmadison.com/mayor/apm/3-6.pdf>

This APM sets the City's policy on retention and destruction of records, and compliance with the public records law. As a practical matter, most of it already applies to the Council's records.

3-9: Appropriate Use of City Computers

Link: <https://www.cityofmadison.com/mayor/apm/3-9.pdf>

This APM, with some attachments not included here, establishes rules for use of City computers. It should apply with equal force to alders' use of city computers.

3-10: Payment for Attendance at Social Events

Link: <https://www.cityofmadison.com/mayor/apm/3-10.pdf>

This policy limits the City payment of costs to attend events that are primarily social, rather than employment related. A discussion as to how this APM would fit with the Alders' expense accounts would be needed.

3-13: Web Linking Policy

Link: <https://www.cityofmadison.com/mayor/apm/3-13.pdf>

This APM limits employees' ability to link to outside websites. Any link must be approved by IT and meet certain criteria. My observation is that some Alders do not follow this policy; for security of the City's system, it seems that the APM should apply.

3-18: Use of City of Madison Logo (BCC)

Link: <https://www.cityofmadison.com/mayor/apm/3-18.pdf>

This APM limits use of the City logo, which is trademarked, and provides a process to obtain approval for use of the logo.

3-20: Software acquisition policy

Link: <https://www.cityofmadison.com/mayor/apm/3-20.pdf>

This policy requires approval of IT before obtaining any new software.

4-4: Television and Video Production*

Link: <https://www.cityofmadison.com/mayor/apm/4-4.pdf>

This APM generally requires that all video production be done through City Channel.

4-7: Policy for the procurement and disposal of Electronic products

Link: <https://www.cityofmadison.com/mayor/apm/4-7.pdf>

This APM sets policies for the City to obtain and dispose of electronic products in an environmentally reasonable manner.

5-2: Vehicle Accident Reporting (if use a city car)

Link: <https://www.cityofmadison.com/mayor/apm/5-2.pdf>

Policies for reporting any accident involving a City-owned vehicle.

6-1: All Hazard Evacuation Procedures

Link: <https://www.cityofmadison.com/mayor/apm/6-1.pdf>

Because this APM covers all persons in a City facility when an evacuation or sheltering takes place, it applies to Alders as much as employees or visitors.

6-5: City Owned Meeting Facilities (BCC)

Links: <https://www.cityofmadison.com/mayor/apm/6-5.pdf>

<https://www.cityofmadison.com/mayor/apm/6-5AttachA.pdf>

This APM establishes policies encouraging the use of city facilities for city meetings, requiring the use of the electronic sign up system, and sets other rules.

C. POSSIBLE DISCIPLINE PROCESS.

This issue is complicated because Alders are not employees in the traditional sense, and do not have a supervisor who may impose discipline. To a large extent, the discipline imposed on an Alder will be a type of public shaming, perhaps to be considered by the voters of the district at the next election.

Listed here is just one possible scenario for imposition of discipline.

1. Complaints about an Alder should be made to the President of the Council, and should be in writing. Complaints about the President would be made to the Vice-President.
2. The President would conduct some type of investigation, including an interview with the Alder about whom the complaint was filed. The President would determine if the complaint was sustained or dismissed. For some offenses, the President could refer the matter to the CCEC.
3. The CCEC should establish levels of offenses and possible discipline. Here is one possible approach:

Offense	Discipline
Very Minor	Verbal Direction from President
Minor	Written Direction from President
More than Minor but not Significant	Written Direction from President with a copy to the CCEC
Significant	Written Direction from the President with a hearing before the CCEC to consider a CCCEC motion of admonishment
Very significant	Written Direction from the President with a hearing before the CCEC to consider introduction of a resolution of Censure to be considered by the Common Council
Major	Consideration of removal from office pursuant to sec. 17.12, Wis. Stats.

4. Whatever is determined to be the approach, it should be codified in the Madison General Ordinances.
5. The Council would need to determine if multiple offenses would result in progressive discipline.
6. These same sort of rules could be applied to BCC members.

D. LEGAL PROCEDURES FOR REMOVAL.

Despite my recollection and that of the current Council President, I could not find a memo that it thought I had prepared on this topic. It may have been in an email that is long since buried.

Nonetheless, the rules are pretty clearly set out in sec. 17.12, Wis. Stats., repeated in part here:

17.12 Removal and suspension of city officers.

(1) GENERAL AND SPECIAL CHARTER. Officers of cities, except public officials, as defined in s. 62.51 (1) (b), operating under the general law or under special charter including school officers, may be removed as follows:

(a) *Elective*. Elective officers by recall as provided in s. 9.10, or by the common council, for cause.

(c) *Appointed officers*. An appointed officer may be removed in any of the following manners:

1. An officer appointed by the common council, by the common council, at pleasure.

2. An officer appointed by an officer or body other than the common council, whether or not the appointment was confirmed by the common council, in any of the following manners:

a. By the appointing officer or body, at pleasure.

b. By the common council, for cause.

...

(d) *Votes required*. Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of 3 or more members, by an affirmative vote of two-thirds of all the members thereof.

...

(3) SUSPENSION. The mayor of any city may summarily suspend from office any officer thereof whose removal is sought and against whom charges have been preferred therefor, and may appoint an officer to discharge the duties of such office until such charges have been disposed of. If such charges are dismissed, the officer so suspended shall thereby be restored to office and be entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended.

(3m) COMMON COUNCIL AUTHORITY. Notwithstanding subs. (1) and (2) and subject to sub. (4), a city may by ordinance provide that any appointed city officer may be removed only for inefficiency, neglect of duty, official misconduct, or malfeasance in office.

(4) GENERAL EXCEPTION. But no officer of any city, appointed according to merit and fitness under and subject to a civil service or to a police and fire commission law, or whose removal is governed by such a law, shall be removed otherwise than as therein provided.

Thus, a member of the Council may be removed by the Council “for cause.” Sec. 17.12(1)(a), Stats. This would clearly require a hearing of some sort. Removal requires a three-fourths (3/4) vote of the Council, or 15 votes. Sec. 17.12(1)(d), Stats. If the Council adopted the standards set out in sec.17.12(3m), Stats., then a member could only be removed upon a showing of “inefficiency, neglect of duty, official misconduct, or malfeasance in office.” Although it is a policy question for the Council, I would recommend including the standards in sub. (3m) to give some guidance of what is required for removal.

Although not directly relevant to the issue now being considered, here is my prior formal opinion that delineated the separation of powers issues arising in trying to apply most APMs to the Council without the Council’s approval:

<https://www.cityofmadison.com/attorney/documents/2017opinions/Opinion2017-003.pdf>