

27 **BACKGROUND & ANALYSIS:**

28 Currently, City of Racine Municipal Code of Ordinances Section 2-583(c) mandates that “[a]ny
29 action” by the City’s six-member Board of Ethics “shall require an affirmative vote of four members.” Item
30 0166-19 is a “[c]ommunication from multiple members of the Board of Ethics requesting an amendment of
31 the ethics code of the ordinance to allow for a simple majority of the board to conduct business.” As of
32 March 7, 2019, there are 6 members appointed to the Board of Ethics, leaving no vacancies. However, the
33 minutes of the last three meetings indicate that on average, only 4 members have appeared at each meeting.
34 As such, unless the decision is unanimous, the Board has been unable to conduct any action at these previous
35 meetings.

36 At the February 25, 2019 Finance and Personnel Committee meeting, the Committee posed several
37 questions about this proposed amendment and instructed the City Attorney’s Office to research the answers
38 thereto, which are set forth below.

39 **1. Under Robert’s Rules of Order, what constitutes a quorum?**

40 According to Robert’s Rules of Order, as it applies to a board such as the Ethics Board, a quorum
41 is a majority of the members of the board unless a different quorum requirement is provided for by the
42 bylaws (or, in this case, the City Ordinances). RONR (11th ed.), p. 347, ll. 12–16.

43 **2. Under Robert’s Rules of Order, what is the minimum number of people who need to**
44 **affirmatively vote for an item in order to take action?**

45 Currently, Ordinance Section 2-583(c) mandates that “[a]ny action by the [Ethics] board shall
46 require an affirmative vote of four members.” If this subsection were repealed in its entirety, the default
47 rules for majority votes found in Robert’s Rules would apply to the Ethics Board.

48 Robert’s Rules states that, “the basic requirement for approval of an action or choice by a
49 deliberative assembly, except where a rule provides otherwise, is a *majority vote*.” RONR (11th ed.), p.
50 400, ll. 5–7. “The word *majority* means ‘more than half’; and when the term *majority vote* is used without
51 qualification—as in the case of the basic requirement—it means more than half of the votes cast by persons
52 entitled to vote, excluding blanks or abstentions, at a regularly or properly called meeting.” RONR (11th
53 ed.), p. 400, ll. 7–12. Therefore, when the City’s rules or Ordinances are silent on what constitutes an
54 actionable vote, “direct approval . . . must be registered by more than half of the members present and
55 voting on the particular matter, in a regular or properly called meeting of the body.” RONR (11th ed.), p.
56 4, ll. 5–9.

57 Alternatively, other bases for determining a majority vote can be prescribed by rule or ordinance.
58 For example, an ordinance could require an affirmative vote of the majority of either: (a) the members

59 present,¹ (b) the members present and voting, or (c) the membership as a whole.² See RONR (11th ed.) pp.
60 402, ll. 22–36; 403, ll. 1–8.³

61 **3. Is there a State Statute that dictates the number of municipal ethics board members and/or**
62 **the number of municipal ethics board members that must be present for a quorum?**

63 There is not a State Statute that dictates the number of municipal ethics board members and/or the
64 number of municipal ethics board members that must be present for a quorum.

65 To the extent it is a useful point of comparison, the State Statutes dictate that the State Ethics
66 Commission is comprised of at least six members. See Wis. Stat. §§ 15.01(2) and 15.62(1)(a).

67 **4. Is there a State Statute that dictates the minimum number of municipal ethics board**
68 **members who need to affirmatively vote for an item in order to take action?**

69 There is not a State Statute that dictates a minimum number of municipal ethics board members
70 who need to affirmatively vote for an item in order to take action.

71 To the extent that it is a useful point of comparison, the State Ethics Commission mandates that
72 any action by the State Ethics Commission, “except an action relating to procedure of the commission,
73 requires the affirmative vote of at least two-thirds of its members.” Wis. Stat. § 19.47(4).

74 **5. Is there a reason why the City’s current Ordinance requires four affirmative votes**
75 **for the City’s Ethics Board to take action on an item?**

76 On July 19, 2011, the City’s Common Council approved Ord. 6-10, “[t]o repeal and recreate
77 Chapter 2, Article VII., Code of Ethics, of the Municipal Code” City of Racine Common Council
78 Minutes, Item No. 10-5064, July 19, 2011. It is possible that, back in 2011, when drafting the new Ethics
79 Board voting requirement in Ordinance Section 2-583(c), that states, “[a]ny action by the board shall require
80 an affirmative vote of four members,” the drafter’s intent was to mirror the voting requirement set forth in
81 the 2011-12 Wisconsin Statutes for the Government Accountability Board, which stated, “[a]ny action by
82 the board requires the affirmative vote of at least 4 members.” Wis. Stat. § 5.05(1e) (2011-12).

83 In December 2015, the State Legislature passed 2015 Wisconsin Act 118, which replaced the six
84 member Government Accountability Board with two State commissions—the Ethics Commission and the
85 Elections Commission—each of which now consists of “*at least 6 members.*” Wis. Stat. § 15.01(2); 2015

¹ According to Robert’s Rules, “[v]oting requirements based on the number of members present—a majority of those present, two thirds of those present, etc.—while possible, are generally undesirable. Since an abstention in such cases has the same effect as a negative vote, these bases deny members the right to maintain a neutral position by abstaining. For the same reason, members present who fail to vote through indifference rather than through deliberate neutrality may affect the result negatively.” RONR (11th ed.) p. 403, ll. 22–36.

² It is also possible to specify, by rule or ordinance, that there be an affirmative vote of the majority of the “fixed membership” (i.e., the membership number set by ordinance) or the majority of the actual “entire membership” (i.e. the actual membership excluding vacancies) if, for example, there are vacancies on the board at the time of the vote. See RONR (11th ed.), p. 403, Footnote.

³ For instance, the Racine Wastewater Utility Board of Standards requires a majority of its seven members (i.e., four members) to vote in concurrence in order to take action. Ord. Sec. 98-142(b). Conversely, the four member Due Process Board requires “a concurring vote of a majority of a properly convened board . . . on any matter upon which the board is required to consider,” which could be as few as two concurring votes between the three members required for a quorum. Ord. Sec. 2-262(b).

86 Wis. Act 118; *see also* Wis. Legislative Council Information Memorandum IM-2015-15. Among the
87 changes made to the Statutes by 2015 Wisconsin Act 118 was the creation of Wisconsin Statute section
88 19.47(4), which states that any action by the State Ethics Commission, “except an action relating to
89 procedure of the commission, requires the affirmative vote of at least two-thirds of its members.”⁴

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91 **BUDGETARY IMPACT:**

92 This item would have a \$0.00 impact on the City’s budget.

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94 **OPTIONS/ALTERNATIVES:**

95 There are various options available to take action on this item:

96 **1. Take no action and leave Ordinance Section 2-583(c) as is.**

97 In this instance, the Ordinances would continue to require an affirmative vote of four members in
98 order to take any affirmative action.

99 **2. Repeal Ordinance Section 2-583(c) in its entirety.**

100 If Section 2-583(c) were repealed, the Ethics Board would be governed by the default voting
101 requirements in Robert’s Rules, which require a majority of the members present and voting in order for
102 the Board to act on a matter.

103 **3. Redraft Ordinance Section 2-583(c) in accordance with the best practices**
104 **recommended by Robert’s Rules.**

105 In the event that the Finance and Personnel Committee decides to recommend that the Common
106 Council modify Ordinance Section 2-583(c), Robert’s Rules encourages the drafter to include two elements
107 in its voting requirement: “(1) the proportion that must occur—as a majority, two thirds, three fourths, etc.;
108 and (2) the set of members to which the proportion applies—which (a) when not stated, is always the
109 number of members *present and voting*, but (b) can be specified by rule [or ordinance] as the number of
110 members present, the total membership, or some other grouping.” RONR (11th ed.) p. 402, ll. 24–31.

111 Much like the current Ordinance specifies, in no uncertain terms, the number of votes that are
112 required for affirmative action on an item, any redraft of Section 2-583(c) should contain a specific
113 proportion of affirmative votes required and the set of members to which said proportion applies.

114

115 **RECOMMENDED ACTION:**

116 The City Attorney’s Office is neither recommending approval nor recommending denial of this
117 item. This is a policy matter that is entirely at the discretion of the Common Council.

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⁴ It is possible that this change in statutory language was necessitated by the shift from the six member Government Accountability Board to a six or more member State Ethics Commission, wherein four votes would not equate to two-thirds of, for example, a seven member board.

119 ATTACHMENT(S):