

Note to the Commission:  
May 24, 2010 Landmarks Commission

The Landmarks Commission requested that staff look into the other examples of appeals language and supermajority votes throughout the Madison General Ordinances. The list below is not comprehensive, but it is representative of language that is found throughout the ordinances. There is specific correlation to the quasi-judicial Conditional Use and Demolition Permit Decision appeals as related to the Plan Commission.

## **1. Votes that require a supermajority (2/3) of the Common Council:**

### **A. Plan Commission Conditional Use Appeal:**

Like a Landmarks Commission decision, a Conditional Use Permit is a quasi-judicial decision by the Plan Commission which is only reviewed by the Common Council under an appeal. An appeal may be filed by the applicant, the alderman of said district, or 20% of landowners with 200 feet of subject property. A reversal or modification of the Plan Commission's decision requires a supermajority (2/3) favorable vote of the Common Council. (see citation below)

### **28.12 ADMINISTRATION AND ENFORCEMENT. (Zoning CODE)**

#### (11) Conditional Uses.

##### (i) Appeal From Action By City Plan Commission.

... The action of the City Plan Commission shall be deemed just and equitable unless the Common Council, by a *favorable vote of two-thirds (2/3) of the members of the Common Council*, reverses or modifies the action of the City Plan Commission. Any person aggrieved by the decision of the Common Council or any alderperson, officer, department, board or bureau of the City, may, within thirty (30) days after the filing of the decision in the office of the City Clerk, commence an action seeking the remedy available by certiorari.

### **B. Plan Commission Demolition Permit Appeal:**

Similarly, a Demolition Permit is also a quasi-judicial decision by the Plan Commission which is only reviewed by the Common Council under an appeal. An appeal may be filed by the applicant or alderperson of said district. A reversal or modification of the Plan Commission's decision requires a supermajority (2/3) favorable vote of the Common Council. (see citation below)

### **28.12 ADMINISTRATION AND ENFORCEMENT. (Zoning CODE)**

#### (12) Approval of Demolition (Razing, Wrecking) and Removal.

(h) Appeals. An appeal from the decision of the City Plan Commission granting or denying a demolition or removal permit may be taken to the Common Council by the applicant for the demolition or removal permit or by the Alderperson of the district in which the building proposed to be demolished or removed is located. Such appeal must specify the grounds thereof in respect to the findings of the City Plan Commission and must be filed with the office of the Zoning Administrator within ten (10) days of the final action of the City Plan Commission. .... The action of the City Plan Commission shall be deemed just and equitable unless the Common Council, by a **favorable vote of two-thirds (2/3) of the members of the Common Council** voting on the matter, reverses or modifies the action of the City Plan Commission. Provided, however, that if the applicant for a demolition or removal permit also requested an amendment to the Zoning Code pursuant to Section 28.12(10) or a conditional use permit pursuant to Section 28.12(11), the determination shall be appealed with the appeal of the conditional use or map amendment.

## **2. COMMON COUNCIL BUSINESS requiring 2/3 vote**

### **A. 2.04 ORDER OF BUSINESS**

No business shall be taken up out of said order, except by either unanimous consent and without debate or by *a two-thirds (2/3) vote*.

### **B. 2.05 INTRODUCTION OF BUSINESS.**

(b) Any business to be referred may be introduced from the floor, and if no fiscal note is prepared, will be referred to the comptroller for a fiscal note. Introduction of any matters by title only or without a fiscal note shall require *a two-thirds (2/3) majority vote*. Any matter introduced from the floor shall be either (i) referred to the next Common Council meeting for action or (ii) automatically referred to the next Common Council and be placed on the agenda as if for introduction, solely for the purpose of additional referrals.

### **C. 2.11 PREVIOUS QUESTION.**

The Council by *a two-thirds (2/3) vote* may terminate debate on any question before the Council. Termination of debate, however, shall not preclude the right of any alder to ask for information from City staff.

### **D. 2.12 DIVISION OF QUESTION.**

(2) When a question has been divided, no member shall speak more than twice nor for more than ten (10) minutes on any motion with reference to any single item as to which separate consideration has been granted, unless the Council by *a two-thirds (2/3) vote* of the members present shall grant an extension of said time.

### **E. 2.13 DEBATE.**

(2) No member shall speak more than twice on any question or motion nor more than ten (10) minutes at any one time, without leave of *two-thirds (2/3) of the members present*.

**F. 2.26 MOTION TO RESCIND.** A motion to rescind an action of the Common Council will be considered only if notice of intent to make said motion had been given at the preceding regular Council meeting. The notice of said motion shall be in writing and shall be accompanied by a copy of the appropriate legislation effectuating such rescission. A motion to rescind without such notice will be considered only in an emergency situation as determined by the presiding officer and will only be adopted *by a two-thirds (2/3) vote*. A motion to rescind will not be considered after publication of the legislation sought to be rescinded.

### **G. 2.29 CITIZENS RIGHT TO ADDRESS COMMON COUNCIL.**

(2) Except for informational and public hearings, speakers shall be limited to a three-minute address unless the Common Council agrees *by a two-thirds (2/3) vote* to extend the time.

### **H. 2.34 SUSPENSION OF RULES.**

(1) The assent of **two-thirds (2/3) of all members** of the Council shall be required to suspend, alter, or modify any of the rules in this Chapter for a given meeting.

### **I. 3.03 MAYOR.**

(2) The Mayor shall have the veto power as to all acts of the Council, except such as to which it is expressly or by necessary implication otherwise provided. .... If the Mayor disapproves he shall file his objections with the Clerk, who shall present them to the Council at its next meeting. A *two-thirds (2/3) vote* of all the members of the Council shall then make the act effective.

**J. 3.30 QUALIFICATIONS--CITY OFFICERS, MEMBERS OF COMMISSIONS, AND EMPLOYEES.**

(2) Residence. ... Each person who is or shall be eligible for appointment as a member of a City of Madison board, committee or commission shall be a resident of the City of Madison, provided, however, that this provision shall not apply to a member of or candidate for appointment to a City of Madison board, committee or commission where, in the judgment of the Mayor and *two-thirds (2/3) of the Common Council*, the best interests of the City will be served by the appointment of a non-resident member who is particularly well qualified by reasons of education, background, and experience with Madison business concerns or other Madison-based employers and the Mayor specifies fully to the Common Council the reasons why he or she is recommending such appointment.

**K. 3.53 CIVIL SERVICE SYSTEM.**

(3) Personnel Board.

(a) A Board of (d) *A two-thirds (2/3) vote* of all members of the Council shall be required to remove any member of said Board from office prior to the expiration of his term of office.

**L. 4.16 RESERVE FUND.**

(1) There is hereby established in the City of Madison, a fund separate and distinct from every other fund, and designated as the Municipal Reserve Fund. The sources of said fund shall be such monies, or securities, from any source whatsoever, as the Common Council may, by resolution, *by a two-thirds (2/3) vote* from time to time direct to be paid into said fund.

**M. 33.01 BOARDS, COMMISSIONS, AND COMMITTEES PROCEDURES.**

(6) Terms of Appointment.

(b) Term Limits. No person, other than Alders, shall serve on any Sub-unit for a period in excess of twelve (12) years, unless authorized by a two-thirds (2/3) majority vote of the Common Council. Time served prior to July 1, 2009, shall not be included in any calculation of term limits.

**N. 16.01 CITY PLAN COMMISSION.**

(3) Appointment and Terms of Alderperson Members. The Mayor shall appoint three (3) members of the Common Council to be members of such commission; and, at its annual meeting in April of each year the Common Council shall, by a two-thirds (2/3) vote of its members confirm any such mayoral appointments of three of its number as members of the City Plan Commission for a period of two years from and after the first day of May next ensuing.

**3. Votes requiring 3/4 Majority of Common Council:**

**A. 2.19 RESOLUTIONS OR ORDINANCES APPROPRIATING FUNDS.** (Am. by Ord. 8156, 11-14-83) No appropriation shall be made or voted from any City fund for any purpose except upon an affirmative vote of three-fourths (3/4) of all members of the Common Council provided, however, that adoption of the annual budget shall be a simple majority vote item. (Am. by ORD-05-00015, 2-25-05)

**B. 4.03 CONTINGENT FUND.** The Board of Estimates and the Common Council shall annually provide for a contingent fund of not less than one hundred thousand dollars (\$100,000). No appropriation shall be made from said fund except upon an affirmative vote of three-fourths (3/4) of all the members of the Common Council.

**C. 14.30 REGULATION OF BOATS**

(8) Prohibited Operation.

Motorboat Racing. Motor boat racing is prohibited unless the race course is approved in advance by the Parks Commission. ... The decision of the Parks Commission may be appealed to the Common Council by filing a written notice of appeal with the City Clerk within ten (10) days after the decision of the Parks Commission. The decision of the Parks Commission shall stand unless three-fourths (3/4) of the members of the Common Council vote to reverse it. (R. and Recreated by Ord. 7839, 10-4-82; Am. by ORD-09-00147, 11-6-09)

**D. ZONING PROTEST PETITION**

**2.12(10)(g) 1. Action by Common Council.**

The Common Council shall not act upon a proposed amendment to this ordinance as initiated or as modified under (9)(f) above until it shall have received a recommendation from the City Plan Commission under (9)(f) above. In the event that a written protest against the proposed map amendment as initiated or as modified under (9)(f) above is filed with the City Clerk and is duly signed and acknowledged by the owners of twenty percent (20%) or more of either of the areas of the land included in such proposed map amendment or modification, or by the owners of twenty percent (20%) or more of the area of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such map amendment shall not become effective except by the *favorable vote of three-fourths (3/4)* of the members of the Common Council voting on the proposed change. Furthermore, in the event that a written protest against the proposed map amendment is initiated or as modified under (9)(f) above is filed with the City Clerk and is duly signed and acknowledged by either twenty percent (20%) of the registered electors residing in the areas of the land included in such proposed map amendment or modification, or by twenty percent (20%) of the registered electors residing within all buildings any part of which is on land immediately adjacent extending one hundred (100) feet therefrom, or by twenty percent (20%) of the registered electors residing within all buildings any part of which is on land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such map amendment shall not become effective except by the *favorable vote of three-fourths (3/4) of the members of the Common Council voting* on the proposed change.

**3. Other appeal language examples from the MGO:**

**A. Urban Design Commission**

33.24(4)(e)(3)

An appeal of the decision of the Urban Design Commission to approve or reject the issuance of a building, demolition or excavation permit under this subsection, or to approve exterior painting, or any other approval required by this Sec. 33.24(4)(e)3., may be taken to the Plan Commission by the applicant or by the Alderperson of the District in which the use is located. Any appeal shall stay issuance of permits hereunder until the appeal has been acted upon by the Plan Commission. Appeals of UDC decisions regarding signs made pursuant to Sec. 31.043 shall be final administrative decisions as stated in Sec. 31.043(5). (Section 33.02(4)(e) Am. by Ord. 9536, 7-28-88; ORD-09-00091, 8-1-09)

**B. PARKS COMMISSION**

8.17(5) An appeal from the decision of the Park Commission or designee to grant or deny a parks vending permit may be taken to the Common Council by any person aggrieved by the decision. – a simple majority of the Common Council makes the final decision.

8.29(3) and(4) appeal from parks Superintendant / Parks Commission for limiting public address system in parks. – Appeal – simple majority of Common Council.

#### **4. Appeals only to the Court System:**

##### **A. 31.043 URBAN DESIGN COMMISSION AND COMPREHENSIVE DESIGN REVIEW.**

(1) Zoning Administrator Appeals. The UDC shall hear appeals of decisions of the Zoning Administrator and, where applicable, Official Notices issued by the Building Inspection Division or the Zoning Administrator relating to signs, however decisions regarding structural or mechanical concerns are not appealable. The UDC shall make a final decision on an appeal within sixty (60) days of the application, unless the applicant waives this deadline in writing or in person at a UDC meeting.

(5) Appeals from Decisions of the UDC. A decision of the Urban Design Commission under this ordinance shall be a final administrative decision for purposes of judicial review. Any person aggrieved by the decision of the Urban Design Commission may commence a court action seeking the remedy available by certiorari within thirty (30) days of the decision.

##### **B. Parks Commission :**

Emergency trimming, other pruning, removal of plant material on the public right-of-way are a final decision by the Parks Commission with the following language: *The decision of the Board of Park Commissioners shall be a final administrative determination, **subject to judicial review as may be provided by law.***

##### **C. BOARD OF PUBLIC WORKS**

Board of Public Works/ Appeals for street use, excavating n the right of way, curb cuts, driveway entrances, privilege in streets, newsboxes etc at the discretion of the City Engineer, appealable only to the Board of Public Works, and then to **Circuit courts.**

##### **D. 29.18 BOARD OF BUILDING CODE, FIRE CODE, CONVEYANCE CODE AND LICENSING APPEALS**

(a) Appeals.

1. The owner of a building or structure or any other person who is aggrieved and directly affected may appeal from decisions or orders of the Fire Chief, from Building Code Orders, or from a decision of the Director of the Building Inspection Division refusing to grant approval of a plan, modification of or variance from the provisions of Madison General Ordinances Chapters 27, 29, and 40 covering the manner of construction or materials to be used in the erection, alteration, or repair of a building or structure, or the wrecking or demolition of a building or structure determined to be unsound pursuant to Sec. 28.04(22)(d)1.a. of the Madison General Ordinances, to the Board of Building Code, Fire Code, Conveyance Code and Licensing Appeals.(Decision on Appeals.

(b) Decision on Appeals.

1. The Board shall affirm, modify, or reverse the decision of the Fire Chief or Director of the Building Inspection Division. A concurring vote of two-thirds (2/3) of the voting members present shall be required to modify or reverse said decision. **Appeal of the action of the Board shall be to Circuit Court.**