

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

Date: April 4, 2007

**OPINION #07-001**

TO: Dean Brassler, City Comptroller

FROM: Michael P. May, City Attorney

RE: Payment of Salaries to Alderpersons and Mayor elected in April, 2007  
Election: Effect of Amendment to Sec. 3.29, MGO, in March, 2007.

You have asked my opinion on the effect of the amendment to Sec. 3.29 of the Madison General Ordinances (MGO) in March, 2007. This charter ordinance purported to raise the salaries for alders and the mayor elected in April, 2007. See CHA-07-00002, Legistar File No. 05769 (a copy of the ordinance is attached).

**SHORT ANSWER**

For the reasons set forth herein, it is my opinion that the ordinance is ineffective to increase the salaries for elected officials elected in the April, 2007 election. Unless modified, the ordinance will be effective to change salaries for alders elected at the 2009 spring election, and for the mayor at the 2011 spring election. In the interim, alderpersons and the mayor should be paid according to the terms of Sec. 3.29, MGO, prior to its amendment in March, 2007.

**DISCUSSION**

**A. Statutory Restrictions on Increases in Elected Officials' Salaries.**

The ability of elected officials to modify their salary is limited by state constitution and statutes.

Article IV, Sec. 26 of the Wisconsin Constitution, provides in part:

- (2) Except as provided in this subsection, the compensation of a public officer may not be increased or diminished during the term of office

The exceptions provided in the Constitution are not applicable here.

In addition, Sec. 66.0505, Wis. Stats., provides in part:

Compensation of Governing Bodies. An elected official of any county, city, town, or village, who by virtue of the office held by that official is entitled to participate in the establishment of the salary attending that office, shall not during the term of the office collect salary in excess of the salary provided at the time of that official's taking office.

Both of these provisions establish the well-accepted rule that elected officials may not vote during their term to raise their salary during that term. Thus, changes in salary must be adopted prior to an election to be effective for those who take office following the election. This rule is repeated in Sec. 3.29, MGO.

There is a more specific limitation applicable to cities, set out in Sec. 62.09(6)(b), Wis. Stats. This section provides with respect to the council establishing salaries for the elected officials:

- (b) Whenever such salaries are to be changed or established, the council shall, not later than the first regular meeting in February, fix the amount of salary of each officer entitled to a salary who may be elected or appointed for a definite term during the ensuing year. (Emphasis added).

Under the clear language of the statute, any increase in salaries for a mayor or an alderperson to be elected in the spring election must be established no later than the first regular meeting in February.

The Supreme Court of Wisconsin has twice had the opportunity to interpret this statute. In each instance, the Court held that the requirement of establishing the salaries at the first regular meeting in February was mandatory and could not be modified or ignored by the municipality.

In *Smith v. City of Phillips*, 174 Wis. 54, 182 N.W. 338 (1921), the common council of Phillips voted in March, 1916, to reduce the salary of the city attorney to be elected in the spring election in April, 1916. The elected city attorney filed a claim for the full salary as it existed as of the first meeting in February, 1916. Interpreting the prior version of Sec. 62.09(6)(b), the Supreme Court stated as follows:

The terms of this statute are positive and indicate that the legislature intended that the common councils of cities are required to fix the salaries of city officers at this first regular meeting in February. Manifestly, it was considered the best municipal policy to remove the question of compensation of city officers from the

influence of the municipal election which follows early in April. This idea of freeing the salary question from municipal political influence is also guarded by forbidding any increase or diminution of such fixed salary during the term of any such officer. We are of the opinion that the circuit court correctly held that the terms of this statute are mandatory and require city councils to fix the amount of the initial municipal salaries at the regular meeting in February. (Emphasis added).

The Court went on to hold that the attorney was entitled to the salary as established in the prior ordinance.

A similar situation arose in *Feavel v. City of Appleton*, 234 Wis. 483, 291 N.W. 830 (1940). In this case, the electors, through the initiative process, passed by referendum an increase in salary at the April election, to be applied to alderpersons being elected at that election. The court in *Feavel* affirmed that the common council lacked authority to increase salaries any time after the first regular meeting in February, and further held that the electors could not do by referendum what the common council lacked authority to do itself. *Id.* at 489, 492. The dissent did not challenge the rule that the Council could only raise salaries at the first meeting in February, but contended the direct legislation route by the electors would allow an increase at the time of the election. *Id.* at 493-97.

I conclude that the Madison Common Council was without authority to enact an amendment to Sec. 3.29 of the Madison General Ordinances in March, 2007, to be effective in April, 2007.

#### **B. Application of the Legal Rules to Ordinance CHA-07-00002**

A review of the history of this ordinance indicates that it was referred to the Board of Estimates on March 6, 2007, which recommended adoption by the Council. The Council adopted a substitute by unanimous vote on March 20, 2007.

Because these times of consideration and adoption are later than the first regular meeting in February, the modification to the ordinance is not effective for alderpersons elected in April, 2007, nor for the mayor elected in April, 2007.

This does not mean that the ordinance is invalid or in any way defective. It was properly introduced and approved by the Common Council. By its terms, the ordinance reflects the Council's desire to increase salaries for alders and the mayor on and after April 17, 2007. An ordinance such as this should be interpreted to give effect to all portions that are valid, see, e.g., *General Casualty Co. of Wisconsin v. Wisconsin Dept. of Revenue*, 2002 Wis. App. 248, 258 Wis. 2d 196, 208, 653 N.W. 2d 513 (Ct. App. 2002), *Pet. for Review Denied*, 2003 WI 1, 258 Wis. 2d 108, 655 N.W. 2d 128 (2002) (Valid portions of law must stand).

Although the operation of sec. 62.09(6)(b), Wis. Stats., means that the increase does not go into effect for those elected in April, 2007, it will apply to alderpersons elected in the April, 2009 election, and to the mayor elected in the April, 2011 election. This assumes that the Council does not determine to change the ordinance, on a timely basis, prior to either of those elections.

The compiled Madison General Ordinances will reflect the change in sec. 3.29., MGO, adopted in March, 2007. As editor of the ordinances, I will add the following editor's note after the new sec. 3.29:

[Editor's Note: The above language in sec. 3.29 was adopted on March 20, 2007, CHA-07-00002, Legistar File No. 05769. Pursuant to Formal Opinion #07-001 of the City Attorney, the ordinance is not effective to change the salaries of alderpersons elected in April, 2007, or the mayor elected in April, 2007. It is effective, if not modified on a timely basis, for alderpersons elected in April, 2009, and the mayor elected in April, 2011. Any future changes in this ordinance must be adopted no later than the first regular meeting in February prior to the spring election.]

### CONCLUSION

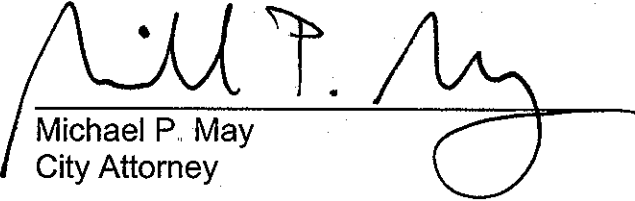
Based upon this legal analysis, I advise you that in paying salaries to alderpersons and to the mayor, for those elected in the April, 2007 election, your office should follow the provisions of sec. 3.29, MGO, as it existed prior to the amendment on March 20, 2007.

Under sec. 3.29, MGO, as it existed in February, 2007, the salaries to be paid are as follows:

Mayor:	\$112,881
Alders:	\$ 6,974
Common Council President:	\$ 9,288
Council President Pro-Tem	\$ 7,815

All of these figures were arrived at by calculations performed by your office, adjusting the stated salaries as provided in sec. 3.29, MGO, as it existed in February, 2007. Under the terms of sec. 3.29 as it existed in February, 2007, these salaries are not subject to further adjustment during the term beginning April, 2007.

The above amounts may be further adjusted as provided by CHA-07-00002, for alders elected in April, 2009, and the mayor elected in April, 2011.



Michael P. May  
City Attorney

MPM:pah

cc: Mayor Dave Cieslewicz  
All Alders  
City Clerk

SYNOPSIS: Any ordinance to increase the salaries of alders or the mayor must be adopted no later than the first regular meeting in February prior to the April elections. Ordinance CHA-07-0002 was not adopted until March 20, 2007, and thus is ineffective to raise the salaries of the alders and the mayor elected in April, 2007. It is effective to raise the salaries of alders elected in April, 2009, and the mayor elected in April, 2011.



# City of Madison Master

City of Madison  
Madison, WI 53703  
www.cityofmadison.com

**File Number: 05769**

<b>File Number:</b> 05769	<b>File Type:</b> Charter Ordinance	<b>Status:</b> Passed
<b>Version:</b> 2	<b>Reference:</b>	<b>Controlling Body:</b> BOARD OF ESTIMATES
<b>Requester:</b> BOARD OF ESTIMATES	<b>Cost:</b>	<b>Introduced:</b> 02/26/2007
<b>File Name:</b> Mayor's salary		<b>Final Action:</b> 03/20/2007

**Title:** SUBSTITUTE CHARTER - Amending Section 3.29 of the Madison General Ordinances to provide for a salary increase for the Mayor and Alderpersons and to clarify the language that specifies the manner in which successive salary increases shall be calculated.

**Notes:** 4115mayorsalaryCH  
MPM

MAYOR APPROVAL DATE: 3/21/07

**Code Sections:**

**Agenda Date:** 03/20/2007

**Indexes:**

**Agenda Number:** 67.

**Sponsors:** David J. Cieslewicz, Austin W. King, Paul J. Van Rooy and Michael E. Verveer

**Enactment Date:** 04/05/2007

**Attachments:**

**Enactment Number:** CHA-07-00002

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Attorney's Office/Approval Group	02/27/2007	Approved As To Form				
1	Attorney's Office	02/27/2007	Fiscal Note Required / Approval	Comptroller's Office/Approval Group	02/28/2007	02/27/2007	
1	Comptroller's Office/Approval Group	02/27/2007	Approved Fiscal Note By The Comptroller's Office	Attorney's Office		02/27/2007	
1	Attorney's Office	02/27/2007	Refer for Introduction				
1	COMMON COUNCIL	03/06/2007	Refer	BOARD OF ESTIMATES		03/12/2007	
1	BOARD OF ESTIMATES	03/12/2007	RECOMMEND TO COUNCIL TO ADOPT (14 VOTES REQUIRED) - REPORT OF OFFICER				Pass

2	Attorney's Office/Approval Group	03/20/2007	Approved As To Form			
2	Attorney's Office	03/20/2007	Fiscal Note Required / Approval	Comptroller's Office/Approval Group	03/20/2007	03/20/2007
2	Comptroller's Office/Approval Group	03/20/2007	Approved Fiscal Note By The Comptroller's Office (SUBSTITUTES)	BOARD OF ESTIMATES		03/20/2007
2	COMMON COUNCIL	03/20/2007	Adopt			Pass

**Text of Legislative File 05769**

**..Fiscal Note**

Funding for the Mayor's salary is fully budgeted in the 2007 Adopted Mayor's Office operating budget. No additional appropriation is required. However, there is not sufficient funding in the Council Office budget to support the proposed increase in Alderperson salaries, estimated to total an additional \$2,164 (\$2,010 in salary and \$154 in benefits). Therefore, an appropriation from the Contingent Reserve is required

**..Title**

SUBSTITUTE CHARTER - Amending Section 3.29 of the Madison General Ordinances to provide for a salary increase for the Mayor and Alderpersons and to clarify the language that specifies the manner in which successive salary increases shall be calculated.

**..Body**

DRAFTER'S ANALYSIS: This ordinance changes the manner in which increases in the Mayor's and Alderpersons salaries are calculated. Under current law, the salary for the Mayor increases every year by the amount of increase granted to the City's managerial employees from 4 years earlier. Under this ordinance, the Mayor's salary would only increase once, at the beginning of a four-year term, by the combined amount of such managerial increases in the prior four years. It would then be fixed for four years. The salary set forth as the base in this ordinance (\$115,138) is the amount the Mayor elected in April would be paid under the continued operation of the current formula. For Alderpersons, current law provides for no salary increases. Under this ordinance, salaries for Alderpersons would increase only once, at the beginning of each two-year term, by the combined amount of the average increases granted to the City bargaining units in the previous two years.

\*\*\*\*\*

Pursuant to Section 66.0101 Wis. Stats., 2003-04, the Common Council of the City of Madison do ordain as follows:

1. Section 3.29 entitled "Salaries Of Mayor And Officials" of the Madison General Ordinances is amended to read as follows:

"3.29 SALARIES OF MAYOR AND OFFICIALS. Pursuant to the provisions of Section 62.09(6), Wis. Stats., the salaries of City officers are hereby fixed at the rates hereafter indicated and shall not be increased or diminished during the term for which said officers are elected or appointed:

**Annual Salary**

Members of the Board of Public Works, excluding the Alderpersons and City employees, (each) per year \$100.00  
 Members of the Board of Review (each) per diem \$ 20.00

**Alderpersons:**

Effective the term that begins April 15 17, 2003 2007, the Alderpersons' salaries, except for that of President and President Pro Tem of the Common Council, shall be ~~\$6,774~~ \$7,113. Such salaries shall annually be adjusted by a percentage equal to the average percentage of the adjustments granted to the City's recognized bargaining units whose contracts expired two years preceding the year of adjustment, rounded to the nearest whole percentage effective the second pay period in April. However, such annual adjustments to salaries shall terminate at the end of the terms of Alderpersons in 2005. Thereafter, at the beginning of each

successive two-year term, that amount shall be adjusted once by a percentage equal to the combined two annual percentage changes granted to the City's recognized bargaining units in the previous two years, rounded to the nearest whole percentage.

Mayor:

Effective the term that begins April 15 17, 2003 2007, the Mayor's salary shall be \$101,324 \$115,138. Thereafter, at the beginning of each successive four-year mayoral term, that amount shall be adjusted once by a percentage equal to the resultant combined four annual percentages changes calculated four-years previously for managerial employees in the previous four years pursuant to Section 3.38(6)(c)4., rounded to the nearest whole percentage, and shall be effective the second pay period in April of each year of the mayoral term. Such annual salary adjustments shall terminate at the end of the mayoral term in 2007. The Mayor shall accrue vacation as provided in Section 3.36(7) of these ordinances. In addition to this salary, the benefit provided for in Section 3.38(28) of these ordinances shall be afforded to qualifying Mayors. ~~Notwithstanding these provisions, the Mayor's salary beginning April 15, 2003 and ending April 10, 2005 shall be \$96,258 annually.~~

President of the Common Council:

Effective term that begins April 15 17, 2003 2007, the President's salary shall be \$9,047 \$9,473. ~~Such salary shall annually be adjusted by a percentage equal to the average percentage of the adjustments granted to the City's recognized bargaining units whose contracts expired two years preceding the year of adjustment, rounded to the nearest whole percentage effective the second pay period in April. However, such annual adjustments to salary shall terminate at the end of the terms of Alderpersons in 2005.~~ Thereafter, at the beginning of each successive two-year term, that amount shall be adjusted once by a percentage equal to the combined two annual percentage changes granted to the City's recognized bargaining units in the previous two years, rounded to the nearest whole percentage.

President Pro Tem of the Common Council:

Effective the term that begins April 15 17, 2003 2007, the President Pro Tem's salary shall be \$7,588 \$7,971. ~~Such salary shall annually be adjusted by a percentage equal to the average percentage of the adjustments granted to the City's recognized bargaining units whose contracts expired two years preceding the year of adjustment, rounded to the nearest whole percentage effective the second pay period in April. However, such annual adjustments to salary shall terminate at the end of the terms of Alderpersons in 2005.~~ Thereafter, at the beginning of each successive two-year term, that amount shall be adjusted once by a percentage equal to the combined two annual percentage changes granted to the City's recognized bargaining units in the previous two years, rounded to the nearest whole percentage.

This is a charter ordinance and shall be effective upon sixty (60) days from passage and publication subject, however, to the referendum procedures of Section 66.0101(5), Wisconsin Statutes."

2. Pursuant to sec. 66.0101, Wis. Stats., this Charter Ordinance shall take effect 60 days after publication, subject to the referendum rights in sec. 66.0101(5), Wis. Stats.