

**CITY OF MADISON, WISCONSIN**

REPORT OF: CITY ATTORNEY

PRESENTED 1/20/09  
REFERRED \_\_\_\_\_

TITLE: Changes to Sec. 33.01, MGO, to make various changes related to Boards, Commissions and Committees to standardize operations and rules.

REREFERRED \_\_\_\_\_

REPORTED BACK \_\_\_\_\_

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ADOPTED \_\_\_\_\_ POF \_\_\_\_\_

DATED: January 12, 2009

RULES SUSPENDED \_\_\_\_\_

ID NUMBER \_\_\_\_\_

RE: Legistar # 13233

TO THE MAYOR AND COMMON COUNCIL:

This report contains a more extensive analysis of the changes being proposed in operations of City boards, commissions, and committees. The report will take the form of restating each section of the ordinance, followed by a brief explanation. The Subcommittee Report should also be consulted.

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

- (1) Purpose and Intent. The purpose of Chapter 33 is to compile in one location the ordinances establishing and regulating City boards, commissions, and committees. In some cases, however, it has been deemed advantageous to maintain these regulations with the ordinance related to the subject matter of the board, commission, or committee. Furthermore, those boards, commissions, and committees that are created by resolution of the Common Council are not included in the Madison General Ordinances. Please refer to the MGO Index for a listing of standing City boards, commissions and committees.

**ANALYSIS (1):**

**No change, other than referral to the index for a listing of boards, commissions, and committees.**

- (2) Applicability. Except as set forth elsewhere in these ordinances, in state law, or in the document establishing a given board, commission or committee, this section shall apply to all such bodies, regardless of how established or whether termed a board, commission, committee, work group, task force, or similar name or whether standing or ad hoc.

**ANALYSIS (2):**

**This subsection explicitly states that the rules established in Sec. 33.01 apply to all boards, committees, or commissions unless stated otherwise. There are some bodies which have rules required by state law or for which these rules were modified in the ordinance establishing that committee. For example, the Police and Fire Commission has independent status once established by the City and may make its own rules, and the Madison-Dane County Board of Health may make its own bylaws.**

- (3) Definitions. As used in this section:
  - (a) “Ad hoc” means a Sub-unit that is to have temporary existence to meet a specific purpose or project and does not have ongoing annual requirements. The action creating the Ad hoc Sub-unit should reference the time or action which, when accomplished, means the Ad hoc Sub-unit expires.

- (b) “Authority or District” means an entity that is a separate political body from the City of Madison.
- (c) “Board or Commission” means a Sub-unit of the City, except for the Board of Estimates that is given some independent power to make determinations on behalf of the City of Madison.
- (d) “Committee” means any Sub-unit other than a board or commission, and generally is limited to making recommendations or reports to the Mayor or Common Council or some other body, unless explicitly empowered otherwise. Any Sub-unit called task force, work group or similar name is a Committee.
- (e) “Standing” means a Sub-unit that is intended to have permanent existence, or until such time as the entity creating the Sub-unit terminates its authority.
- (f) “Subcommittee” means a Sub-unit made up of members of the parent Sub-unit or as authorized in Sec. 33.01(4)(d), MGO.
- (g) “Sub-unit” means any board, commission, committee or subcommittee.

### **ANALYSIS (3):**

**This subsection establishes definitions. There was no similar section in the prior ordinance. Among the important changes is the use of the term “sub-unit” to generically refer to boards, commissions, committees, or subcommittees. This section also establishes that, as a general rule, a body that is given the name “board” or “commission” must have some independent authority to act on behalf of the City. Otherwise, the sub-unit shall be named “committee”.**

- (4) Creation and Dissolution.
  - (a) Sub-units may be created and dissolved by ordinance, resolution, order of the Mayor, order of the President of Common Council, or, in the case of subcommittees, by action of the parent Sub-unit.
  - (b) Standing Sub-units shall be created and dissolved by ordinance. To the extent some standing Sub-units exist as of the date of passage of this ordinance without authorization by ordinance, the City Attorney shall draft and introduce ordinances to reflect such standing Sub-units.
  - (c) Ad hoc Sub-units may be created and dissolved by written order or resolution.
  - (d) Any board, committee or commission may create and dissolve subcommittees and may appoint any of its members to serve on such subcommittees. No board, committee or commission may appoint to any of its subcommittees any person who is not a member of the board, committee or commission unless the person has been nominated by the board, committee or commission and approved by the Common Council. If the board, committee or commission includes subcommittees created or authorized by the Common Council, the members of such subcommittees may serve as members of other subcommittees created by the parent body.
  - (e) Notwithstanding Subdivision (d) above, any number of boards, committees and commissions may form joint committees or subcommittees consisting of members of the various boards, committees or commissions which have approved such action.

### **ANALYSIS (4):**

**This subsection governs the creation and dissolution of committees. Subdivisions (a), (b), and (c) are new. It establishes that standing sub-units are to be created and dissolved by ordinance. In this manner, such standing sub-units should be reflected in the MGO. Ad hoc sub-units are not to be created by ordinance, but by resolution or order. Subsection (d) and (e) of this subsection are reenactments of former Secs. 33.01(4)(c) and (d).**

- (5) Appointments. Except as otherwise provided by ordinance, all appointments shall be made as follows:
  - (a) Appointments to Standing Sub-units (except subcommittees) and non-City committees shall be made by the mayor and confirmed by the Common Council.
  - (b) Appointments to subcommittees shall be made by the parent Sub-unit or as authorized under Sec. 33.01(4)(d), MGO.

- (c) Appointments to Ad Hoc Sub-units shall be subject to the rules set forth in the resolution or order establishing the Sub-unit. If not otherwise provided, appointments shall be made by the Mayor and confirmed by the Common Council.
- (d) Vacancies. Vacancies shall be filled in the same manner as other appointments
- (e) Action on Appointment. The Common Council may confirm a Mayoral appointment, refer the appointment to another meeting, refer the appointment to the Mayor's office or reject an appointment by placing it on file. If an appointment is rejected, the same person may not be nominated for the same position for a period of six (6) months.
- (f) Alternates. If the Sub-unit is authorized to have Alternate members, the Alternates shall be given numerical appointments (First Alternate, Second Alternate, etc.). When a member or members of the Sub-unit are absent, the Alternates shall act as full members of the Sub-unit in their numerical order, that is, the First Alternate shall first act as a full member; the Second Alternate shall be the next to so act, etc.

**ANALYSIS (5):**

**This subsection is new and governs appointments to sub-units. Generally, appointments are made by the Mayor and confirmed by the Council. Subsection (e) establishes new rules on how the Council is to act on appointments. Subsection (f) establishes new rules with respect to the numbering of alternate members of any sub-unit.**

- (6) Terms of Appointment.
  - (a) All appointments to Sub-units shall be for a term of three (3) years, except for Alders, which shall be concurrent with the respective Aldermanic term. No Mayoral appointment shall commence after the Mayoral term of office.
  - (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.
  - (c) Any ordinance amendment or resolution affecting the terms of or the qualifications of members of boards, commissions or committees shall, unless otherwise explicitly provided therein, have prospective application only and shall not have any effect upon the remainder of any terms of office nor upon the appointment of any member of a Sub-unit in existence on the date said ordinance amendment or resolution becomes effective.
  - (d) Notwithstanding any fixed term of office, the terms of board, commission and committee members shall run until their successors are appointed and confirmed or for a period of ninety (90) days after the end of the fixed term, whichever is less. This ordinance shall apply to every person holding such office on January 1, 2003 and thereafter.

**ANALYSIS (6):**

**This subsection sets up a new rule that appointments to sub-units shall be for three (3) years. This rule should result in less administrative work in filling of positions on sub-units. Subdivision (b) establishes a general term limit of twelve years on any sub-unit. This limit is prospective; no time saved prior to July 1, 2009 counts toward this limit. Subdivisions (c) and (d) are reenactments of former Section 33.01(4)(f).**

- ~~(2)(7)~~ Officers; Chairperson Restriction.
  - (a) Sub-units shall, except as otherwise provided, choose their Chair, Vice-chair and any other officers. Elections for officers shall be conducted at least every two (2) years, following election of Alders but may be held more often. Officers shall be chosen by secret ballot if requested by any member of the Sub-unit.
  - (b) After December 31, 2003 or after the expiration of any current appointment, nNo alderperson shall be the chairperson, co-chairperson, or vice-chairperson of any City committee, commission, board, subcommittee, ad hoc committee, ad hoc commission or ad hoc boardSub-unit authorized to have more than two citizen members appointed by the Mayor and confirmed by the Common Council. Alderpersons who currently chair City committees, commissions, boards, subcommittees, ad hoc committees, ad hoc commissions or ad hoc boards with more than two citizen appointments may not be re-appointed to or re-elected to said position after the effective date of this ordinance. In the

event the citizen chair and vice-chair are absent from a meeting, an alder, upon consensus of the members present, may assume the chair. However, in no event shall an alder serve as chair of any such ~~committee, commission or board~~ Sub-unit for more than two (2) consecutive meetings.

**ANALYSIS (7):**

**This subsection requires sub-units to have a Chair and Vice-Chair and that those positions shall be filled by election at least once every two years. It also reenacts former Section 33.01(2) MGO.**

**(3)(8) Attendance, Quorum and Voting.**

- (a) If at any board, commission or committee meeting, a quorum is not secured within fifteen (15) minutes of the officially scheduled meeting time, the ~~board, commission or committee~~ Sub-unit shall adjourn without taking any action, except that it may set a date and time for its next meeting.
- (b) The chair of each board, commission, and committee (or staff if delegated by the Chair) shall report to the Mayor and Common Council Office each instance in which a member is absent ~~without excuse~~ from three ~~of four~~ consecutive meetings or five (5) meetings out of twelve (12). For purposes of this reporting only, a called meeting that is not held due to lack of a quorum shall count toward a missed meeting by any member not present. The Mayor shall take appropriate action to secure the attendance of such members including, in the Mayor's discretion, requesting their resignation or requesting that the Council remove the person from the Sub-unit.
- (c) In the absence of any statute or ordinance that establishes the quorum for any ~~board, commission or committee~~ Sub-unit, the quorum of any such body is the number that constitutes a majority of the authorized voting membership of the ~~board, commission or committee~~ Sub-unit. Vacant positions shall be counted in determining the quorum of such a body.
- (d) In the absence of any statute or ordinance to the contrary, motions before any ~~board, commission or committee~~ Sub-unit shall be passed by an affirmative vote of not less than a majority of the ~~board, commission or committee~~ Sub-unit in attendance so long as such majority vote exceeds a majority of the quorum of ~~board, commission or committee~~ Sub-unit.

**ANALYSIS (8):**

**This subsection is primarily a reenactment of Section 33.01(3). It changes the absences required to trigger a report from 3 of 4 consecutive meetings to 3 consecutive meetings or 5 of 12 meetings and removes the concept of an excused absence. It requires that Chairs or staff report absent members to the Mayor and Common Council Office. It also states that if a meeting cannot be held due to lack of a quorum, any person who fails to come to the meeting where there is no quorum shall be considered to have been absent from a meeting.**

**(4)(9) Officers, Minutes, and Rules of Procedures.**

- (a) Every ~~board, commission or committee~~ Sub-unit, whether created by ordinance or by resolution, shall select officers and shall keep minutes of its proceedings. After the minutes have been approved by the board, committee or commission, a copy shall be filed with the City Clerk within five (5) business days.
- (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~~ Sub-unit 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~~ Sub-units shall follow the procedure set forth in sec. 2.21, MGO, on motions for reconsideration. Sub-units shall review and make any changes in rules of procedure every two (2) years, which shall be filed with the City Clerk by July 1 of even-numbered years.

- (c) 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. Any board, committee or commission may create committees or subcommittees and may appoint any of its members to serve on such committees or subcommittees. No board, committee or commission may appoint to any of its committees or subcommittees any person who is not a member of the board, committee or commission unless the person has been nominated by the board, committee or commission and approved by the Common Council. If the board, committee or commission includes committees or subcommittees created or authorized by the Common Council, the members of such committees or subcommittees may serve as members of other committees or subcommittees created by the parent body.
- (d) ~~Notwithstanding Subdivision (c) above, any number of boards, committees and commissions may form joint committees or subcommittees consisting of members of the various boards, committees or commissions which have approved such action.~~
- (e)(d) Council Participation. Every board, committee and commission Sub-unit, whether created by ordinance ~~or by~~ resolution, or order shall permit any member of the Common Council to take part in its deliberations and to speak on any agenda item. This includes closed sessions of Sub-units except as provided herein or if the individual member's exclusion is necessary for the purpose of the closed session. Nevertheless, Council members who are not members of the board, committee or commission Sub-unit shall not vote, shall not be counted in determining whether or not there is a quorum, and may not make or second any motion. This subdivision does not apply to quasi-judicial hearings on contested matters, nor to deliberations concerning such hearings on contested matters nor to closed sessions of the Ethics Board held for the purpose of hearing and deliberating confidential requests for advisory opinions pursuant to Sec. 3.35(11)(b), nor to personnel matters.
- (f) 1. ~~Any ordinance amendment or resolution affecting the terms of or the qualifications of members of boards, commissions or committees shall, unless otherwise explicitly provided therein, have prospective application only and shall not have any affect upon the remainder of any terms of office nor upon the appointment of any member of a board, commission, or committee in existence on the date said ordinance amendment or resolution becomes effective.~~
2. ~~Notwithstanding any fixed term of office, the terms of board, commission and committee members shall run until their successors are appointed and confirmed or for a period of ninety (90) days after the end of the fixed term. This ordinance shall apply to every person holding such office on January 1, 2003 and thereafter.~~
- (g)(e) Public Comment. Every board, committee and commission Sub-unit, including committees and subcommittees created under Subsection (4)(ed), above, shall establish a period for public comment at or near the beginning of each meeting. The public comment section of the meeting allows comments on any matter on the agenda or matters not on the agenda, provided, however, that the board, committee, or commission Sub-unit shall not take action on a matter raised in the public comment portion of the meeting unless that matter is otherwise on the agenda. The Sub-unit may allow public comment on any agenda item at the time that item is taken up. Members of the public who comply with applicable rules, including registering to speak prior to the Sub-unit beginning discussion on any agenda item, on registration forms established by the City, shall be permitted at least three (3) minutes to speak. If the speaker requires an interpreter, either because of his/her limited English proficiency or because of a disability, he/she shall be allowed no less than six (6) minutes.

This subdivision shall not apply to quasi-judicial hearings on contested matters, nor to deliberations concerning such hearings on contested matters nor to closed sessions of the Ethics Board held for the purpose of hearing and deliberating confidential requests for advisory opinions pursuant to Sec. 3.35(11)(b).

**ANALYSIS (9):**

This is primarily a reenactment of former Section 33.01(4). It adopts a new requirement that any sub-unit which has rules shall review those rules at least every two years and file them with the City Clerk. It also adopts the commonly recognized rule from Roberts Rules of Order that a Chair shall not vote unless the Chair's vote would affect the outcome of the matter, but allows sub-units to change this by rule. It also makes minor changes in the provisions related to Council members participation in committees and public comment at committee meetings.

- ~~(h)~~(10) Meetings Not to Be Held. ~~Boards, committees, and commissions~~  
(a) Budget Meetings. Sub-units shall not schedule meetings on the same nights that the Board of Estimates or the Common Council is considering the annual Operating and Capital budgets.  
(~~h~~)(b) No Meetings Election Day. ~~No committee, board or commission created by the Madison General Ordinances Sub-unit~~ shall meet on any general or primary election day at which local city offices or positions are decided.

**ANALYSIS (10):**

This is essentially a reenactment with minor changes to former Section 33.01(4)(h).

- ~~(5)~~(11) Reports.  
(a) Every ~~board, committee, or commission~~Sub-unit, whether created by ordinance ~~or~~, resolution, or order shall act on items the Council refers to it, where the votes are contested, by roll call vote. Its report to the Council shall include a list of members who voted and the vote of each. In case any report of a board, committee, or commission shall fail to contain the list of members and votes, the City Clerk shall reject the report and shall return it to the board, committee or commission. Any ~~board, committee, or commission~~Sub-unit, which fails to act upon any matter referred to it by the Common Council, within the deadline for such action as may be set by the Common Council, shall have been deemed to have waived the opportunity to report to the Common Council on the matter referred. The Common Council may then take up the referred item notwithstanding the board, committee or commissions failure to file a report.  
(b) In January and June of each year, the City Clerk shall notify the chair of each ~~board, committee and commission~~Standing Sub-unit of the requirements contained in Subsection ~~3.30(5)(a)~~33.01(8)(b) and shall send to the department or division head responsible for providing staff services to the ~~board, committee or commission~~Sub-unit a copy of the notification.  
(c) ~~During the first six calendar months following the effective date of this Subsection, the Clerk may accept reports which do not contain the required roll call votes but shall, in writing, notify the submitter of the incomplete report of the requirement contained in Subdivision (a) hereof.~~

2. The City Attorney is directed to make corresponding changes to other City ordinances to reflect these changes related to boards, commissions and committees.”

**ANALYSIS (11):**

This subsection is a reenactment of former Section 33.01(5), with minor modifications.

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Michael P. May, City Attorney