


Legal Memorandum

To: Timothy Kabat, Mayor
Cc: Kelly Branson, Finance Director
From: Stephen F. Matty, City Attorney 
Date: November 1, 2016
Re: Process to adopt the budget after veto

The Legal Department was asked to define the process to adopt a budget after a veto occurs. Much of the process to override a veto, itself, can be found in a previous opinion from the Legal Department dated March 9, 2010, which is found in the Council Member Handbook as well as attached. Assuming a veto on the budget is not overridden, the question turns to what process must be subsequently followed to adopt a budget. Under this opinion, it is assumed that the City has followed its Board of Estimates process found in Chapter 2 of the City Code.

In order to adopt a budget after the first budget was vetoed and not overridden, the City must comply with the requirements in Wis. Stat. § 65.90. This statute sets the minimum due process and standards to adopt a budget. This includes, among other things, a public hearing, public notice and the ability for the public to inspect the proposed budget under certain time frames. For example, the proposed budget must be available for public inspection at least 15 days prior to the time of the public hearing. See § 65.90(3)(a).

Conversely, it is not necessary to reconvene the Board of Estimates. The Board of Estimates process has already been followed. Nothing requires it to meet again. Rather, any sponsor can introduce legislation to adopt a budget proposal. Such legislation could go directly on a Common Council agenda without being routed to any committee pursuant to § 2-323 of the City Code.

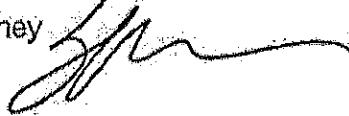
Legal Memorandum

To: Common Council and Mayor Mathias Harter

From: Stephen F. Matty – City Attorney

Date: March 9, 2010

Re: Veto Procedure



Recently, the Legal Department received a number of inquiries requesting clarification on the procedure to be used after the Mayor has issued a veto. The purpose of this memorandum is to provide guidance on the veto procedure.

Analysis

Controlling Authority

The Rules of the Common Council require that the Council follow Robert's Rules of Order as to questions of procedure during meetings. See Rule XIII. Nothing, however, in Robert's Rules of Order deals with procedures to be employed during or after a veto action, except as it pertains to nominations by the chair to appointments of committees. See *Robert's Rules of Order Newly Revised* (10th Ed.) p. 477. Accordingly, the only authority to which the City is bound is that found under state law. Specifically,

The mayor shall have the veto power as to all acts of the council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within 5 days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.

Wisconsin Stat. § 62.09(8)(c).

City Clerk's Duties

Accordingly, after a mayor has exercised veto power, the legislation needs to be placed on the next regular meeting agenda of the Common Council in

compliance with the Open Meetings Law. Upon arriving at this agenda item during the meeting, the City Clerk would be recognized by the presiding officer before any other person and would proceed to read aloud the Mayor's objections that have been filed with her office. No debate whatsoever should occur on the underlying legislation prior to the reading and presentation of the Mayor's objections by the City Clerk. In other words, no member of the Council, including the Mayor, should be allowed to elaborate or debate the legislation or override vote at this time. Any such attempt would be out of order.

Debate on Motion to Override Veto

After the City Clerk has concluded her presentation of the Mayor's objections, the presiding officer should identify whether there are any members of the Council that wish to be recognized on the subject matter. If no Council Member seeks to be recognized, then the legislation would remain invalid since the Mayor's veto was the last legislative enactment on the subject matter. On the other hand, if a Council Member wishes to speak and has been recognized, the Council Member may make a motion to override the Mayor's veto. No debate may occur until a person has seconded the motion and the motion has been recognized by the presiding officer.

Assuming a Council Member has moved to override the veto, which was seconded and recognized by the presiding officer, debate may occur on the motion. At this point, it is recommended that the procedure for recognizing debaters should follow the procedure outlined for motions to appeal a ruling from the chair. Under this procedure, the Mayor is allowed to speak first and last on the issue and need not vacate his chair while so speaking. See *RONR*, (10th Ed.) p. 249-50.

[The Mayor] is entitled to preference over other members seeking recognition. He can answer arguments against the decision or give additional reasons by speaking a second time at the close of debate. He may announce his intention to speak in rebuttal and ask if there are others who wish to speak first.

Id.

Supermajority Vote Required

Once debate has concluded, the question presented to the Council on the motion would be, "Shall the act become effective notwithstanding the objections of the Mayor?" In the event there are twelve (12) or more affirmative votes, the Mayor's veto is overridden. The Mayor's veto is sustained when there are less than twelve (12) affirmative votes.

Other Motions

Council Members also have the ability to make other motions prior to an override vote. For example, the Council could refer, postpone or table the override vote

for a variety of reasons, (e.g. the sponsor of the legislation is not present or there is a desire for full attendance of the Council or more debate). The Council must exercise caution when electing to refer, postpone or table an override vote. If the period of postponement, referral or tabling is too long, then the Council risks that the subject matter has become too stale for future action.

Additional caution is required during a veto override procedure because other motions would be out of order. A Council Member cannot make a motion to sustain or affirm the Mayor's veto. Any such attempt would be confusing and misleading to the governing body and the public because it would appear that a simple majority of negative votes could cause an override of the Mayor's veto. Any such motion should be ruled out of order.

Likewise, the Council cannot attempt to amend the underlying legislation during a motion to override a veto. First, such action would not be germane to the underlying motion. Second, allowing an amendment could circumvent the supermajority requirement under the law and undermine the separation of powers concept that is at the core of our democracy. Any such motion should be ruled out of order.

Finally, attempts to reconsider are also out of order as previously analyzed in the Legal Department's Memorandum dated May 5, 2006. The Council's attempts to reconsider a failed override vote or to reconsider the underlying legislation prior to an override vote would render the Mayor's veto power meaningless. Such attempts should also be considered to be dilatory. If an amendment or reconsideration is desired, then the proper recourse would be to introduce new legislation which includes the amendments and changes for future consideration.

Conclusion

In order to conserve municipal resources and improve the public's confidence in its municipal institutions, it is the recommendation of the Legal Department that the above-described procedure be followed after the mayor's veto power has been exercised. In this fashion, the City Clerk is able to fulfill her duties under the law, debate occurs only after proper motions have been made and recognized and all of the elected officials are provided fair opportunity to argue and debate. A one-page summary sheet is attached.

Attachment: Veto Procedure Summary Sheet

VETO PROCEDURES
(03-09-10)

1. Veto agenda item is placed on the agenda and recognized by the presiding officer and governing body.
2. City Clerk reads Mayor's objections verbatim.
 - A. Mayor cannot elaborate on objections until there is a motion to override the veto that is seconded.
 - B. Council Members cannot debate the veto or Mayor's objections until there is a motion to override the veto that is seconded.
3. Council may make a motion to override the veto.
 - A. If there is a motion to override the veto and a second, then debate would occur as normal, except the Mayor gets to speak first and last on the subject matter, without vacating the chair.
 - B. After debate, the question posed to the Council would be: "Should the act become effective notwithstanding the objections of the Mayor?"
 - C. Twelve (12) affirmative votes are required to override the veto (even if there is only a quorum of twelve).
4. Council may make a different motion.
 - A. Council could move to refer, postpone or table the override veto. (e.g. sponsor is not present; more debate is desired, full attendance is desired, etc.) At some point postponement, tabling or referral becomes too stale.
 - B. Cannot amend legislation at issue because not germane to override question and it would also defeat the supermajority vote requirement.
 - C. Cannot reconsider underlying legislation before override veto.
 - D. Cannot reconsider failed override vote.
5. If no motion, then the legislation continues to be invalid due to the Mayor's veto.