

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

Date: May 15, 2009

MEMORANDUM

TO: Mayor Cieslewicz
All Alders
All Agency Heads

FROM: Michael P. May, City Attorney

RE: **Revised Procedures for Substitute or Alternate Ordinances or Resolutions**

This memorandum explains the procedures for preparation and consideration of substitute and alternate ordinances or resolutions. This direction is needed because of some confusion as to how the process is to work, and the need for some clarifications since the City began to use the Legistar process.

The procedures set out in this memorandum have been developed with input from the Mayor's Office, the City Clerk's office and the Common Council Organizational Committee. Please note that the changes set out in this memorandum will require some corresponding changes in APM 3-1 and the related documents identifying the nature of a Substitute, Alternate or Amended ordinance.

These new procedures should be used for all drafting done after the May 19, 2009, Common Council meeting.

Definitions

Sponsor: Alder(s) or Mayor who sponsor legislation. The lead sponsor, that is, the member who first requested that the resolution or ordinance be prepared, should be the first name listed on the legislation. This is a change. In the past, sponsorship often was listed alphabetically or the Mayor was placed first even if the Mayor was not the lead. Section 2.05(6) of the Madison General Ordinances defines sponsorship requirements and also outlines the provisions that are exceptions. (MGO Section 2.05(6)(a) through (6)(i)), and section 2.05(7), attached to this memo). Among the common exceptions are Common Council by Request and Common Council by Petition. The Plan Commission may also sponsor ordinances related to zoning matters, sec. 28.12(10)(b)2., MGO.

Lead Referral: Lead committee/commission/board whose recommendation will be on the floor for Council action unless another version is moved. If the Lead Referral's recommendation is to adopt legislation, it must have a sponsor. If the legislation is modified by the Lead Referral, the modified legislation must be sponsored and will be either a Substitute or an Alternate.

Secondary Referral: Other committee/commission/board that reviews legislation, proposes changes to legislation and reports their recommendation(s) to the Lead Referral.

Substitute Ordinance/Resolution: Any change in the ordinance or resolution that is approved by the Lead Sponsor prior to consideration on the Council floor. This includes changes to resolutions or ordinances sponsored by a body such as the Board of Public Works.

Alternate Ordinance/Resolution: Legislation proposed by a member of the Council that is an alternate to and is not approved by the lead sponsor prior to consideration on the Council floor.

Amended Ordinance/Resolution: Any change approved on the Council floor proposed by a member of the Common Council, whether made to the lead referral's recommendation, a substitute, or an alternate.

Proposed Changes from Secondary Referral Agencies

- Staff person for the committee requesting the change enters the recommended changes in their MINUTES (Action Note field). This information returns with the action to the Lead Referral. *Keep the lead referral staff person informed.*
- The Lead Referral should then consider the recommended changes at its meeting.
- If the Lead Referral approves the changes AND the lead sponsor approves the changes, a **Substitute** should be drafted as a result of the Lead Referral's recommendation. The lead sponsor is the first sponsor listed in the legislative file. As noted below, the drafter should assume that the Lead and other Sponsors will continue to sponsor legislation until informed otherwise. The drafter should keep the Lead and other Sponsors informed of any changes to the legislation.
- If the Lead Referral approves the changes AND the lead sponsor **DOES NOT** approve the changes but another sponsor is willing to support the changes, an **Alternate** should be drafted as a result of the Lead Referral's recommendation. The lead sponsor is the first sponsor listed in the legislative file.
- Any changes proposed by the Secondary referrals should be added as an attachment to the legislative file.

NOTE: Secondary Referrals cannot authorize the drafting of a substitute. If, however, the Lead Referral or the Lead Sponsor refuse to approve suggested changes from the Secondary Referrals, and another Sponsor is found, an Alternate may be presented by that Sponsor.

Proposed Changes from Lead Referral Agencies/Committees

- Staff person for the Lead Referral enters the recommended changes in their MINUTES (Action Note field).
- All changes to the text file of legislation approved by the Lead Referral should be entered by the original drafter/preparer of the legislation (can be found in the Extra Information sheet tab of the legislative file; all ordinance drafting must be done by the City Attorney).

- Before any changes are entered into the text file, the Lead Referral staff person must determine if the new version is going to be a Substitute or an Alternate (see above under Proposed Changes from Secondary Referral Agencies). The Lead Sponsor will be notified with a presumption they approve and that the change will result in a Substitute, unless they say otherwise within a specified time or unless they already contacted the staff person. If the Lead Sponsor is not willing to offer the Substitute, the Lead Referral must find another sponsor, and the change will be called an Alternate. Drafters of legislation also will assume that all Sponsors will remain sponsors unless notified otherwise. Staff should keep the Lead Sponsor and other Sponsors informed of changes in a substitute.
- The original (or previous) version of the legislation **MUST** be added as an attachment in the legislative file (use the Master Generic report and attach the original or previous version as a PDF) by the drafter that is preparing the substitute or alternate. This will keep a record of versions of the legislation in Legistar.
- After the recommended changes to the text are entered, the fiscal note process must be followed. The drafter/preparer needs to obtain the fiscal note approval by the Comptroller's office. The drafter/preparer should notify the Clerk's office that the fiscal note has been approved, so the file can be placed on the Common Council agenda.
- The staff person should take their action in their minutes on the new version that has been created by the drafter.
- Any legislation must have a sponsor to be considered by the Council. A Lead Referral's recommendation to place on file or refer legislation may be considered by the Council even if the lead sponsor disagrees with that recommendation.
- The sponsors have many opportunities to remove themselves as sponsors up to the point it is on the Council floor for final approval. Sponsors wishing to be removed or added to legislation should contact the Clerk's Office, the Council Office or, for ordinances only, the City Attorney. An Alder may move to adopt the original legislation or an Alternate version of the legislation on the Council floor.

NOTE: If there is a change to legislation that is editorial in nature (misspellings, punctuation errors, minor corrections to sentence structures), then a substitute should **NOT** be drafted. The original drafter should just make the correction(s).

Proposed Changes Outside of Committee Action

- In some instances, the Lead Sponsor wishes to make changes to an ordinance or resolution outside of consideration by the Lead Referral. These changes may occur prior to the Lead Referral's action or after the Lead Referral's action. Any proposed change sponsored by the Lead Sponsor made prior to action on the Council floor should be presented as a Substitute. Changes made on the Council floor will result in an Amended resolution or ordinance.
- The Lead Sponsor may propose a Substitute to be considered by the Lead Referral. Any Sponsor

may propose an Alternate to be considered by the Lead Referral.

- All changes to the text file of legislation proposed by the Sponsor should be entered by the original drafter/preparer of the legislation (can be found in the Extra Information sheet tab of the legislative file; all ordinance changes must be drafted by the City Attorney).
- After the recommended changes to the text file are entered, the fiscal note process must be followed. The drafter/preparer needs to obtain the fiscal note approval by the Comptroller's office. The drafter/preparer should notify the Clerk's office that the fiscal note has been approved, so that the file can be placed on the Common Council agenda.
- The sponsors have many opportunities to remove themselves as sponsors up to the point it is on the Council floor for final approval. Sponsors wishing to be removed or added to legislation should contact the Clerk's Office, the Council Office or, for ordinances only, the City Attorney. An Alder may move to adopt the original legislation or another Alternate version of the legislation on the Council floor.

Amendments on the Council Floor

- Any changes made to an ordinance or resolution on the Council floor will result in an Amended ordinance or resolution. The City Clerk will make the changes in Legistar as part of the proceedings of the Council.

Information

- Multiple versions of a file cannot be listed on a Council agenda in Legistar. So the previous versions of legislation MUST be included as attachments in the corresponding legislative file and the version as recommended by the lead referral will be the version that appears on the Council agenda.

cc: Maribeth Witzel-Behl
Janet Piraino
OCA Staff and Attorneys

2.05 INTRODUCTION OF BUSINESS.

- (6) Unless otherwise provided in these ordinances, no ordinance or resolution shall be introduced unless it is sponsored by a member of the Common Council or the Mayor or both. Use of a Common Council member's name as sponsor must be with his or her knowledge and consent. This provision shall apply not only to ordinances and resolutions, but also to all substitutes and amendments. The provisions of this subsection shall not apply to the following:
- (a) Recommendations of the City Attorney or Risk Manager relating to claims.
 - (b) Recommendations and advice of the City Attorney relating to litigation in which the City is or is going to become involved.
 - (c) Changes to ordinances and resolutions which may be mandated by state or federal law.
 - (d) Recommendations of the Personnel Board relating to the classification of positions.
 - (e) Changes to ordinances and resolutions which may be required by the adoption of the annual City Budget.
 - (f) Petitions for direct legislation pursuant to the provisions of Section 9.20 Wis. Stats.
 - (g) Ordinances and resolutions necessary to implement Public Works projects previously approved in the annual City Budget or allowed under sub. (2) of this ordinance.
 - (h) Zoning map or text amendments allowed under Sec. 28.12(10)(b), MGO, to be sponsored by the Plan Commission or Planning Division.
 - (i) Changes to ordinances recommended by the City Attorney which are intended to correct errors, omissions or inconsistencies therein.
- (7) For any matters not sponsored by a member of the Common Council, the sponsoring officer or body shall be indicated by name. (Cr. by ORD-07-00194, 12-20-07)