

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

Date: March 27, 2020

MEMORANDUM

TO: Madison Common Council

FROM: Michael P. May
City Attorney

RE: Mayoral Emergency Proclamation, Emergency Order and Resolutions
Agenda Item 18 (Legistar 60077) and others

Several items on the March 31 agenda relate to the ongoing COVID-19 emergency and the Mayoral issuance of an Emergency Proclamation. This memo is to explain those items.

1. Emergency Proclamation and Resolution.

The most significant item is the resolution declaring an emergency in Madison, Agenda Item 18 (Legistar 60077). Under Wisconsin state law and MGO sec. 3.19, the Council declares an emergency. The Mayor may also declare an emergency, and submit a resolution to the Council to confirm the emergency. This agenda item is the resolution to confirm the Mayor's Emergency Proclamation of March 23, 2020.

The Council has the authority to pass the resolution as presented, which would affirm the Mayor's Emergency Proclamation in all respects. The Council may also amend the resolution, which has the effect of amending the Emergency Proclamation on a prospective basis. If the Council defeats the resolution, the Mayor's Emergency Proclamation has no further effect in the future. The Council's actions are prospective only; they do not render the Proclamation amended or ineffective retroactively.

This resolution and the Emergency Proclamation it would affirm should be viewed as establishing the framework for future emergency actions by the Mayor and the Council during the COVID-19 crisis. I will refer to this as the "Primary Emergency Proclamation." This resolution adopting the Primary Emergency Proclamation grants the Mayor broad power to suspend or modify City policies, resolutions and ordinances, provided all of such actions that relate to Council legislation is to be presented to the Council for confirmation. The resolution adopts the language of the Proclamation and allows the Mayor to:

. . . after consultation with the City Attorney, issue orders to suspend the operation of, amend, create, or adopt city policies or ordinances, and suspend enforcement actions, that are not in conflict with existing state or federal laws, in

order to mitigate the effects of the coronavirus pandemic on city workers, residents of, and businesses within the City of Madison. This includes the power to extend deadlines, waive penalties, issue permits or licenses, contract or waive contractual terms, or such other actions as are appropriate to protect the health, safety and welfare of the City and its residents.

That broad power is tempered by the requirement that any changes to legislation – resolutions and ordinances – must be presented to the Council in the form of a resolution to confirm the Mayor’s actions. Those resolutions (a number are on the agenda and will be discussed below) are subject to adoption, amendment or defeat by the Council. The Proclamation and resolution provide:

To the extent any such actions by the Mayor affect a legislative enactment of the Common Council, the actions shall be presented in a resolution to the Common Council at the next regularly scheduled meeting when the resolution may be considered. By the resolution, the Council will affirm, rescind, or amend any of the orders issued by the Mayor.

The resolution does not require that administrative actions by the Mayor – for example, emergency modifications to APMS – be confirmed by the Council because this power resides with the executive, not the legislative, branch.

Thus, the Council is being asked in this resolution to approve a structural framework for the City to address pressing issues arising out of the COVID-19 crisis. The framework allows the Mayor to take immediate action, subject to approval by the Council.

2. Subsequent Emergency Order and Resolutions.

Acting under the authority of the Primary Emergency Proclamation, the Mayor issued an order (the “Subsequent Emergency Order”) on March 26, granting a series of waivers and modifying deadlines in the ordinances. Pursuant to the Proclamation, resolutions to confirm those actions are being introduced for referral at this meeting. Those resolutions are at agenda items 88-106 and 108 (Legistar items 60085-87, 60090, 60107-09, 60111-17, 600120-24, and 600126). A summary of them and their intent can be found in the Mayor’s Subsequent Emergency Order, which is being emailed with this memo.

These resolutions are being referred to the Council meeting of April 21, and questions about them may be fielded prior to that time. These resolutions do, however reflect the types of matters that will be addressed by the Mayor during the emergency period. Most are items to give relief of some sort to Madison’s residents, non-profits and businesses, or to make it easier for staff to address the crisis. As with the Primary Emergency Proclamation, these subsequent resolutions may be approved, amended or defeated by the Council.

CC: Department and Division heads

