

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

Date: November 2, 2006

MEMORANDUM

TO: Plan Commission

FROM: Katherine C. Noonan, Assistant City Attorney

RE: Motions to Reconsider

In a memo to the Commission in August 2005, I noted that reconsideration of Plan Commission actions is controlled by two different procedures (see attached Memo). Currently, Plan Commission actions still are subject to two different reconsideration procedures, however, for all actions other than conditional uses, Sec. 2.21, MGO adopted in June 2006, now applies rather than Roberts Rules.¹

Pursuant to Sec. 28.12(11)(i), MGO, reconsideration of a conditional use application can occur only if a member of the Plan Commission requests reconsideration in writing within ten (10) days of the initial action. All other actions of the Plan Commission are subject to Sec. 2.21, MGO which permits reconsideration if any member who voted in the affirmative on any question that was adopted, or any member who voted in the negative when the number of affirmative votes was insufficient for adoption, moves reconsideration of a vote, at the same or next succeeding regular meeting of the Plan Commission. Although the above two procedures are somewhat similar, having two different procedures for reconsideration can lead to confusion and I would suggest that the Plan Commission select one procedure to apply to all their actions.

Choosing to follow Sec. 2.21, MGO likely will be easier because it is the procedure followed by all boards, commissions, etc. that have not chosen a specific alternative procedure. The Plan Commission is authorized to adopt rules for carrying out its business, and such rules may be amended by a 2/3 vote of members present, as set forth in Rule 3.115(b).

¹ Subdivision (b) of Subsection (4) entitled "Officers, Minutes, and Rules of Procedure" of Section 3.27 entitled "Qualifications--City Officers, Members of Commissions, and Employees" of the Madison General Ordinances is amended to read as follows:

"(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 board, committee or commission 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. Unless modified by its own rules of procedure or otherwise required by ordinance or statute, boards, committees and commissions shall follow the procedure set forth in sec. 2.21, MGO, on motions for reconsideration."

If the Plan Commission wishes to use the procedure in Sec. 2.21, MGO, it need not adopt a rule to replace Rule 3.112(k), which is the Plan Commission rule making Roberts Rules applicable, because a specific procedure adopted by ordinance, e.g. Sec. 2.21, MGO takes precedence over a rule of a board, commission, etc. An amendment to Sec. 28.12(11)(i), MGO, however, would be necessary to remove the language relating to reconsideration of conditional uses.

If the Plan Commission wishes to retain the two procedures for reconsideration, no action need be taken. Sec. 28.12(11)(i), MGO still will apply to conditional uses, and Sec. 2.21, MGO will apply to all other actions.

The Plan Commission rules were adopted prior to a number of changes in the City's current ethics code, found in Sec. 3.27, MGO. Because the requirements in Sec. 3.27, MGO are more extensive than those in Rule 3.115(e), titled Conflict of Interest, Sec. 3.27, MGO applies to Plan Commission members and Rule 3.115(e) should not be followed. Amending the Rules to delete or change this provision would reduce the likelihood of a Commission member looking to the wrong regulation. If the Commission wishes to do so, it would be useful to review the other Rules to determine if other changes are desired. I believe the most recent version of the Rules is dated 1980.

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

August 2, 2005

MEMORANDUM

TO: Plan Commission

FROM: Katherine C. Noonan, Assistant City Attorney

SUBJECT: Reconsideration of Action

Rule 3.112(k) in the Policies and Procedures Manual of the City Plan Commission states that parliamentary procedure at Commission meetings shall be governed by Roberts Rules of Order. A particular rule of order, however, may not control if there is a rule of the Commission calling for a different procedure or if there is an ordinance that specifies a different procedure.

Under Roberts Rules of Order, a motion to reconsider may be brought only by a member of the prevailing side on a vote and only on the same day as the vote to be reconsidered was taken. Other than Rule 3.112(k) that applies Roberts Rules of Order, there is no Commission rule that specifically deals with motions to reconsider. There is, however, an ordinance that specifies a procedure for bringing motions to reconsideration on conditional use determinations. It is Sec. 28.12(11)(i), MGO and does not apply to actions other than those on conditional uses applications. Because there is no Commission rule setting out the procedure for bringing motions for reconsideration, and because Sec. 28.12(11)(i), MGO applies only to conditional use determinations, motions to reconsider any other action of the Plan Commission would be subject to Roberts Rules of Order and could be made only by a member of the prevailing side and only at the meeting at which the action was taken.

If the Plan Commission wishes to treat motions to reconsider in a different manner than currently is required by the rules and Sec. 28.12(11)(i), additional rules could be adopted or ordinance amendments could be proposed.

FROM PLAN COMMISSION
BASIC POLICY AND PROCEDURES MANUAL

(b) Order of the Public Hearing

1. The Secretary shall be present to record the names, addresses, and all statements made by those appearing. The Chair shall endeavor to keep repetitions and irrelevant speech making to a minimum, and to maintain the decorum of the meeting above reproach.

2. The Chair shall briefly identify the subject or subjects under consideration. S/he shall call for alternate appearances for and against the subject under consideration. Each person appearing shall be instructed to give his full name and address and state his views as briefly and quickly as possible. Those persons who agree with the views of a prior speaker shall be requested to do so indicate rather than repeating those views.

3. No prolonged argumentative questioning of the Commission or speakers shall be permitted. All questions directed to the Commission or a speaker shall be addressed to the Chair. The Commission shall determine if questions are to be permitted by those attending the hearing. Any Commission member or alternate may question a speaker on the facts presented or for clarification of a statement made.

4. Upon conclusion of the public statements, the Chair shall thank all for their interest and attendance, notify them of the date of any subsequent hearings on the subject matter by others, and assure them that their views will be fully considered by the Commission. The hearing then shall be adjourned and the matter referred to the Commission for action at either the same meeting or a subsequent meeting.

→ 3.115 MISCELLANEOUS

(a) Suspension of Rules

The Commission by unanimous vote may suspend any of these rules (except City and State Codes).

(b) Amendments

These rules may be amended at any regular or special meeting by a two-thirds vote of the members present.

(c) Orientation for New Commissioners

As each new Plan Commission member is appointed, S/he are furnished with a membership roster, meeting dates, a Policy and Procedures Manual, agenda, recent meeting minutes, Land Use Plan, Objectives and Policies, a copy of the booklet "The Job of the Plan Commissioner", and a City-County Building parking sticker, if needed. The Secretary, Secretary Designee, and any available members review the above materials with the new appointee. The new member is urged to talk with other members.

If several recent appointees desire to meet with present members and staff, joint orientation sessions will be scheduled.

(d) Continuing Education Opportunities

From time to time, continuing education opportunities, such as lectures, programs and training sessions, are brought to the attention of the Commission by members, staff or others. While City-paid tuition is not available to Commissioners, interested members should contact the Secretary in the event that some sharing of travel, materials or incidental needs could be arranged. Joint meetings with other boards, commissions, and authorities and field trips in and around the Madison area are also periodically scheduled.



(e) Conflict of Interest

No member shall engage in any business or transaction or shall have a financial or personal interest, direct or indirect, which is incompatible with the proper discharge of his or her official duties in the public interest or which would tend to impair his or her independence of judgment or action in the performance of official duties. Personal, as distinguished from financial interest, includes an interest arising from blood or marriage relationships or close business or political association.

Specific conflicts of interest which are not intended to be all inclusive are enumerated below for the guidance of members:

1. Incompatible Employment. No member shall engage in or accept private employment or render service for private interests when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
2. Disclosure of Information. No member shall, without authorization, disclose any confidential information concerning the property, government or affairs of the City or any private interest coming before the Commission before such information is or becomes readily available to the public. Nor shall any member in any fashion use any information acquired due to his or her position on the Commission to advance the financial or other private interest of him or herself or others before such information is or becomes readily available to the general public.
3. Gifts and Favors. No member shall accept any valuable gift, whether in the form of service, loan, thing or promise, from any person, firm or corporation which to his knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the City or the Commission; no member shall accept any gift, favor or thing of value that tend to influence him or her in the discharge of duties or grant in the discharge of duties any improper favor, service or thing of value. It is not the intent of this statement to preclude the receipt by Commissioners of items which may be fully and personally consumed within two hours of receipt of such items nor to preclude participation by members in regularly accepted social amenities or courtesies.