

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

Date: October 8, 2019

**FORMAL OPINION NO. 2019-001
ON CALCULATING A MAJORITY VOTE TO PASS A MOTION**

TO: Mayor Rhodes-Conway
All Alders
Department and Division Heads
Committee Staff

FROM: Michael P. May
City Attorney

RE: Calculating a Majority Vote for a Committee to Pass a Motion

The City of Madison has special rules for voting in Boards, Commissions and Committees (BCC, also called Sub-units). Both staff to BCC and the chairs should be aware of the rules to be certain that a matter is not mistakenly assumed to have passed, when the vote was insufficient under the City's rules.

Although these situations are rare, they occurred in two different City BCC recently. In each instance, the chair refrained from voting and, had the chair voted in favor, the matter would have passed. The failure of the chair to vote meant that the motion did not pass.

Question Presented.

Under Madison's rules for BCC, how many votes are necessary for a matter to pass?

Short Answer.

Under Sec. 33.01(8)(d), MGO, in order to pass, a matter must receive a vote of not less than a majority of the members of the BCC in attendance at the meeting, and that amount must also be not less than a majority of the quorum of the BCC.

Discussion.

A. The City's Rules and Robert's Rules Compared.

The language of Sec. 33.01(8)(d), MGO, is:

In the absence of any statute or ordinance to the contrary, motions before any Sub-unit shall be passed by an affirmative vote of not less than a majority of the

Sub-unit in attendance so long as such majority vote is not less than a majority of the quorum of Sub-unit.

The City's rule is very different from the rule in Robert's Rules of Order (Robert's Rules of Order Newly Revised, 11th Ed., hereafter "RONR"). RONR provides:

The word *majority* means 'more than half'; and when the term *majority vote* is used without qualification – as in the case of the basic requirement – it means more than half of the votes cast by persons entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting.

RONR, p, 400, l. 7-12.

The City calculates a majority vote differently, in two respects. First, we require a majority of the members of the BCC *in attendance*. Robert's requires a majority of the members present and voting. Secondly, the City's number cannot be less than a majority of the quorum of the BCC, regardless of how many people are in attendance at the meeting in question.

The City's rule also is related to the rule about the chair of a body voting, as set out in RONR (p. 405, l. 21-26):

In all other cases the presiding officer, if a member of the assembly can (but is not obliged to) vote whenever his vote will affect the result – that is, he can either to break or to cause a tie; or, in a case where two-thirds vote is required, he can vote to cause or to block the attainment of the necessary two-thirds.

Many people think the chair may only vote to break a tie. Under the quoted provision of RONR, which the City has adopted, the chair may vote whenever the vote will change the outcome.¹

Sec. 33.01(9)(c), MGO, adopts the general rule of RONR, but as noted below, the BCC are given the option of changing this rule. This subsection reads:

Unless authorized by the rules adopted under subdivision (b) above, the chair of a Sub-unit shall not vote unless the chair's vote would affect the outcome of the matter before the Sub-unit and shall not participate in making motions or discussion thereon.

The sub. (b) referred to is Sec. 33.01(9)(b), MGO, under which the BCC may adopt rules for their operations not inconsistent with the City's ordinances or state law. Thus, many BCC have adopted a rule that allows the chair to vote on all matters before the

¹ The City's rule on what constitutes a majority vote was approved in 2009 after a long study by a subcommittee of the CCOC. See Legistar 13233, ORD. 09-00051. The Council could, of course, change the City's rule for majorities to match those in RONR, and could adopt a rule that chairs may vote whenever the chair wishes.

BCC, and in some cases, allows the chair to participate in debate. This is contrary to the general operation of RONR, which perceives the chair as a neutral arbiter.

Under Sec. 33.01(9)(b), MGO, BCC are required to file their rules with the City Clerk by July 1 of even numbered years. BCC that have adopted such rules of procedure should follow this directive, and should ask the City Attorney to review their proposed rules.²

B. The Problem Presented.

In order to present the voting problem, I will use a hypothetical committee of seven persons.

At the meeting, six members of the committee are present, including the chair. Six members is more than the quorum of four required to proceed, so the committee convenes³. A matter comes up for a vote, and the committee votes in favor of the item by 3-2, with the chair not voting. The chair assumes the matter passed.

However, it did not pass. In order to pass, it must be “a majority of the Sub-unit in attendance.” Since six members are present, a vote of four is required to make a majority. If, however, city staff or the chair had been aware of the rule, the chair could have voted to make the vote 4-2, in which case the matter would pass, or if the chair opposed the measure, the chair could have declined to vote or vote to make it 3-3, in which case the measure would fail.

Note this same problem arises if there are one or more abstentions. Take our same hypothetical BCC, with seven members, and all are in attendance. It still takes four votes to be a majority of the members in attendance. A measure comes up for a vote, and the vote is 3-2 in favor, with one abstention. It has not passed, but the chair could decide to vote in favor of the measure, which creates the needed majority vote.⁴

C. Solutions to the Problem Presented.

Before examining solutions to the problem, the City’s definition of a majority vote in a Sub-unit has at least one distinct policy effect. The effect is to assure that any measure coming to the Council has substantial support in the BCC that have taken it up. If the City followed RONR, that may not be true. For example, let us take our hypothetical 7-member committee. Assume that only four members, a bare majority, are in

² The review by the City Attorney is important. We recently discovered that a BCC had adopted a rule that, in order to pass, any vote required “in excess” of a majority, a standard that is wrong and incalculable.

³ Remember that under Sec. 33.01(8)(a), MGO, if a Sub-unit does not make quorum within fifteen minutes of the noticed starting time, the meeting is to adjourn with no action taken, including no taking of testimony.

⁴ The City’s rule also requires that the vote be not less than a majority of the quorum. I have tried to come up with a hypothetical where a vote is a majority of the members in attendance and yet fails to be a majority of quorum, but have been unable to do so. I am not clear on the reason for this second test as part of the rule.

attendance at a meeting. A measure comes up for approval, and is approved by a vote of 2-1, with the chair not voting. Under RONR, it has received a majority of the members voting, so it is approved. However, many would question – as did the CCOC subcommittee that recommended these rules – that such a vote cannot be said to represent the will of the 7-person committee. In this case, the 2-1 vote is not only less than the majority of the members in attendance, it is also less than a majority of the quorum.

1. Solution One: The Chair should be prepared to vote if needed.

We recommend that the chair of each Sub-unit, and the staff, determine at the start of the meeting the majority vote needed for the meeting. In the examples given above, and in the real life examples that occurred recently, the chair failed to realize that the chair's vote was needed to achieve a majority. In these instances, the chair and the staff should take note of the number of members in attendance so they are aware of the "majority" need for approval of a measure. The chair may then vote to affect the outcome, or not vote, realizing that means the matter did not pass. It may be appropriate to prepare a chart of votes required based on BCC membership; our office could assist you in preparing such a chart.

2. Solution Two: Adopt rules allowing the chair to vote on all motions.

As noted above, the City's rules allow Sub-units to adopt some of their own procedural rules, and explicitly recognize the right to allow chairs to vote. A Sub-unit may also allow the chair to participate in debate.⁵ BCC that have adopted these rules report few problems with them, and if the chair becomes accustomed to voting on all motions, the possibility of the problem noted above becomes much less likely. Our office should review any procedural rules.

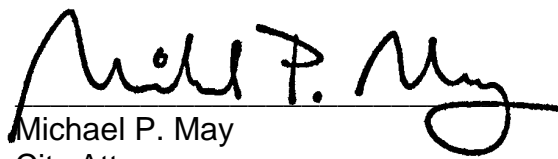
3. Solution Three: Change the City's Ordinance on majority votes in BCC.

Under this solution, the City would scrap its current ordinance and use the RONR rule of a majority of members voting on a matter. I identified at least one policy reason for the City's rule, and there may be other reasons to support the stricter application of a majority rule. However, it certainly would avoid the problems presented above, and would be easier for most persons to apply in any given situation.

⁵ Under RONR, the chair must ask leave of the body to provide comments on a matter before the body.

Conclusion.

The City's rules require that, for a matter to be approved in committee, it must obtain a majority of all the committee members in attendance. Chairs and staff should determine before a meeting the exact number of votes needed for approval of a matter. If the chair's vote would affect the outcome, the chair may vote.



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SYNOPSIS: Discussion of the City's rules for majority vote in Sub-units, where a majority of the members in attendance are needed for approval of a matter.