

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

**MEMORANDUM**

TO: City of Madison Common Council

FROM: John Strange, Assistant City Attorney

DATE: April 6, 2020

RE: Department of Transportation Action Resolution (Legistar File # 60121)

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In her updated Emergency Order dated March 26, 2020, the Mayor temporarily suspended the enforcement of M.G.O. § 33.56(5) to allow the Department of Transportation (“DOT”) to take action on items that normally must first go to the Transportation Commission. The purpose of this memorandum is to provide background for that Order, provide examples of actions DOT has already taken pursuant to that Order, and, to the extent possible at this point, identify the fiscal impact of those actions.

**BACKGROUND**

M.G.O. § 3.14 creates the Department of Transportation, which is responsible for “managing, operating, controlling, and maintaining the city’s transportation system, which consists of...bicycles; bus, truck and rail freight, and motor vehicle traffic; parking; pedestrians; street, curb and right-of-way use;...[and] transit.” See M.G.O. § 3.14(1)(a)-(f). In turn, the Director of Transportation is responsible for managing and directing the DOT, and ensuring that the city’s transportation system operates in a manner that is “safe, efficient, affordable, and equitable for all its users.” See M.G.O. § 3.14(2)(a)-(r). In doing so, the Director of Transportation supervises the Traffic Engineering, Metro Transit and Parking divisions of the DOT. See M.G.O. § 3.14(3)(a)-(c). Thus, under the authority of M.G.O. § 3.14, the DOT can take actions necessary to manage, operate, control and maintain the city’s transportation system, including those related to traffic engineering, Metro Transit, and Parking.

However, the DOT’s authority under M.G.O. § 3.14 is limited by M.G.O. § 33.56(5), which states that decisions related to the following items must first be approved by the Transportation Commission:

- “(5) Powers and Duties. The Transportation Commission shall decide the transportation issues listed below in a manner that is consistent with the transportation policies and plans adopted by the Common Council:
- (a) Transit.

1. Transit service standards;
  2. Transit fares;
  3. Transit route additions, extensions or contractions;
  4. Transit changes in schedules and hours of service;
  5. Rules necessary to ensure safety for bus passengers;
  6. Regional transit contracts (services and pass programs);
  7. Bus routes and stops;
  8. Charter service, taxis, limousines, courtesy cars, hotel buses, jitney services hire-and-drive service, ride-sharing, car-sharing, transportation network companies, subscription bus service, park and ride facilities, and any other issues pertaining to the operation of the City's transit and services;
  9. Transit for people with disabilities;...
- (b) Parking.
1. Off-street parking rates;
  2. Provide recommendations to the Common Council regarding on-street parking rates.
  3. Rules necessary to ensure safe and proper operation of parking facilities;
  4. Revenue collection technology and systems;...
- (c) Pedestrian, Bicycle, and Motor Vehicle.
1. Pedestrian and bicycle safety, enforcement, and facility maintenance programs;
  2. School crossings;
  3. Safety programs and projects;
  4. Traffic signals;
  5. Crossing guard assignments;
  6. Traffic calming;
  7. Provide recommendations to the Board of Public Works regarding right-of-way use and geometric design on arterial and collector street projects;
  8. Development Review..."

Emergency Order Number 8 temporarily suspends the requirement that the DOT take these items to the Transportation Commission prior to making a decision:

“The City will temporarily suspend the enforcement of Madison General Section 33.56(5) to allow the Director of Transportation, Transit Manager, Traffic Engineer, and Parking Manager to take actions related to transportation issues identified in Madison General Ordinance Section 33.56(5)(a)-(c), provided that if the Transportation Commission meets during the coronavirus pandemic the Director of Transportation shall present each action taken pursuant to the authority above for ratification or rescission by the Transportation Commission.”

Thus, this Order will allow the DOT to take action on the above items without first going to the Transportation Commission during the pandemic, provided that any actions are ratified by the Transportation Commission when it is able to meet. If the Transportation Commission were to rescind an action taken by the DOT pursuant to the Order, the Mayor, any alderperson, or any member of the Transportation Commission could appeal the Transportation Commission decision to the full Common Council pursuant to M.G.O. § 33.56(6), just as usual.

### **WHY THIS ORDER IS NECESSARY**

In order to manage, operate, and control the city's transportation system during the health emergency in a manner that is safe, efficient, and equitable, the Director of Transportation may need to take immediate action on some of the items listed above before the Transportation Commission is able to meet. Doing so will allow the DOT to be more nimble in the face of the emergency and ensure the safety of residents using the city's transportation system.

For example, as explained below, this Order allowed the DOT to immediately adjust Metro Transit services in order to ensure the safety of its passengers and operators, when such actions would otherwise have had to wait until at least April 15, 2020 for the Transportation Commission to meet. As the health emergency evolves, other similar actions with regard to the City's transportation system are likely to arise. The ability to make those decisions quickly will be essential to ensuring the public health, welfare, and safety.

In taking action under this Order, the Mayor and DOT do not anticipate needing to take action on all of the items listed, including those listed in M.G.O. § 33.56(a)6., (b)4., or (c)1.-8. However, given the unknown nature of the health emergency, this Order will give the DOT the ability to do so if necessary to respond to the COVID-19 emergency.

Finally, this Order comes with an important caveat – that any decisions made pursuant to it must subsequently be ratified by the Transportation Commission. Since the Transportation Commission has been deemed an essential committee, any decision made pursuant to this Order will likely be reviewed by the Transportation Commission within one month of the decision being made, if not sooner.

### **DOT ACTIONS TAKEN PURSUANT TO THIS ORDER SO FAR**

So far, the DOT has utilized this Order to take the following actions in response to the COVID-19 health emergency:

- |                          |   |
|--------------------------|---|
| 33.56 (5) (a) 1., 3., 4. | Reduced Metro Transit service to Saturday plus commuter routes. |
|--------------------------|---|

- 33.56 (5) (a) 5. Instituted rear door entry and exit for safety of the operator, 6-foot spacing within the coach for safety of passengers, and set a 15-person maximum passenger bus occupancy to ensure passengers can keep a safe distance from each other.
- 33.56 (5) (a) 2. Suspended collecting fares on fixed route and paratransit service in order to have rear door entry and exit and ensure operator need not handle fare media.
- 33.56 (5) (a) 8. Operating Metro Transit as Charter Service as allowed by the Federal Transportation Administration during declarations of emergency to transport clients from the Beacon to shelter.
- 33.56 (5) (b) 2. Suspended on-street parking rates. This waiver covers the requirement that the TC provide a recommendation to the CC on this issue. The suspension of parking rates, itself, was done pursuant to a separate Order and that Order and the fiscal impact associated with it will be addressed in a separate Memorandum.

### **FISCAL IMPACT**

The Resolution related to this Order indicates no fiscal impact because the legislation itself does not specify the actions DOT may need to take during the emergency. With each action, the Director of Transportation will be able to provide a better estimate of the fiscal impact and will need to review this impact with the Transportation Commission when it meets.

Further, fiscal impacts related to actions taken pursuant to this Order will need to be considered against the background of the COVID-19 emergency. For example, Metro Transit receives approximately one million (\$1,000,000) in fare box revenue each month. As a result of the COVID-19 emergency and Governor's Safer-At-Home Order, Metro Transit would likely have experienced a significant drop off in this revenue regardless of any action to suspend the collection of fares. Thus, for purposes of action taken pursuant to this Order, DOT's fiscal impacts will focus on the impact of the DOT action, not the health emergency as a whole. DOT will separately track and report those cumulative impacts.

With that in mind, the Director of Transportation estimates the following fiscal impacts as a result of DOT actions taken thus far pursuant to Emergency Order 8:

- 33.56 (5) (a) 1., 3., 4. Reduced Metro Transit service to Saturday plus commuter routes.

FISCAL IMPACT: None. Operators not serving routes are being reassigned to other tasks such as bus cleaning.

33.56 (5) (a) 5.

Instituted rear door entry and exit for safety of the operator, 6-foot spacing within the coach for safety of passengers, and set a 15-person maximum passenger bus occupancy to ensure passengers can keep a safe distance from each other.

FISCAL IMPACT: None. Current demand is able to keep occupancy less than 15 passengers per bus with a couple of relief buses.

33.56 (5) (a) 2.

Suspended collecting fares on fixed route and paratransit service in order to have rear door entry and exit and ensure operator need not handle fare media.

FISCAL IMPACT: For fixed route service, about \$100,000 per month for every month Metro Transit suspends the collection of fares. For paratransit service, about \$30,000 per month for every month Metro Transit suspends the collection of fares.

33.56 (5) (a) 8.

Operating as Charter Service as allowed by the Federal Transportation Administration during declarations of emergency to transport clients from the Beacon to shelter.

FISCAL IMPACT: About \$70,000 per month for every month this service is provided.

The Fiscal Impacts of other decisions taken pursuant to this Order, such as those related to parking involving additional ordinance waivers in Chapter 12, Madison General Ordinances, are covered by separate memoranda.

**APPENDIX**

**CITY OF MADISON, WISCONSIN**

A RESOLUTION \_\_\_\_\_

PRESENTED  
REFERRED

March 31, 2020  
Adopt under  
Suspension of the  
Rules

Temporarily suspend the enforcement of Madison General Ordinance Section 33.56(5) to allow the Director of Transportation, Transit Manager, Traffic Engineer, and Parking Manager to take actions related to transportation issues identified in Madison General Ordinance Section 33.56(5)(a)-(c)

Drafted by: Marci Paulsen

Date: March 25, 2020

SPONSORS: Mayor Satya Rhodes-Conway

WHEREAS, on March 23, 2020, pursuant to Madison General Ordinance Section 3.19, the Mayor issued an Emergency Proclamation, based on the increasing transmission of COVID-19 within the City of Madison; and

WHEREAS, on March 24, 2020, the Governor of Wisconsin issued Emergency Order #12 ordering individuals to remain home except for Essential Travel; and

WHEREAS, as part of the Governor's Order all Nonessential Businesses are required to close; and

WHEREAS, the closure of numerous businesses throughout the City has the potential to have significant negative financial impact on residents.

NOW THEREFORE BE IT RESOLVED, that effective immediately, the City will temporarily suspend the enforcement of Madison General Ordinance Section 33.56(5) to allow the Director of Transportation, Transit Manager, Traffic Engineer, and Parking Manager to take actions related to transportation issues identified in Madison General Ordinance Section 33.56(5)(a)-(c) related to the powers and duties of the Transportation Commission, until the Director of Public Health Madison and Dane County and the Governor of Wisconsin determine to end emergency actions they have taken to combat the coronavirus pandemic, provided that if the Transportation Commission meets during the coronavirus pandemic the Director of Transportation shall present each action taken pursuant to the authority above for ratification or rescission by the Transportation Commission.