

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

To: Ann Kovich, Transportation Commission Chair
From: Amber McReynolds, Assistant City Attorney
Cc: Mike May, City Attorney
RE: Votes Needed to Pass Motions and Motions to Reconsider
Date: July 26, 2019

Question: **How many votes are needed for a motion to pass at the Transportation Commission?**

Short Answer: **A majority of Transportation Commission members in attendance and a majority of the quorum of the Commission is needed for a motion to pass. The Chair may vote when it would affect the outcome of the motion.**

At the July 24, 2019 Transportation Commission (TC) meeting, the TC took a vote on agenda item G.1. Legistar # 56722 “Reconsideration of Spaight Street Speed Humps”.

A motion was made and seconded to recommend proceeding with two speed humps between Baldwin and Dickinson and hold on the speed hump East of Dickinson until other traffic calming measures are investigated including but not limited to a four-way stop and street narrowing.

Eight (8) members were in attendance including the non-voting Chair. Of the seven (7) voting members, four (4) voted in favor of the motion and three (3) voted against. A discussion followed about how many votes are needed for the motion to pass.

I was asked at the meeting if the motion passed and at the time after looking at Madison General Ordinance 33.01, I believed it did. After reviewing Madison General Ordinance 33.01 more closely and speaking with City Attorney Mike May, my opinion has changed. I believe that in this specific circumstance the motion did not pass. My advice is that the TC take another vote on this issue at their next meeting on 8/14/19 as a Motion to Reconsider.

Analysis

MGO 33.01(8) addresses attendance, quorum, and voting for boards, commissions, and committees and is controlling because MGO 33.56, the ordinance specific to the Transportation Commission, does not provide differently.

1. Quorum and Number of Votes Needed to Pass a Motion

MGO 33.01(8)(c) states that “[i]n the absence of any statute or ordinance that establishes the quorum for any Sub-unit¹, quorum is a majority of the number of members fixed by law....” The TC is a nine (9) member body (MGO 33.56(3)). Therefore, quorum for the TC is five (5). However, contrary to some opinions voiced at the July 24, 2019 TC meeting, this does not always mean that five (5) votes are needed to pass a motion. There is no requirement that a vote requires a majority of total members to pass. Rather, the number of votes required is based on the attendance when the vote is taken.

MGO 33.01(8)(d) states that “[i]n 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.” (emphasis added).

While the votes needed to pass a motion could differ at each meeting based on the number of members in attendance, a motion can never pass with less than a majority of quorum. Since TC quorum is five (5), a majority of quorum is three (3), and no vote may pass the TC with less than three (3) votes.

Examples of how many votes needed based on TC members in attendance:

Members in attendance	Votes needed to pass a motion
5 (min. needed for quorum)	3
6	4
7	4
8	5
9	5

2. When the Chair Votes

MGO 33.01(9)(c) states that ... “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.” (emphasis added).

While at first glance it may seem that this ordinance means the Chair only votes when there is a tie, there are other scenarios when a Chair's vote could affect the outcome of the matter.

The 7/24/19 TC meeting was an example of when the Chair's vote could have affected the outcome even though there was not a tied vote. While most people at the meeting, including myself, thought the vote passed on a 4-3 vote of 7 voting members, since the Chair was present, eight(8) total present members required five (5) votes to have the majority for the motion to pass. Under those specific circumstances, the Chair's vote could have affected the outcome of the

¹ MGO 33.01(3)(g) clarifies that the term “sub-unit” includes commissions.

matter since if the Chair had voted yes, the motion would have properly passed. Had I realized this nuance during the meeting, I would have advised the Chair to vote.

3. Reconsideration

Since I did not properly advise the Chair to vote at the 7/24/19 meeting, my recommendation is that the TC reconsider the motion at the next TC meeting scheduled for August 14, 2019.

MGO 33.01(9)(b) requires that sub-units follow MGO 2.21 on motions for reconsideration. MGO 2.21(1) states:

“It shall be in order for any member who voted in the affirmative on any question which was adopted, or for any member who voted in the negative when the number of affirmative votes was insufficient for adoption to move a reconsideration of such vote, at the same or next succeeding regular meeting of the Council. It shall be in order for any member who was, due to an excused absence, not present at the time the question was considered to move reconsideration of such vote at the next succeeding regular meeting of the Council. A motion to reconsider having been lost shall not be again in order. A motion to reconsider shall not be in order when the same result can be obtained by another motion.” (emphasis added).

Therefore, either the member who was absent (assuming the absence was excused), or one of the three members who voted against the motion would need to make a motion to reconsider. MGO 2.21 is clear that motions to reconsider must happen at the next meeting, so this must be on the agenda and take place at the TC’s meeting on August 14, 2019.

The members then take a vote on whether to reconsider the motion. If that motion passes (by a majority of those in attendance according to the above chart), a member may next move to “proceed with two speed humps between Baldwin and Dickinson and hold on the speed hump East of Dickinson until other traffic calming measures are investigated including but not limited to a four-way stop and street narrowing.” The TC will vote on the substantive motion and will need a majority of those in attendance in favor to pass (see chart). On either the vote to reconsider or the substantive vote, the Chair should vote if the Chair’s vote will affect the outcome of the matter.

While researching this issue, I noticed that motions to reconsider may only happen once. While item G.1 on the 7/24/19 TC agenda was listed as a “reconsideration”, our office’s opinion is that it was not a motion to reconsider. First, motions to reconsider must happen at the next regular meeting and the item the TC discussed was first approved on February 13, 2019. Second, the motion was not to reconsider the motion approved in February, but rather to amend one part of the approved neighborhood traffic management program list. This item could be better described as an amendment to the neighborhood traffic management program list rather than a motion to reconsider. In case anyone raises the issue that the TC cannot move to reconsider a motion that has already been reconsidered, it should be clear that the 7/24/19 motion to “proceed with two speed humps...” was not actually a motion for reconsideration. Going forward, these types of

changes might be better categorized as amendments of plans or program lists rather than “reconsiderations” to avoid confusion with the process of motions for reconsideration.

Conclusion

A vote at the TC needs a majority of members in attendance to pass and the Chair should vote if it would affect the outcome of the vote. Although I have determined that the vote on agenda item G.1. on 7/24/19 did not pass, the TC can address this at its next meeting through a motion for reconsideration.