LEAGUE OF WISCONSIN MUNICIPALITIES

Wisconsin Village Officials Handbook

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WISCONSIN VILLAGE OFFICIALS HANDBOOK

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PREFACE

Serving as a village official is one of the most direct forms of public service there is. From the condition of the roads to the rules that govern how the village grows, the decisions that local officials make affect the community in immediate and tangible ways. That is what makes local government so meaningful, but it is also what makes it so demanding.

Municipal officials need to navigate a wide range of state laws and requirements, often with little formal training and on top of full-time jobs and family obligations.

This handbook is designed to help. It is not a comprehensive legal treatise, and it is not a substitute for the advice of your municipal attorney. Rather, it is a practical starting point. It covers the fundamentals, the core topics that every village official needs to know, regardless of the size of their community or the specifics of their role. Each chapter provides enough background to help you understand the landscape, ask the right questions, and recognize when a situation calls for deeper research or legal counsel. References for further reading are included throughout.

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CHAPTER I

BECOMING AND SERVING AS A VILLAGE OFFICER

A. Qualifications for Office

1. Resident Elector

Elected village officials must be "electors" of their village at the time of their election.[1] Every U.S. citizen that is (1) age 18 or older, and (2) has "resided" in the district for 28 consecutive days before the election is an elector of that district.[2] Anyone appointed to fill a vacancy in an elective office must meet the residency qualifications applicable to that office.[3]

Determining whether someone is a resident of the village is harder than it might sound. A person can have multiple dwellings, but only one may be considered their legal residence at a time.[4] Wisconsin statutes lay out a long list of standards to determine residency for voting purposes.[5] This statute can be helpful, but fundamentally, a person's residence for election qualification purposes is "the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return."[6] A person's claim that they intend one place to be their residence is not enough to establish residency where their actions or conduct clearly indicate that their residence is somewhere else.[7]

Questions of residency can be resolved by the village board or by courts. Wisconsin statutes provide that the village board shall be the judge of the election and qualification of its members.[8] This means the village board is empowered to remove village officers for failure to meet residency requirements. Courts may also remove village officers for the same reason through "quo warranto" actions brought under Wis. Stat. Ch. 784, which allows the Wisconsin Attorney General to bring an action against any village officer in the state upon receipt of a complaint or on their own information.[9] Private individuals may also bring a quo warranto action against a village officer, but the individual must bring the action in the name of the state[10] and have standing.[11]

Some appointed officers must also be residents, including members of the board of harbor commissioners and the library board.[12] Cities may also require that law enforcement, fire, and/or emergency personnel reside within 15 miles of the city. But aside from that, villages are prohibited from requiring their employees to reside within the village limits.[13] However, villages are allowed to require that law enforcement, fire, and/or emergency personnel reside within 15 miles of the municipality.

2. Criminal Record

The Wisconsin Constitution prohibits any person from holding a public office or appearing on the ballot

[1] Wis. Stat. § 61.19.
[2] Wis. Stat. § 6.02(1).
[3] Wis. Stat. § 17.28.
[4] *Kempster v. City of Milwauke*e, 97 Wis. 343, 347 (1897).
[5] Wis. Stat. § 6.10.
[6] *Id*.
[7] *Eastman v. City of Madison*, 117 Wis. 2d 106, 118-119 (Ct. App. 1983).
[8] Wis. Stat. § 61.32.
[9] Wis. Stat. § 784.04(1).
[10] *Clarke v. Wisconsin Elections Comm'n*, 2023 WI 79.
[11] *City of Waukesha v. Salbashian*, 128 Wis. 2d 334, 346 (1986).
[12] Wis. Stat. §§ 30.37(3) and 43.54(1), respectively.
[13] Wis. Stat. § 66.0502.

for any state or local office if the person has been convicted of a felony or of a misdemeanor that has been designated as "a violation of public trust."[14] Many felonies are defined in both state and federal law. However, the League is not aware of any state or federal statute that currently designates a misdemeanor as "involving a violation of public trust."

It's important to note that this constitutional prohibition applies even after the person completes their sentence unless the person is pardoned for the crime.

3. Running for Multiple Offices Allowed

The same person may run for more than one local nonpartisan office at the same election. However, if a person is elected to both offices, the law of compatibility would prohibit holding both offices.

Wisconsin Stat. § 8.03(2m) provides that "[a] candidate may appear on the ballot for more than one local nonpartisan office at the same election."[15] However, the law prohibits a person from holding two incompatible offices. The courts have held that when a second incompatible office is taken, the first is vacated. Thus, for example, although the same person may run for village president and municipal judge, that person may hold only one of those offices. If the person won both seats and chose to be sworn in as the village president, the office of municipal judge would be vacant.

B. The Election Process

Village officers are elected at the Spring election. People may be elected to a village office by being nominated, winning the primary (if there is one), and then winning the general election. Alternatively, people can win a primary or general election without nomination by write-in.

1. Caucus

Unless the village board chooses to use nomination papers, candidates for village offices are nominated by caucus.[16] Caucuses are physical events where village electors gather to vote on nominations for village offices. The village board must choose a date for the caucus between December 1st and January 1st prior to the election. The caucus must then take place between January 2nd and January 21st.[17]

At the caucus, candidates may be nominated either in writing or by motion from the floor.[18] Village trustees are nominated together and municipality-wide rather than in districts. Electors are given one vote for every available position.[19] The candidates who receive the most votes are nominated, but the number of nominees is capped at a number equal to twice the number of positions to be filled.[20]

2. Nomination

If a village uses nomination papers, candidates must submit a declaration of candidacy, a registration statement, and a sufficient number of nomination signatures.[21]

[14] Wisconsin Constitution, Article XIII, Section 3.
[15] See also *In re Appeal of Board of Canvassers v. Erickson*.
[17] Wis. Stat. § 8.05(1)(a).
[18] Wis. Stat. § 8.05(1)(d).
[19] Wis. Stat. § 8.05(1)(e).
[20] Wis. Stat. § 8.05(1)(i).
[21] Wis. Stat. § 8.10.

Only people that are eligible to vote and live in the village can sign nomination papers for an office representing the village.[22] Candidates must get all their required signatures during a specific time period. For village offices, that period runs from December 1st of the year before the spring election to the second Tuesday in January at 5:00pm.

3. Primary

If more than two candidates are nominated for one elected position, villages may hold a primary. A primary may be ordered in one of three ways: (1) by a majority of the village board, (2) by petition signed by a number of electors equal to 10% of the total votes for governor in the village in the last election, or (3) automatically by charter ordinance.[23] The village board must order a primary no later than 3 days after the deadline for filing nomination papers.[24] If a primary is requested by petition, the petition must be submitted to the village clerk by the December 1st preceding the election.[25] But regardless of the method, a primary may not be ordered if there are two or fewer nominated candidates for a single office.[26]

If there is a spring primary, it is held on the third Tuesday in February.[27] The candidates who receive the first and second most votes in the primary advance to the spring election.[28]

4. Write-in

As an alternative to the nomination or caucus processes, people may be elected to village offices by write-in. Both primary and general election ballots must allow for write-in candidates.[29] However, write-in votes are not counted unless either (1) there are no candidates certified to appear on the ballot, (2) **any** certified candidate dies or withdraws before the election, or (3) the write-in candidate files a registration statement no later than noon on the Friday before the election.[30]

5. Election

The Spring election takes place on the first Tuesday in April every year. The person that receives the most legal votes is elected to the office.[31] If there is a tie, the winner is chosen by lot.[32]

C. Taking Office

1. Oath

Elected and appointed village officials are required to take and file the official oath within 5 days of being notified of their election or appointment.[33] Though some communities administer both an oral and a written oath, only the written oath is required.[34] The written oath for village officers must be signed and filed with the village clerk except village clerks who file their oaths with the village treasurer.[35]

[22] Wis. Stat. § 8.10(2)(b).
[23] Wis. Stat. § 8.11(1m).
[24] Wis. Stat. § 8.11(1m)(a).
[25] Wis. Stat. § 8.11(1m)(c).
[26] Wis. Stat. § 8.11(1m)(d).
[27] Wis. Stat. § 5.02(22).
[28] Wis. Stat. § 5.58(3)
[29] Wis. Stat. §§ 5.58(1a) & 5.82.
[30] Wis. Stat. § 7.50(2)(em).
[31] Wis. Stat. § 5.01(3).
[32] Wis. Stat. § 5.01(4).
[33] Wis. Stat. § 61.21.
[34] Wis. Stat. §§ 19.01(1) and (1m).
[35] Wis. Stat. § 19.01(4)(g).

Any person that refuses or neglects to take and file the official oath technically vacates their office.[36]

2. Salary

Salaries for elected village officials are set by the village board and require a three-fourths vote to change.[37] Compensation for elected village officials must be set before the earliest time that nominations papers may be filed for the office or, if caucuses are used, before the caucus date is determined.[38] Changes in compensation that happen after that time only apply to the official's next term.

Village officials may refuse their salary by following a specific process outlined in Wis. Stat. § 66.0505(3).

3. Term

Unless otherwise provided, the term of office for all village elective officers is two years.[39] The regular term of office for village presidents and trustees begins on the third Tuesday of April in the year of their election.[40] The regular term of office for other village officers begins on May 1 following their election unless otherwise provided by ordinance or statute.[41] A village may change a term of office by charter ordinance.[42]

Municipal judges have four-year terms unless a different term, not exceeding four years or less than two years, is established by charter ordinance. The municipal judge's term begins on May 1 in the year of their election.[43]

D. Compatibility of Offices

For a variety of reasons, it is common for village officials and employees to serve in multiple roles. Often this happens legally and without issue. However, Wisconsin law prohibits village officials and employees from serving in multiple roles if the roles would conflict with each other.

This section provides an overview of the legal rules governing when village officials and employees may simultaneously hold another office or position in the same or a different government unit. Incompatibility issues are very fact specific, and this section cannot and does not include every possible compatibility issue. The goal of this section is to help village officials and employees identify potential incompatibility problems. However, this section cannot replace legal advice from a qualified attorney on the specific facts of a situation.

1. Wisconsin Law

Wisconsin law provides several rules that expressly allow or prohibit someone from serving in more than one office or position in certain situations. Where these statutory and constitutional rules apply, they overrule any outcome that would be reached by the incompatibility doctrine discussed below. For this

[36] Wis. Stat. § 17.03(7).
[37] Wis. Stat. § 61.32.
[38] Wis. Stat. § 61.193(2).
[39] Wis. Stat. §§ 61.20(1) and 61.23(1).
[40] Wis. Stat. §§ 61.23(2).
[41] Wis. Stat. §§ 61.23(2).
[42] Wis. Stat. §§ 61.195, 66.0101.
[43] Wis. Stat. § 755.02.

reason, the question of whether offices/positions are compatible should begin by reviewing whether any Wisconsin statute or constitutional provision applies.

Unless otherwise authorized by statute, village governing body members are ineligible during their term for any non-elective office or position created by the governing body during that term or where the power to appoint the office or position is vested in the governing body. However, governing body members *are* eligible for offices or positions that were not created during their term of office if they resign first.[44] Village governing body members also may not simultaneously hold any federal office (except postmaster) or any foreign office."[45]

On the other hand, Wisconsin statutes expressly allow the following:

a) Village trustees and presidents may also serve as county supervisors.[46]
b) Village trustees and presidents may also serve as a village employee and be paid an hourly wage so long as it does not exceed $15,000 a year.[47]
c) An elected village officer may also serve as a volunteer firefighter, emergency medical services practitioner, or emergency medical responder so long as their annual compensation from such positions (including fringe benefits) does not exceed $25,000 a year for villages with a population of 5,000 or less or $15,000 for villages with a population above 5,000.[48]
d) Most village official may also serve as an election official appointed under Wis. Stat. § 7.30 and be compensated for their work as provided by law unless they are on the ballot that election;[49] and
e) Village trustees and presidents may also represent the governing body on other village boards and commissions if they do not receive any additional compensation, except a per diem as long as all members of the board or commission receive a per diem.[50]

2. The Incompatibility Doctrine

If the Wisconsin statutes and constitution are silent on whether two positions are compatible, the next step is to determine whether the common-law incompatibility doctrine would prohibit someone from serving in both positions. The incompatibility doctrine is a court-created law (also known as "common law") that prohibits someone from simultaneously holding two "incompatible" offices/positions. Courts have typically held that accepting an incompatible office serves as a resignation of the first office.[51] However, in a Wisconsin case involving an incompatible office and position of employment, the court allowed the person involved to choose between the two, though this was not established as a rule going forward.[52]

When considering whether two offices/positions are incompatible, the legal question focuses entirely on the duties of each office/position rather than on the person who would occupy them.[53] A general treatise

[44] Wis. Stat. § 66.0501(2).
[45] Wisconsin Constitution, Article XIII, Section 3. *See also Martin v. Smith*, 239 Wis. 314, 330 within the meaning of Article XIII, Section 3 of the Wisconsin Constitution.
[46] Wis. Stat. § 59.10(4).
[47] Wis. Stat. § 61.327.
[48] Wis. Stat. § 66.0501(4)(a).
[49] Wis. Stat. § 66.0501(4)(b). Wis. Stat. § 7.30(2)(a).
[50] Wis. Stat. § 66.0501(2).
[51] 3 McQuillin, Mun. Corp., § 12:112 (3d ed.).
[52] *See Otradovec v. City of Green Bay*, 118 Wis. 2d 393, 394, 397 (Ct. App. 1984).
[53] 3 McQuillin, Mun. Corp., § 12:112 (3d ed.).

quoted in a 1985 Wisconsin Attorney General Opinion states that incompatibility exists when the duties and functions of two offices/positions are "inherently inconsistent and repugnant, so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both."[54]

a. Superiority The clearest example of incompatible offices/positions are those where one office/position is directly superior to the other or holds power over the salary, duties, or obligations of the other office/position in some way. The League has long opined that governing body members may not hold other offices/positions of employment in the same municipality unless the arrangement is specifically authorized by statute.[55] This is true even if the office/position is under the control of a board or commission like a police and fire commission because the governing body still exercises budgetary and general supervisory control in those cases.[56] Wisconsin courts have twice ruled that particular offices/positions are incompatible because one office/position is superior to the other.[57]

In *State v. Jones,* the Wisconsin Supreme Court held that the offices of county judge and justice of the peace were incompatible.[58] The Court noted that the county judge might be asked to rule on matters that are directly related to the office of the justice of the peace.[59] As a result, the county judge could be considered "superior" to the justice of peace in such a way as to render the two positions incompatible as a matter of public policy.[60]

In *Otradovec v. Green Bay,* the Wisconsin court of appeals ruled that the office of alderman was incompatible with the position of residential appraiser in the city assessor's office.[61] As alderman, Otradovec would have had power over the terms of both his own employment contract and the appointment of his direct supervisor—i.e., the city assessor.[62] As a result, the court ruled that the office of alderman was superior to the position of resident appraiser and that this created an incompatibility that could not be avoided by abstaining on votes where conflicts existed.[63]

Courts outside of Wisconsin have found superiority between offices/positions in less direct circumstances. For example, Massachusetts' highest state court ruled that the office of county commissioner and the position of district court clerk were incompatible because the county commission had control over the property, expenses, and location of the clerk's office and were responsible for auditing the office.[64] Although Wisconsin Courts are not bound by other state court decisions, the decisions of other courts can still be persuasive. In fact, Wisconsin courts have specifically cited other state court decisions in incompatibility doctrine cases in the past.

b. Other Potential Compatibility Issues

If one position is not directly superior to the other, it's necessary to compare the two offices/

[54] 74 Op. Att'y Gen. 52 (1985), quoting 63A Am. Jur. 2d Public Officers and Employees § 78 (1984).
[55] League Opinion Compatibility of Offices 583.
[56] *Id*.
[57] *State v. Jones,* 130 Wis. 572 (1907); *Otradovec v. Green Bay,* 118 Wis. 2d 393 (Ct. App. 1984).
[58] *State v. Jones,* 130 Wis. 572 (1907).
[59] *Id*. at 574.
[60] *Id*. at 575.
[61] *Otradovec v. Green Bay,* 118 Wis. 2d 393 (Ct. App. 1984).
[62] *Id*. at 396-97.
[63] *Id*. at 397.
[64] *Russell v. Worcester Cty.,* 323 Mass. 717, 719-20, 84 N.E.2d 123, 123 (1949).

positions in question to other offices/positions that courts have already ruled are either compatible or incompatible. A survey of incompatibility doctrine cases around the country reveals that it is relatively rare for two offices/positions to be ruled incompatible where one of the offices cannot be considered superior to the other office/position in some way.[65] However, there have been some circumstances where courts have found incompatibility even without the element of superiority.

Two offices/positions may be incompatible if holding them together would create an incentive to act dishonestly. In *Woods v. Treadway,* Hawaii's highest court ruled that the positions of county supervisor and deputy district assessor were incompatible.[66] The court reasoned that the district assessor could potentially be tempted to inflate the value of property within their district to provide additional funds to the county which they would then be responsible for distributing as county supervisor.[67]

Courts appear to split on when potential contracts between different government units can create incompatibility issues. For example, New Jersey's highest court ruled that two offices/positions that both have the power to negotiate and/or approve a contract between the government units they represent may be incompatible regardless of whether the government units have or intend to contract on any matter.[68] In *McDonough,* the court held that the positions of mayor and county board member were incompatible because state law allowed the two government units to contract with each other on a variety of matters; allowing one person to serve in both capacities would put them "on both sides of the bargaining table."[69] On the other hand, the Michigan Supreme Court required an actual contract before there could be an incompatibility issue.[70] In *Macomb County v. Murphy,* the court ruled that the office of township trustee was not inherently incompatible with the position of personal property tax collector in the county treasurer's office. The court reasoned that, although the township could contract with the county for collection of its delinquent personal property taxes, it hadn't yet and didn't intend to.[71]

On the other hand, village offices are more likely to be compatible with positions in other government units if the position does not exercise any independent discretion. In *Brown v. Healey,* a New Jersey court ruled that the role of mayor was *compatible* with the position of county purchasing agent.[72] The court reasoned that the county purchasing agent was solely charged with carrying out the directives of the county's governing body and therefore exercised no discretion that could come into conflict with their duties as mayor.[73]

[65] *See* 3 McQuillin, Mun. Corp., §§ 12:112 and 12:114 (3d ed.) (includes a survey of incompatibility doctrine cases across the United States showing that the most common ground for incompatibility is direct superiority of one office/position over the other.)
[66] *Woods v. Treadway,* 31 Haw. 792 (1931).
[67] *Id*. at 795.
[68] *McDonough v. Roach,* 35 N.J. 153, 171 A.2d 307 (1961).
[69] *Id*. at 156.
[70] *See Macomb Cty. Prosecuting Atty. v. Murphy,* 464 Mich. 149, 627 N.W.2d 247 (2001).
[71] *Id*. at 165.
[72] *Brown v. Healey,* 76 N.J. Super. 371, 184 A.2d 666 (Super. Ct. Ch. Div. 1962).
[73] *Id*. at 377.

CHAPTER II

ROLES AND RESPONSIBILITIES

A. Introduction

Every village in Wisconsin depends on its officers, employees, boards, and commissions to function. From the village president who presides over board meetings to the clerk who maintains the village's records, each position plays a distinct role in keeping village government running effectively. Understanding these roles and the legal framework that defines them is essential for anyone involved in village government.

This chapter provides an overview of the major officers and governing bodies found in Wisconsin villages. It covers the powers and responsibilities of village presidents, village managers, boards of trustees, and individual trustees, as well as key appointed officers like the clerk and treasurer. The chapter also addresses how village positions are created, combined, and abolished, and provides an overview of the various boards and commissions that villages are required or authorized to establish. Throughout, the chapter identifies the relevant statutory provisions so that village officials can refer to the law directly when questions arise.

B. Village Presidents

Village presidents play an important role in the operation of village government. However, unlike mayors, village presidents are not the chief executive officers of their villages. Instead, village presidents can be thought of as more of a first among equals; vested with some discretionary powers but mainly non-discretionary administrative duties.

1. Role as Presiding Officer

The village president is both a member and the presiding officer of their village board.[1] The president has the right to make motions and participate in debate just like any other member.[2] As presiding officer, the president is responsible for conducting village board meetings in accordance with the village's rules of procedure. Most villages have adopted Robert's Rules of Order as their parliamentary authority, but many villages customize Robert's provisions to suit their particular needs. The role of the presiding officer under Robert's Rules of Order is covered in chapter IV (on parliamentary procedure).

2. Appointment and Removal Powers

Village presidents are often tasked with appointing a variety of village officers, board members, and commissioners. Many villages grant appointment authority by ordinance, but there are also several statutes that specifically require that appointments be made by the village president both with and without the confirmation of the village board. However, villages may require board confirmation for these and other appointments by ordinance.

Examples of positions that specifically require board approval include:

- Election officials.[3]

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[1] Wis. Stat. § 61.24.

[2] *Id*.

[3] Wis. Stat. § 7.30(4)(a).

• Harbor commissioners.[4]
• Library board members.[5]
• Plan commission members.[6]
• Zoning board of appeals members.[7]

Examples of positions that do not specifically require board approval include:
• Airport commissioners.[8]
• Police and fire commissioners.[9]
• Weed commissioner.[10]

Except as otherwise provided by statute, village presidents may remove any officer that they appointed at pleasure.[11]

3. Ministerial Duties
Village presidents are required to complete a variety of "ministerial" tasks. Ministerial tasks are acts that the president must perform and, if they fail to do so, aggrieved parties may bring a mandamus action to compel the president to complete these tasks.[12] These duties include:

• Signing village licenses and permits.[13]
• Signing contracts, conveyances, commissions, and other written instruments that were approved by the village board.[14]
• Signing every village order drawn on the treasury.[15]

C. Village Managers

Villages have the option to adopt the "village manager plan" under chapter 64, subchapter I of the Wisconsin statutes.[16] The main purpose of the village manager plan is to "separate the legislative and executive powers of village government."[17] This is accomplished primarily by creating a uniquely powerful position: the village manager. The village manager is responsible for the operation of the village according to the board's directives.

Village managers serve as the chief executive officer and head of village administration.[18] By default, village managers are vested with all the executive and administrative powers that are granted to the president, board of trustees, and every board, commission, and officer that existed when the village

[4] Wis. Stat. § 30.37(3).
[5] Wis. Stat. § 43.54(1)(a).
[6] Wis. Stat. §§ 62.23(1) & 61.35.
[7] Wis. Stat. §§ 62.23(7)(e) & 61.35.
[8] Wis. Stat. § 114.14(2)(a).
[9] Wis. Stat. § 61.65(3g)(d)3.
[10] Wis. Stat. § 66.0517(1).
[11] Wis. Stat. § 17.13(1).
[12] *Sharp v. City of Mauston*, 92 Wis. 629, 66 (1896).
[13] Wis. Stat. § 61.24, League Opinion Licensing and Regulation 336.
[14] Wis. Stat. § 61.50.
[15] Wis. Stat. § 61.24.
[16] Wis. Stat. § 64.15.
[17] Wis. Stat. § 64.07(1).
[18] Wis. Stat. § 64.11(1).

adopted the manager form of government.[19] Village managers also have the power to create and discontinue "minor administrative offices," but not departments, boards, and commissions.[20] Finally, village managers have the sole authority to appoint department heads, subordinate village officials, and all village employees without board confirmation and to remove them at pleasure.[21] Village managers are also specifically required to present monthly reports and accounts to the board.[22]

D. Board of Trustees

Under the standard president-board of trustees system, the board of trustees serves as the village's legislature and collectively exercises executive authority as well. The board of trustees is required to hold regular meetings but may choose when and how often to meet by enacting a bylaw provision.[23] Special meetings of the board may be called by any two trustees by filing a notice with the clerk.[24] The board has a variety of roles and responsibilities including legislative, quasi-judicial, supervisory, financial, and some executive/administrative duties.

The board of trustees has full control over the village's property, finances, and public services and is solely vested with the authority to exercise the village's constitutional and statutory home rule and police powers.[25] The village may exercise these powers through licensing, regulation, borrowing, taxing, appropriating, fining, imprisoning, confiscating, or any other means that is not prohibited by law.[26]

The board's authority includes, but is not limited to:

- Setting and interpreting rules governing its own proceedings;
- Directing the enforcement of village ordinances;
- Appointing and/or confirming administrative personnel and officers;
- Managing the village's financial operations;
- Appointing and/or confirming members of village boards;
- Conducting the village's intergovernmental affairs;
- Protecting the welfare of the village and its inhabitants;
- Providing community leadership; and
- Exercising all the powers of villages that the law does not otherwise delegate.

The board of trustees also has substantial authority to regulate its own members. The board may determine the number of trustees on the board by ordinance.[27] The board also has the power to determine whether its own members are qualified and duly elected.[28] If members don't attend meetings, the board may punish the members and/or direct law enforcement to find the absent members and bring them to the meeting.[29] At meetings, the board also has the power to fine members and attendees for disorderly behavior.

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[19] *Id*.
[20] Wis. Stat. §§ 64.10 & 64.11(2).
[21] Wis. Stat. § 64.11(3), League Opinion Governing Bodies 222.
[22] Wis. Stat. § 64.12.
[23] Wis. Stat. § 61.32.
[24] *Id*.
[25] Wis. Stat. § 61.34(1).
[26] *Id*.
[27] Wis. Stat. § 61.20(4).
[28] Wis. Stat. § 61.32.
[29] *Id*.

For more detailed information about the powers of villages, see chapter III on legislative and oversight powers.

E. The Role of Individual Trustees

Trustees are village leaders that are responsible for setting policy and charting the future of the village. However, the statutes provide very little detail about the powers and duties of trustees. This was by design. The lack of detail reflects the fact that trustees don't have any authority in their individual capacity. Their power comes entirely from their role as a member of the board of trustees. In that capacity, each trustee has full authority to make and second motions, participate in discussions, and vote on every matter before the board.

The law doesn't prohibit trustees from doing related activities outside of their role on the board. For example, village board members can and should function as a liaison between the village and the members' constituents. Trustees may engage with their constituents by, for example, holding listening sessions, writing newsletters, and/or surveying constituents.

However, certain actions remain outside the scope of the role as trustee. For example, individual village board members do not have supervisory authority over village employees and, as such, should refrain from directing village staff. While it's appropriate to request information from staff, village board members should not demand that certain information be provided or actions taken unless local law authorizes village board members to do so. Such actions stray into executive authority territory.

Because there are no statutory provisions offering direction for individual village board members, villages may want to consider establishing guidelines and/or developing materials to help village board members more fully understand their roles and responsibilities. This could include a code of conduct and a training/resource manual for new (and returning) village board members.

F. Other Village Officials

1. How They Are Selected

There are two ways that village officers may be selected: election or appointment. Only trustees, the village president and municipal judges are required to be elected by the village's voters.[30] If the village has a police and fire commission (or a person or committee that acts as one), then the police and fire chiefs are appointed by that body.[31] Also, the village may appoint a corporation or independent contractor as assessor, and that corporation or independent contractor must designate the person responsible for assessment.[32] For all other village officers, the board of trustees may choose one of five methods for their selection.[33]

1. Appointment by the village president;
2. Appointment by the village president subject to confirmation by the village board;
3. Appointment by the village board;

[30] Wis. Stat. § 61.197.
[31] Wis. Stat. §§ 61.65(3g)(d)2, 62.13(3).
[32] Wis. Stat. § 61.197(1)(f).
[33] Wis. Stat. § 61.197(1).

4. Election by the voters (can be required for clerk, treasurer, assessor, and constable by regular ordinance and for any officer by charter ordinance); or
5. Selection under any of the above methods from a specific list of eligible candidates.

The law also lays out several default rules. One of these rules is that village officers are selected in the same manner that they were selected on April 15, 1939, as long as the method in place at that time was one of the five listed above.[34] For village offices that fall under this default rule, the selection method may only be changed by charter ordinance under Wis. Stat. § 66.0101.[35]

2. Clerk

Clerks play a critical role in the operation of the village. They serve as the central record keeper, chief election officer, and administrative coordinator for many areas of village government, among other duties. Villages may require clerks to execute and file an official bond. If a village does not require a bond, then it must obtain a dishonesty insurance policy or other appropriate insurance policy to cover the clerk in an amount determined by the board.[36]

Clerks are often appointed as the designated records custodian for the village. But even if they aren't, the clerk is still required by law to have custody of every village record and to make those records available upon request according to Wisconsin's public records law.[37] Still, their duties extend far beyond records.

As the village's chief election officer, the clerk plays a critical role in running elections in the village. The clerk is responsible for buying and maintaining election equipment, preparing and publishing required notices of elections, equipping the polling places, distributing ballots, and training and supervising election officials.[38] For village elections, the clerk also prepares the ballot.[39] Outside of directly administering elections, the clerk also provides voter education and accommodations, manages voter registrations, administers absentee voting, and certifies petitions for direct legislation and nomination papers.[40]

The clerk also supports many essential functions of village government as an administrative coordinator. Clerks' duties can vary from village to village depending on what tasks are assigned by the board. However, clerks have a variety of administrative duties that are assigned by statute, including:

- Attending and taking minutes of the board of trustees meetings;[41]
- Recording ordinances and licenses and related necessary information;[42]
- Performing various tax and finance administrative tasks;[43]
- Accepting oaths of office and issuing certificates of appointment;[44] and
- Accepting resignations from trustees and the village president.[45]

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[34] Wis. Stat. § 61.197(2).
[35] *Id*.
[36] Wis. Stat. § 61.25.
[37] Wis. Stat. § 61.25(5).
[38] Wis. Stat. § 7.15.
[39] *Id*.
[40] *Id*.
[41] Wis. Stat. § 61.25(3).
[42] *Id*.
[43] Wis. Stat. §§ 61.25(3), (6), (8) & (10);
[44] Wis. Stat. § 61.21.
[45] Wis. Stat. § 17.01(13)(b).

Village clerks also serve as a default member of the village board of review and as the board's clerk.[46]

Although this section covers many of the clerk's duties, it does not cover them all. There are a wide variety of statutes that assign specific tasks to the clerk. For example, there are several statutes that require the clerk to report certain information to state departments (e.g., the number of liquor licenses to the Department of Revenue).

3. Treasurer

The treasurer is the village's primary financial officer. Treasurers are responsible for collecting village, school, county, and state taxes and receiving all other money that belongs to the village and depositing that money according to law and board direction.[47] The treasurer is also responsible for keeping detailed financial records.[48] The treasurer is also required to produce a report of the village's finances to the board of trustees at its last meeting before the annual election and at any other time the board requires it.[49]

If required by the village board, treasurers must execute and file an official bond. If the board does not require a bond, it must obtain a dishonesty insurance policy or other appropriate insurance covering the treasurer.[50] Treasurers must also execute the bond required for tax collection.[51]

4. Deputies

The statutes grant the village clerk and treasurer the power to appoint a deputy.[52] Each deputy serves under the direction of the appointing officer and is authorized to perform the duties of their appointing officer in the case of the officer's absence, disability, or vacancy.[53] Both deputies are appointed by their respective officers, but only the deputy treasurer requires confirmation by the village board.[54] The deputy clerk is entitled to receive the same compensation as the clerk when they are acting in the clerk's absence.[55] However, deputy treasurers receive compensation only as directed by the village board.[56]

5. De Facto Officers

If the election or appointment of an officer is found to be invalid or expired for some reason, that officer is usually considered a "de facto officer." A de facto officer is someone who "is in possession of an office and discharges its duties under color of authority."[57] Generally, actions of a de facto officer are valid as to the public and third parties. [58]

G. Creating Village Positions

1. Officer vs. Employee

When creating new village positions, it is important to understand whether the position will

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[46] Wis. Stat. § 70.46(1), (2).
[47] Wis. Stat. § 61.26(2), (3).
[48] Wis. Stat. § 61.26(5).
[49] Wis. Stat. § 61.26(6).
[50] Wis. Stat. § 61.26(1).
[51] Wis. Stat. §§ 61.26(10), 70.67.
[52] Wis. Stat. §§ 61.19 (clerk) and 61.261 (treasurer).
[53] *Id*.
[54] *Id*.
[55] Wis. Stat. § 61.19.
[56] Wis. Stat. § 61.261.
[57] *Schoonover v. City of Viroqua*, 245 Wis. 239, 244 (1944).
[58] *Walberg v. State*, 73 Wis. 2d 448, 463 (1976).

be considered an officer or an employee of the village. There is no complete list of factors for distinguishing a village officer from a village employee. However, a few of the more significant factors that indicate a person is a village officer include:

1. The person is serving in a statutory village office listed in Wis. Stat. § 61.19 such as village president, treasurer, or clerk or is serving on a statutory commission, or board such as the police and fire commission, board of zoning appeals, or planning commission;
2. The person is serving in a position or capacity listed in the village's ordinances as a village office; or
3. The person filed an oath of office.

Elected or appointed village officers, including members of boards and commissions, may not be subject to the same employment regulations applicable to village employees.[59] Moreover, status as a village officer may affect the timing of salary changes, how the person resigns, and how that person is disciplined or removed from office. It also impacts how a vacancy in the office or position is subsequently filled. Wisconsin Stat. §§ 17.13 and 17.16 govern the removal of village officers such as village trustees, and members of village boards and commissions. Wisconsin Stat. § 17.01 specifies how village officers may resign from office.

2. Administrator

One of the most common positions created by Wisconsin villages is the position of the village administrator. Administrators are not mentioned at all in the Wisconsin statutes. Instead, they are entirely created by village ordinance. As a result, what these positions do varies widely depending on the choices that a given village makes. Villages may grant a variety of powers and responsibilities to the administrator.

There are several questions that a village must answer if they want to create a village administrator position. The village must decide who appoints the administrator, if the appointment will require confirmation by the board, if they will be designated as an "officer" of the village, who they will report to, who in the village will report to *them,* and what responsibilities they will have. Common responsibilities include:

1. Serving as the village's chief administrative officer under the general direction and policies of the board of trustees;
2. Implementing legislative actions;
3. Carrying out directives of the village board;
4. Supervising and coordinating day-to-day activities of village departments;
5. Helping to develop agendas for board of trustees meetings;
6. Preparing supporting documents and meetings;
7. Reporting on operations and making recommendations for improvement;
8. Preparing the annual budget; and
9. Serving as the village personnel officer.

[59] See 29 U.S.C. § 203(e)(2)(C).

H. Abolishing or Combining Village Positions

Every village office except for president and trustee may be combined with another office or abolished. The positions of police and fire chief must exist so long as there is a police and fire department, but villages may choose to abolish these departments by contracting for these services.[60] All other officer positions may be abolished or consolidated by charter ordinance under Wis. Stat. § 66.0101.[61]

I. Village Boards/Committees/Commissions

1. Mandatory vs. Optional Boards

The statutes provide for several village boards and commissions. Some are mandatory while others are optional. Optional boards and commissions may be created at the discretion of the board of trustees or must be created when the village wants to engage in a particular activity. Typically, boards and commissions are established to supervise and manage special village activities. The membership, organization, and powers of village boards and commissions are set forth in the statutes authorizing their existence or creation.

Villages are not limited to statutory boards and commissions, though. Villages may also establish other boards, commissions, or committees by ordinance that are not contemplated by the statutes and are designed to address unique local concerns and interests.

2. List of Mandatory Village Boards and Commissions

- Board of Police and Fire Commissioners if the village has its own police department and a population of at least 5,500 population.[62]
- Board of Review.[63]
- Zoning Board of Appeals if the village enacts any zoning ordinance.[64]
- Board of Health for villages in Milwaukee County.[65]

3. List of Optional Village Boards and Commissions

- Plan Commission.[66]
- Library Board.[67]
- Board of Utility Commissioners.[68]
- Board of Park Commissioners.[69]
- Board of Public Works.[70]
- Museum Board.[71]
- Ethics Board.[72]

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[60] Wis. Stat. § 61.65(1)(a).
[61] Wis. Stat. § 61.195.
[62] Wis. Stat. § 61.65(1)(b)2.
[63] Wis. Stat. § 70.46.
[64] Wis. Stat. §§ 62.23(7)(e), 61.35.
[65] Wis. Stat. § 251.02(2).
[66] Wis. Stat. §§ 62.23(1), 61.35.
[67] Wis. Stat. § 43.58.
[68] Wis. Stat. § 66.0805.
[69] Wis. Stat. § 27.08.
[70] Wis. Stat. § 61.54.
[71] Wis. Stat. §§ 229.12 and 229.19.
[72] Wis. Stat. § 19.59(3)(d).

- Board of Estimates.[73]
- Airport Commission.[74]
- Board of Harbor Commissioners.[75]
- Civil Service Commission.[76]
- Board of Public Land Commissioners.[77]
- Housing Authority Board of Commissioners.[78]
- Redevelopment Board of Commissioners.[79]
- Local Exposition District.[80]

4. Police and Fire Commission

All villages that have a police department and a population of 5,500 or more must have a board of police and fire commissioners (PFC).[81] The composition, method of selection, duties and responsibilities of the PFC are established by state law and may not be altered by local enactment.

The PFC is a civil service body with exclusive jurisdiction over hiring, promotions, and the discipline of police officers and firefighters. Its primary functions are to provide for the selection of police and fire employees, including the chiefs of the departments, and to review promotional actions of the chiefs and disciplinary charges brought by any "aggrieved person."[82] It is autonomous from the board of trustees with respect to its areas of jurisdiction.

However, the PFC does not have authority over the day-to-day operation of the police and fire departments unless it has been granted optional powers by the voters at a referendum under § 61.65(3g)(d)2. A commission that has been granted optional powers has additional authority to:

- Organize and supervise the fire and police departments;
- Prescribe rules and regulations for controlling and managing the departments;
- Contract for and purchase all necessary apparatus and supplies for the use of the departments except for the "erection and control" of police and fire stations; and
- Audit all bills, claims and expenses of the fire and police departments before such bills are paid by the village treasurer.

Only the electors at a referendum may grant optional powers. Placement on the ballot requires filing of a petition signed by not less than 20 percent of the total vote cast in the village for governor at the last general election. About fifteen police and fire commissions statewide have been granted optional powers.

Villages without a PFC typically may not discipline police officers or a police chief unless they establish an independent body or person to act in place of the PFC.[83]

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[73] Wis. Stat. §§ 65.01 and 65.02(3).
[74] Wis. Stat. § 114.14(2).
[75] Wis. Stat. § 30.37.
[76] Wis. Stat. § 66.0509(4).
[77] Wis. Stat. § 27.11.
[78] Wis. Stat. § 66.1201(5).
[79] Wis. Stat. § 66.1333(3).
[80] Wis. Stat. § 229.42.
[81] Wis. Stat. § 61.65(1)(b)2.
[82] Wis. Stat. §§ 62.13(5)(b), 61.65(3g)(d).
[83] Wis. Stat. § 61.65(1)(am).

5. Board of Review
All villages must have a board of review. The board is a quasi-judicial (i.e., court-like) body that hears and decides appeals by property owners dissatisfied with the value placed upon their property by the village assessor for property tax purposes.

The board of review consists of the president, clerk, and any other officers (except assessors) that are designated by the board of trustees by ordinance.[84]

Boards of review have the following three primary duties under Wis. Stat. §§ 70.46–48:
1. Adjust the assessor's valuation of a parcel when the assessment has been proven incorrect by sworn testimony at a hearing before the board;
2. Correct any errors or omissions in the descriptions or computations found on the assessment roll; and
3. Check the assessment roll for omitted property and double assessments.

6. Plan Commission

a. Membership
All the provisions of Wis. Stat. § 62.23 apply to villages through Wis. Stat. § 61.35. This means that the village board may, by ordinance, provide for any size and membership of the commission that it sees fit to establish. Absent an ordinance establishing different membership, the statutes provide that the plan commission shall consist of seven members appointed by the village president, and the village president may choose the commission's presiding officer. In addition, the village president may appoint himself or herself and other village elected or appointed officials to the plan commission. However, the commission must have at least three citizen members who are not village officials.[85]

In villages with a military base or installation with at least 200 assigned military personnel, or that contains at least 2,000 acres, the base's commanding officer may appoint a nonvoting member to the plan commission.

Appointments to the commission are to be made in April for three-year terms that expire in April. Appointments may be made at any other time if a vacancy occurs during the middle of a commissioner's term.[86]

In villages, appointments to the plan commission are not subject to confirmation by the village board unless the village board has adopted an ordinance providing for board confirmation of such appointments.

b. Duties
Plan commissions play an important role related to land use planning and zoning. The primary function of a plan commission is developing and recommending the initial adoption or amendment of a comprehensive plan. They may also be delegated many other related responsibilities.

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[84] Wis. Stat. § 70.46(1).
[85] Wis. Stat. §§ 62.23(1)(a), 61.35.
[86] Wis. Stat. §§ 62.23(1)(d), 61.35.

Villages must establish a "planning agency" such as a plan commission before they may adopt a local subdivision ordinance.[87] At a minimum, plats must be referred to the planning agency for consideration prior to final action by the village board.[88] In addition, the village board may delegate the power to approve preliminary and final plats to the plan commission.

Plan commissions are extensively involved in zoning matters. When a village chooses to enact zoning regulations, the plan commission is required to prepare the ordinance and recommend adoption to the village board. Plan commissions are also required to review and provide recommendations on amendments to a zoning ordinance. Plan commissions are also involved in special zoning issues, such as extraterritorial zoning and shoreland and wetland zoning.

For a complete description of plan commission functions and duties, see Wis. Stat. § 62.23(1). For a discussion of the role of the plan commission in village government, see League Legal Opinion Zoning 509.

7. Zoning Board of Appeals

Any village that has enacted a zoning ordinance must have a zoning board of appeals. This board consists of five members appointed by the village president and subject to confirmation by the village board for terms of three years. The president must designate one of the members as chairperson. The president shall appoint two alternate members who shall have full power to act when a regular member of the board is absent or has refused to vote because of a conflict of interest under Wis. Stat. § 62.23(7)(e)2.

The organization, general authority, and procedures of boards of appeals are described in Wis. Stat. § 62.23(7)(e). The zoning board of appeals serves as an appellate and review body for decisions of the village zoning administrator or building inspector. The board is authorized to grant variances to the terms of a zoning ordinance. In addition, the board may be granted authority to approve special exceptions or conditional uses in accordance with the provisions of the local zoning ordinance.[89]

8. Library Board

Villages that establish a public library must establish a library board to administer them. The establishment and operation of public libraries is governed by Wis. Stat. Ch. 43. The provisions most relevant to village library boards are found in Wis. Stat. §§ 43.52 (village libraries), 43.54 (village library board composition), and 43.58 (powers and duties of library boards).

a. Composition

Village library boards are composed of five members, although two additional members may be appointed so that the board has seven members.[90] Most members of the library board must be residents of the village, but up to two members may live outside the village.[91] Up to five additional members may be appointed to a library board under Wis. Stat. § 43.60(3).[92]

[87] Wis. Stat. § 236.45(2)(ac).
[88] Wis. Stat. § 236.45(4).
[89] Wis. Stat. §§ 62.23(7)(e)7, 61.35.
[90] Wis. Stat. § 43.54(1)(a).
[91] *Id.*
[92] *See* Wis. Stat. § 43.54(1).

b. Appointments and Terms

The village president, with the approval of the village board, appoints members of the library board. Members are appointed for three-year staggered terms starting the third Tuesday in April in the year of appointment.[93] One member of the library board must be a school district administrator or his or her representative. No more than one member of the village board may serve on the library board at any one time.[94]

c. Powers and Duties

The library board has exclusive control of the expenditure of all moneys appropriated by the governing body or donated to the library fund.[95] Although the library board has exclusive control of the moneys appropriated for the library fund, the board does not make actual disbursements from the appropriation. Rather, the board audits and approves vouchers for expenditures and forwards these to the appropriate village financial officer, who follows the ordinary procedure for disbursing village funds under Wis. Stat. § 66.0607.[96] The library board is authorized to receive, manage, and dispose of gifts and donations for library purposes.[97] When a gift or donation is made to a public library, library board members are considered special trustees of such property.

The library board has exclusive control and custody of all lands, buildings, and other property given or granted to, or otherwise acquired or leased by, the village for library purposes.[98] The library board may, if authorized by the village board, have exclusive control over the purchase of a site and the erection of a library building.[99] Otherwise, the village board has the sole right to purchase or acquire sites or erect buildings for library purposes.[100] However, in the case of a gift for a library building, the library board has the exclusive right to select and contract for the purchase of a site.[101]

The library board has control over the hiring, firing, and fixing of wages of library employees. However, the village board retains some control over the number of library employees and compensation paid to such employees by virtue of the fact that they control the purse strings.

[93] Wis. Stat. § 43.54(1)(b).
[94] Wis. Stat. § 43.54(1)(c).
[95] Wis. Stat. § 43.58(1).
[96] Wis. Stat. § 43.58(2).
[97] Wis. Stat. § 43.58(7).
[98] Wis. Stat. § 43.58(1).
[99] Wis. Stat. § 43.58(1).
[100] Wis. Stat. § 43.54(3).
[101] Wis. Stat. § 43.58(7)(e).

CHAPTER III

VILLAGE LEGISLATIVE AND OVERSIGHT POWERS

A. Legislation and Ordinances

1. Hierarchy of Laws

Municipalities operate within a hierarchy of laws. At the top of this hierarchy is federal law including the United States Constitution, federal statutes, and regulations. Below these laws are state laws including the Wisconsin Constitution, statutes, and regulations in that order.

At the local level, a charter ordinance is the strongest type of village law. Among other things, a charter ordinance allows a village to change or "opt out" of certain state laws that deal with local affairs. Because of its importance, a charter ordinance must be approved by two-thirds of the village board and is subject to a possible public referendum.

Below charter ordinances, villages use two other types of enactments: ordinances and resolutions.

An ordinance is a law of the village. Ordinances regulate conduct, establish ongoing policies, and carry the force of law within the village. They are permanent in nature and often enforceable by penalty.

Resolutions, by contrast, are less permanent enactments. They typically deal with internal administration, temporary matters, or statements of position. Unlike ordinances, resolutions don't create enforceable laws. Nonetheless, resolutions can have binding legal effects. For example, changing from a village to a city,[1] rejecting bids on public construction,[2] and creating a tax incremental finance district[3] all require adoption of a resolution.

Under this hierarchy, "higher" order laws control over conflicting "lower" order laws. This means you can only change a law with a law of equal or higher order. This is called the "rule of equal dignity." For example, a charter ordinance can only be amended by another charter ordinance, and an ordinance can only be amended by a charter ordinance or an ordinance.

2. Home Rule & Police Powers

Home rule is a defining feature of municipalities. Unlike towns, which may only act as state statutes expressly permit, municipalities are able to act without explicit statutory authorization. Municipal home rule derives from the state constitution and state statute. It gives villages broad authority to shape both the structure of their government and the nature and scope of local laws.

a. Constitutional Home Rule

The Wisconsin constitution authorizes villages to "determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village."[4]

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[1] Wis. Stat. § 61.189.
[2] Wis. Stat. § 62.15(5).
[3] Wis. Stat. § 66.1105(4)(gm).
[4] Wis. Const., Art. XI, sec. 3.

The line between a "local affair" and a "statewide concern" is difficult to draw. The Wisconsin Supreme court has rightly described this distinction as "problematically vague."[5] As a practical matter, under constitutional home rule, villages retain the ability to opt out of certain local governance statutes – e.g., changing board members' terms of office and combining certain statutory offices. Beyond that, efforts to exercise constitutional home rule are somewhat fraught. State supreme court cases have dramatically limited the scope and power of this constitutional provision. As a result, most exercises of home rule by municipalities are enacted under statutory home rule authority.

b. Statutory Home Rule

The principal statutory grant of home rule authority to villages is found in Wis. Stat. § 61.34. Unlike constitutional home rule, statutory home rule is not limited to local affairs and government. The statute grants villages the power to act for the government and the good order of the municipality, for its commercial benefit, and for the health safety and welfare of the public. The village board can carry out this power by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. Courts have said that this statutory grant of power confers upon a village "all the powers that the legislature could by any possibility confer upon it."[6] This broad power to act for the general good is often referred to as the village's police power.

When exercising statutory home rule powers, municipalities may legislate on matters of statewide concern. This means that villages can enact ordinances in the same field and on the same subject covered by state legislation. However, these ordinances cannot conflict with state legislation.

A fuller discussion of the legal details and history of home rule can be found in League Opinion Home Rule 59 R2.

3. State Statutory Preemption

State legislation is a superior authority to local ordinances. If there is a conflict between the two, the state statute will preempt the ordinance. Thus, a municipal ordinance cannot allow what the statutes prohibit or authorize what the statutes allow. However, the conflict between an ordinance and a state statue need not be so direct for the ordinance to be preempted.

When a local regulation affects a matter of statewide concern, the supreme court has created a four-part test to determine whether an ordinance is preempted.[7] If any one of the following is true, the ordinance will fail:

- the legislature has expressly withdrawn municipalities' power to act;
- the ordinance logically conflicts with the state legislation;
- the ordinance defeats the purpose of the state legislation; or
- the ordinance goes against the spirit of the state legislation.

There are numerous areas where state statutes expressly withdraw or limit municipal authority. These statutes typically contain clear language such as "may not enact or enforce an ordinance." Examples of

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[5] *Madison Teachers, Inc. v. Walker,* 2014 WI 99, ¶113.
[6] *Hack v. Mineral Point,* 203 Wis. 215, 219 (1930).
[7] *DeRosso Landfill Co. v City of Oak Creek,* 200 Wis. 2d 642, 651 (1996).

express preemption include levying income tax,[8] certain regulation of landlords,[9] and siting of cell towers.[10]

A common and closely related limitation on municipal authority occurs when the statutes require local ordinances to be “in strict conformity with” state statutes. This allows villages to adopt state standards, so that violations can be cited as ordinance violations, but it does not allow local deviation. For example, state statutes require local traffic regulations to be in strict conformity with the rules of the Department of Transportation.[11]

4. Adopting and Amending Ordinances

a. Charter Ordinances

A village charter is essentially the constitution of the village. Wisconsin Stat. Ch. 61 functions as the charter for villages. Along with Chapter 66, these statutes lay out the structure and procedures for village government. The structure and procedures of village government are perhaps the clearest examples of matters of a “local concern.” As a result, under constitutional home rule, villages may opt out of some of these laws. However, to do that, a village must use a charter ordinance.

Wisconsin Stat. § 66.0101 establishes the requirements for adopting a charter ordinance. A charter ordinance must clearly state that it is a charter ordinance and must identify the portion of the charter or state statute that the village is modifying or opting out of. It must be adopted by a two-thirds vote of the total membership of the board rather than just those present.[12] Once the board adopts the ordinance, it must be published as a Class 1 notice. This publication triggers a 60-day period during which village electors may petition for a referendum. If no petition is filed, the charter ordinance takes effect on the 61st day after publication. If a petition is filed, signed by at least 7% of the voters who cast ballots for governor in the last general election, the ordinance must be submitted to voters for approval.[13] A charter ordinance submitted to referendum only becomes effective if a majority of voters approve it. If rejected, it has no effect.

Once a charter ordinance is adopted, the clerk must record it in a permanent book kept for that purpose and must also file a certified copy of the charter ordinance with the secretary of state.

Charter ordinances and regular ordinances may also be adopted by voter initiative. This is referred to as direct legislation. For more information on direct legislation, see League Opinions Ordinances & Resolutions 444 and 488.

b. Regular Ordinances

Outside of certain specific situations like adopting the budget or making a zoning change, state statutes do not dictate a procedure for adopting ordinances. A common misunderstanding is that a proposed ordinance must be read a certain number of times before adoption. There is no state law requiring this. However, villages are free to adopt their own local procedural requirements for adopting ordinances.

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[8] Wis. Stat § 66.0611.
[9] Wis. Stat. § 66.0104.
[10] Wis. Stat. § 66.0404(4).
[11] Wis. Stat. § 349.06.
[12] Wis. Stat. § 66.0101(2).
[13] Wis. Stat. § 66.0101(5).

1. Public Hearings
Public hearings serve several important functions. Among other things, they inform the public, allow residents to comment, and serve as a means of gauging public support and need. The village board is free to hold a public hearing on any matter. There is no general requirement to hold a public hearing prior to adopting an ordinance, however there are several specific instances where state statutes require a public hearing. For example, a public hearing must be held before adopting the budget, before a zoning ordinance is adopted or amended, and prior to enacting or amending an ordinance imposing impact fees on a developer.[14]

2. Publication
Only village ordinances that impose penalties or forfeitures must be published. They must be published as class 1 notices (one insertion), and take effect on the day after publication, unless a later date is prescribed.[15] If there is no eligible paper published in the village, the board may direct other publication or posting in at least three public places likely to give notice to affected persons or in at least one public place likely to give notice to affected persons *and* on the village's website. In this circumstance, penalty ordinances take effect the day after the village clerk has filed and recorded the proof of posting unless a later date is prescribed.[16]

Rather than publishing the entire ordinance, villages can opt to publish a notice summarizing a newly enacted ordinance. Among other things, the notice must contain the date of enactment, a summary of the ordinance's subject matter and main points, and information regarding where the full text of the ordinance may be viewed.[17]

See League Opinion Publication 125R2 for fuller discussion of publication requirements; Publications 126 contains model summary notice format.

5. Public Purpose Doctrine
The Public Purpose Doctrine serves as both a guide and a boundary on how local governments may use their spending authority. Simply put, the doctrine requires that the expenditure of public funds be for a public purpose.

Since local governments are often in the best position to determine the needs of the public, municipalities have traditionally been given wide discretion to determine whether a public expenditure is warranted. In evaluating an expenditure, a court will give the village board's determination great weight and will conclude that no public purpose exists only if it is "clear and palpable that there can be no benefit to the public."[18]

6. Legislative vs. Quasi-Judicial Decisions
Village board decisions fall into two distinct and different baskets; legislative and quasi-judicial. It is important to understand the difference. Enacting an ordinance is a legislative decision, and elected officials have broad latitude in making these decisions. Quasi-judicial decisions are fundamentally

[14] Wis. Stat. §§ 65.90(3), 62.23(7)(d), 66.0617(3).
[15] Wis. Stat. §§ 985.05(2), 985.02, 61.50(1).
[16] Wis. Stat. § 61.50(1).
[17] Wis. Stat. § 61.50 (3).
[18] *Town of Beloit v. County of Rock,* 2003 WI 8, ¶ 28.

different. These decisions do not create policy, rather they call for applying existing laws to a particular set of facts. Common examples of quasi-judicial decisions include zoning variances, tax assessment appeals and revocation/suspensions of alcohol licenses.

Quasi-judicial decisions more closely resemble judicial decisions and thus bring with them important safeguards:

- Decisions should be confined to the record created. Body members should not conduct independent investigations, seek opinions on the matter, or engage in conversations with people on one side of the issue without the other side present (called *ex parte* communications).
- The applicant should be given notice and an opportunity to be heard.
- Governmental body members may not "pre-judge" decisions or give the impression that they have. They must be fair and impartial; decisions should be made with an open mind based on the law and the legally significant facts demonstrated.[19]

See League Opinions Governing Bodies 351R1 and Powers of Municipalities 941 for fuller discussion of and tips on quasi-judicial decisions.

B. Village Oversight and Administration

1. Directing Enforcement of Village Ordinances

The village board's role in ordinance enforcement is to oversee the process. Typically, the board establishes and enacts ordinances and then delegates the day-to-day enforcement to specific officers and employees who are responsible for investigating violations and ensuring compliance. However, among the president's statutory duties is "seeing that the ordinances are faithfully obeyed." This does not change the board's role, nor does it grant the president broad executive power.

2. Managing Village Property and Public Services

The village board exercises general supervision and control over all property, assets, and public services of the village. This includes managing village-owned real and personal property, including buildings, parks, streets, utilities, and equipment. The board may buy, lease, or sell property.

The board is further responsible for providing and maintaining municipal services. Depending on the size of the village, these include things like police and fire protection and public works operations. The board may establish departments or enter into contracts to ensure the effective and economical delivery of services.

3. Supervising Municipal Employees and Officers

The village board enacts policies that help to guide the actions of staff members. Those staff members in turn take on the responsibility of implementing the board's decisions. It is important that the village board understand its role and respect the role staff plays in the day-to-day functions of the village.

The authority for supervising employees and officers lies with the village board as a collective body. Individual governing body members do not have supervisory authority over municipal employees

[19] *Marris v. Cedarburg*, 176 Wis. 2d 14, 20 (1993).

and therefore should refrain from directing municipal staff. While it's not inappropriate to request information from staff, governing body members should not demand that certain information be provided or that certain actions be taken – such actions stray into executive authority territory.

The board may determine how supervision is carried out — e.g., whether directly by the board, through the village president, or via an appointed village administrator or other supervisory official. Delegation does not remove the board's ultimate authority; instead, it specifies who acts on the board's behalf. As a practical matter, in many villages the village president has more regular contact with the staff than other trustees and serves as a bridge between staff and the village board.

Villages may want to consider establishing guidelines and/or developing materials to help governing body members more fully understand their roles and responsibilities. This could include a code of conduct and a training/resource manual for new (and returning) governing body members.

4. Removal and Suspension of Officials

a. Elected Officers

Elected village officers may be removed by majority vote of all members of the village board for "continued physical inability to perform the duties of office or gross neglect of duty."[20] State statutes do not prescribe the procedures a board must follow when exercising this authority. However, the procedure must be in accord with federal and state constitutional guarantees of due process. League legal staff recommends that village boards follow the procedure proscribed for removal "for cause" found in Wis Stat. § 17.16. This process satisfies the minimum due process rights of the officer and many of its features can be readily fashioned to apply to a removal proceeding instituted by the board.

b. Appointed Officers

Generally, appointed village officers may be removed, at pleasure, by a majority vote of all the members of the board.[21] Police and fire chiefs are the exception. In villages with a police and fire commission (PFC), police and fire chiefs may only be removed by the PFC for just cause.[22] In villages under 4,000 without a PFC, the police chief and police officers may only be removed by a specially appointed person or committee unless an employment contract or collective bargaining agreement provides otherwise.[23]

Elected and appointed village officers may also be removed "for cause" by the judge of a circuit court of the county in which the village is situated.[24]

See League Opinion Officers 767R2 for a more detailed look at the procedures and issues regarding removal of officers.

5. Resignation

State statutes prescribe the procedure for municipal officers to resign. Resignations must be made in

[20] Wis. Stat § 17.13(2).
[21] Wis. Stat. § 17.13(1).
[22] Wis. Stat. § 62.13(3).
[23] Wis. Stat. § 62.13(6m).
[24] Wis. Stat. § 17.13(3).

writing. All village officers, except the village clerk, must deliver resignations to the village board by presenting the resignation to the village clerk. A resigning village clerk must present their resignation to the village president.[25]

A resignation may be either immediate or prospective; it takes effect "at the time indicated in the written resignation."[26] Generally, if no time is indicated, a resignation takes effect immediately upon delivery.

The Wisconsin Court of Appeals has held that resignations may be made on a conditional basis. In *Ortin v. Schuett,*[27] an elected town treasurer submitted a letter of resignation indicating that the resignation would take effect on November 1, conditioned upon the board authorizing an independent audit to clear her name. On November 6, the treasurer wrote another letter to the board withdrawing her resignation, noting that November 1 had passed without action being taken on the audit. The court held that the treasurer's resignation never took effect because the board did not order an audit. According to the court, an officer may indicate that a resignation will be effective when certain specified conditions are met. The public office holder remains in office until those conditions are met.

There is no need for the village board or officer to whom a resignation is presented to formally accept the resignation. The resignation takes effect at the time indicated in the resignation or immediately upon delivery regardless of whether it has been officially accepted by the body or officer to whom it is addressed.[28]

Once a resignation takes effect, the officer cannot withdraw it. It should be noted, however, that the village board may reappoint a person who resigns from the governing body to fill the vacancy created by the resignation if the resigning officer later changes his or her mind. Also, any officer may withdraw a prospective resignation before it takes effect.

6. Vacancies

a. Creation of Vacancies

Under common law, acceptance of an incompatible public office creates a vacancy. See Chapter 1 for a discussion of the incompatibility doctrine. In addition, state statutes list the circumstances under which an office becomes vacant. They include, among other things:

- Death
- Resignation
- Removal
- If the office is elective, ceasing to be an inhabitant of the village from which elected
- Conviction for treason, felony or any crime punishable by imprisonment for one year or more, or of any offense involving a violation of the officer's official oath
- Neglect or refusal to take and file an official oath within time prescribed by law[29]

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[25] Wis. Stat. § 17.01.
[26] Wis. Stat. § 17.01(13).
[27] *Ortin v. Schuett*, 157 Wis. 2d 415 (Ct. App. 1990).
[28] 11 Op. Att'y Gen. 706 (1922).
[29] Wis. Stat. § 17.03.

b. Filling Vacancies

1. Elective Office

Except in the case of recalls, vacancies in any elective village office may remain vacant, or may be filled by special election or by appointment by a majority of the members of the village board. An appointment can be for the remainder of the unexpired term or until a special election is held.[30] The statutes do not set forth a procedure by which the appointments must be made. Villages may determine their own procedure for nominating candidates and selecting a person to fill the vacancy. It should be emphasized, however, that the governing body cannot fill the vacancy by secret ballot. Secret ballots may be used only for the limited purpose of electing the officers of the governing body.[31]

For information on recalls see League Opinion Elections 605 R1.

2. Appointive Office

A vacancy in an appointive office shall be filled in the same manner as the original appointment.[32] If the vacancy is in the office of municipal judge, the provisions of Wis. Stat. §§ 800.06(3) and 8.50(4)(fm) apply.

3. Temporary Vacancies

State law provides that if any municipal officer other than a trustee "is absent or temporarily incapacitated from any cause," the village board may appoint a person to discharge the officer's duties until the officer returns or until the disability is removed. If a trustee is "temporarily incapacitated because of physical or mental disability," the village board may appoint a person to discharge the trustee's duties until the disability is removed.[33]

C. Conducting Intergovernmental Affairs

Intergovernmental cooperation plays an important role in local government administration. The general grant of authority to enter into intergovernmental agreements is found in Wis. Stat. § 66.0301. It provides that unless a more specific statute authorizing cooperation prohibits it, a village may contract with the state, other local governments or federally recognized Indian tribes ". . . for the receipt or furnishing of services or the joint exercise of any power or duty. . ." This is very broad authority. The primary limit on § 66.0301 contracting authority is that it cannot create a power for one party that the party does not have independent of the agreement. Thus, if the parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties.[34] Aside from that, the goals that might be accomplished by a § 66.0301 agreement are limited only by the creativity of municipal officials and the ability to find a partner.

There are no statutorily mandated procedures that a municipality must satisfy before executing a basic intergovernmental agreement. As with most contracts, the agreement merely requires approval by the

[30] Wis. Stat. § 17.24.
[31] Wis. Stat. § 19.88 (1).
[32] Wis. Stat. § 17.24.
[33] Wis. Stat. § 61.23(1).
[34] Wis. Stat. § 66.0301(2).

governing body or an authorized official or committee. There are also no specific requirements for the administration of an agreement. The parties enjoy substantial flexibility in the manner and means of administering it.

CHAPTER IV

PARLIAMENTARY PROCEDURE

A. Introduction

Parliamentary procedure is a set of rules and customs that govern the meetings of a deliberative body. Deliberative bodies can include both the actual governing body of a municipality and other governmental bodies such as municipal committees, commissions, and boards.

At its core, parliamentary procedure exists to empower a group of people to take action collectively, whether that means delegating authority to leadership or retaining direct control over decisions. The fundamental idea is that a deliberative body is not just a group of individuals, it is a separate entity with substantial freedom to take any action that it believes to be in its best interest, limited only by applicable laws and its own rules.

There are several manuals of parliamentary procedure, but the most commonly used manual by far among Wisconsin's municipalities is *Robert's Rules of Order*. For that reason, this chapter focuses exclusively on Robert's Rules. Understanding the purpose behind the rules is the key to unlocking Robert's true potential as a framework for fair and civil governance.

B. Robert's Rules of Order

Robert's Rules of Order was developed by Henry M. Robert and first published in 1876. The book is now in its 12th edition, updated and maintained by the Robert's Rules Association. It is a big book, spanning more than 700 pages, and contains the wisdom of hundreds of years of parliamentary practice. It is designed to address a wide range of issues, both common and rare.

The length of the book is a feature, not a bug. It addresses parliamentary issues objectively and with the goal of maximizing the freedom of the body. Without a comprehensive parliamentary authority, rules tend to be made arbitrarily or at the discretion of leaders rather than the body as a whole.

But no one needs to know all of it. The book is designed to be referenced, not digested. A working familiarity with roughly 20% of the material will cover the vast majority of situations that arise in practice. Nobody should be intimidated by the size of the book. The goal is to strategize, not memorize.

C. When Does Robert's Rules Apply?

Robert's Rules of Order only applies if it has been formally adopted. There is no Wisconsin statute that requires a municipality to adopt any particular manual of parliamentary procedure, much less Robert's Rules specifically. Wisconsin Stat. § 61.32 grants village boards the power to adopt their own rules of procedure.

Robert's Rules is typically applied to villages by ordinance. Importantly, the governing body retains full authority to modify Robert's Rules to suit its needs. Many villages adopt procedural ordinances that adjust specific provisions. Common examples include changing the default speaking time for debate, providing for remote meeting participation, and establishing a process for setting the agenda (something

Robert's Rules does not contemplate in the context of Wisconsin's open meetings law). However, if an ordinance simply states that Robert's Rules shall apply, then the entire book applies, as is, unless a specific provision is contradicted by state or local law. Also, unless the adopting ordinance specifies a particular edition, the most recent edition of Robert's Rules governs.[1]

That said, state statutes do provide certain procedural requirements that may contradict Robert's Rules on specific points. Examples include provisions governing quorum, the presiding officer, the calling of special meetings, vote thresholds for particular actions, and other special procedures such as public hearings. Where state law and Robert's Rules conflict, state law controls. These topics are addressed in greater detail in other sections of this chapter and throughout the handbook.

D. Quorum

The first thing a deliberative body needs to conduct business is a quorum. A quorum is the minimum number of members required to be present for the body to take action.[2] A quorum must be maintained throughout the entire meeting, not just at the start. All business transacted without a quorum present is null and void.[3]

The quorum threshold depends on what kind of body it is. Wisconsin statutes set the quorum threshold for some governmental bodies. For example, the statutes state that the quorum for village boards is a majority of the members elect.[4] But not every village governmental body has a statutorily defined quorum. In those cases, the village board may set the quorum by ordinance. If it does not, the body may set its own. Absent any of these, the default under Robert's Rules is a majority.[5]

Once a quorum is present, the body does not need unanimous agreement to act. Only a vote by a majority of the quorum is required to pass a motion.[6] For example, consider a village board with seven trustees. For this board, quorum would be four members (a majority of eleven). If exactly four members are present, only three votes are needed to pass a motion if everyone voted. That means a seven member village board may take action with the support of just three of its members. This number could even be lower if some members abstain, as these members still count for quorum.[7]

There is almost nothing that a deliberative body may do when a quorum is not present. Villages may only adjourn.[8]

E. Role of the Presiding Officer

1. Who Is the Presiding Officer?

For many statutory governmental bodies, the statutes determine who the presiding officer is or how they are selected. For example, the village president is designated as the presiding officer of the village

[1] *Robert's Rules of Order Newly Revised,* 12th Edition ("RONR") page 23.
[2] RONR 40:1.
[3] RONR 40:6.
[4] Wis. Stat. § 61.32.
[5] RONR 40:2.
[6] RONR 40:1; *State ex rel. Burdick v. Tyrrell,* 158 Wis. 425, 434 (1914).
[7] *See* RONR 1:6.
[8] Wis. Stat. § 61.32.

board.[9] For library boards, the presiding officer is elected by the board itself.[10] For the plan commission, the village president selects the presiding officer.[11]

If the statutes do not address who the presiding officer of a given village governmental body is or how they are selected, then the village board may provide for the method of selection. Where neither the statutes nor a local ordinance addresses the question, the body may elect its own presiding officer under Robert's Rules.[12]

2. Duties of the Presiding Officer

The presiding officer's core responsibility is to keep the meeting running smoothly and fairly.[13]
This includes:

- Opening the meeting and ensuring a quorum is present;
- Announcing and enforcing the proper sequence of business according to the agenda;
- Recognizing members who are entitled to the floor;
- Stating and putting all properly made questions to a vote;
- Protecting the body from improper motions, breaches of decorum, and other violations of the rules;
- Expediting business in every way compatible with the rights of members;
- Deciding questions of order, subject to appeal by the body; and
- Responding to questions about parliamentary procedure or factual information bearing on the business at hand.

3. Tips for Presiding Officers

Robert's Rules offers practical guidance for presiding officers, particularly those newer to the role.[14]

Be prepared. The presiding officer should be thoroughly familiar with the duties of the position and the rules governing the body and should have supporting documents available at every meeting. At a minimum, this means knowing the thirteen most common motions and their order of precedence as listed in Table 2 of Robert's Rules and being comfortable enough with the reference tables to consult them quickly.

Be clear. One of the greatest causes of confusion in meetings is a failure to ensure that everyone knows what the pending question is.[15] The presiding officer should repeat every question after it is made, repeat the main motion after any amendment is voted on (stating it as amended if the amendment passed), and restate the exact question just before taking a vote. The presiding officer should also resist letting members move so quickly through business that parliamentary steps get skipped.

Be fair. The presiding officer should treat every member fairly. The presiding officer should never exploit another member's lack of parliamentary knowledge, even to achieve a temporarily good result, and should never be more technical or strict than is necessary for the good of the meeting.

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[9] Wis. Stat. § 61.24.
[10] Wis. Stat. § 43.54(2).
[11] Wis. Stat. §§ 62.23(1), 61.35.
[12] RONR 13:18, 49:11.
[13] RONR 47:7.
[14] RONR 47:14-19.
[15] RONR 47:17.

F. Robert's Pattern of Formality

Robert's expects people to behave formally throughout the entirety of meetings held under its rules. This formality can be uncomfortable at first. The natural inclination at a municipal meeting is to have a free-flowing conversation, something closer to sitting around a kitchen table deciding what to have for dinner. But when applied to important and/or divisive issues, Robert's correctly sees that kind of informality as a recipe for disorder. To prevent it, Robert's imposes a set of behavioral expectations that create what it calls "an objective and impersonal approach" to decision-making.[16]

First, members must address each other by their titles, not by name.[17] That means "Mr. President," "Trustee," or whichever title is appropriate. When members need to distinguish between people who share the same title, they can use descriptions like "the trustee who last spoke" or "the trustee who brought the motion." Names may be used if all else fails, but the default is titles. This is not empty formality. It is a constant reminder that when members are in a meeting, they are not acting as private individuals. They are a chair, a committee member, a trustee, and they are expected to act accordingly.

Second, members must also direct all of their remarks to the presiding officer rather than speaking directly to one another.[18] This one can feel particularly disorienting, but it can be more difficult for members to police their own tone when speaking directly to a colleague. Directing comments through the chair reduces the temptation to make disparaging or personal remarks.

Taken together, these rules attempt to create a sacred space of deliberation and decision making. Robert's wants members to treat their board rooms as hallowed ground. That might sound ridiculous to people who have sat through contentious or chaotic meetings. But this just shows how important these rules are to effective governance.

G. Motions Generally

1. General Features of Motions

Every motion in Robert's Rules has its own set of rules. It isn't necessary to know every rule for every motion or even the motions you plan to use. Most of the important rules for every motion can be boiled down to eight features. If a member knows what these eight features are for a given motion, they will know essentially everything they need to use it successfully. The features are:

1. Interruption. Some motions may be made even when someone else has the floor. Most cannot.
2. Attachment. Some motions may only be made if they can be applied to another motion. Other motions may be brought on their own.
3. Seconding. Most, but not all motions require one other member to consent to the motion being heard. This is called a "second."
4. Debatability. Most, but not all, motions are debatable.
5. Amendability. Most, but not all, motions may be amended.
6. Vote threshold. Most motions require a majority vote to be approved, but some require a higher threshold either under Robert's, state statute, or local ordinance.

[16] RONR 3:9.
[17] RONR 3:10, 43:23.
[18] RONR 3:12, 43:22.

7. Reconsideration. Most, but not all, motions may be reconsidered by the body.
8. Order of precedence.

2. Order of Precedence

Order of precedence is the most complex of the eight features. It is a fundamental rule of parliamentary procedure that only one question may be considered at a time.[19] If two questions are proposed, one must be resolved before moving to the other. Which goes first depends on where each motion falls in the order of precedence.

The order of precedence can be thought of as a hierarchy that ranks motions relative to one another. A motion that is higher on the order of precedence may be made even when a lower-ranked motion is already pending. If a higher order motion is made, the body swaps to consider the higher order motion and, after that motion is resolved, the body automatically moves back to considering the lower motion.

For example, imagine that a village board is in the middle of debating whether to place a four-way stop at a particular intersection. That is a main motion, and main motions sit at the bottom of the order of precedence.[20] Because it occupies the lowest rank, any other motion in Robert's Rules could be made while it is pending. A trustee could move to amend the motion, refer it to committee, take a recess, or even adjourn. If any of those motions are made, the body would have to address it first before returning to the question about the four-way stop.

At the other end of the spectrum, the motion with the highest order of precedence in Robert's Rules is the motion to fix the time to which to adjourn.[21] Because it takes precedence over all other motions, a member who properly obtains the floor will always be permitted to make this motion, regardless of what other business is pending.

Members don't need to know the exact order of every motion, though. At most, members may want to know the order of the most common motions and maybe a few special motions if they want to use them. In a time crunch, members should reference a chart near the end of Robert's Rules of order that lays out the general order of precedence for the most common motions.[22]

3. Avoid Negative Motions

All deliberative bodies should avoid framing motions in the negative.[23] A negative motion is any motion that proposes that the body *not* do something. A correctly framed motion should be stated in the affirmative so that if the motion passes, the body should have taken some action to change the status quo in some way. If the body is in the exact position before and after passing a motion, that was a negative motion.

Negative motions cause a lot of confusion. For example, imagine that a village is discussing a liquor license application, and several board members are opposed to granting the license. One of those members moves to *deny* the license. What happens if the board votes that motion down? Does that

[19] RONR 5:4.
[20] RONR 10:8(1).
[21] RONR 22:6(1).
[22] RONR t4 (Chart for Determining when each Subsidiary or Privileged Motion is in Order).
[23] RONR 10:12.

mean the applicant now receives the license? Probably not. The motion didn't ask if the license should be granted, it asked if the license should be denied. Just because a license wasn't denied doesn't automatically mean it was granted. But the negative framing of the motion could lead someone to think otherwise, and it puts the body in an awkward position that it could have avoided entirely.

The correct approach in this situation would be to move to *approve* the license, debate it, and vote it down. Either way, the license application is denied. But framing the motion in the positive makes it clear what the body is doing and what it isn't.

H. The Life of a Motion

Understanding the rules that govern motions generally is important, but it is equally important to understand how a motion moves through a meeting from start to finish. Every motion follows a basic lifecycle: a member obtains the floor, makes the motion, the chair states the question, the body debates it (if the motion is debatable), and the body votes. Each stage has its own rules, and familiarity with them helps members and chairs keep meetings running smoothly.

1. Obtaining the Floor

Before a member may make a motion, they usually must obtain the floor first.[24] A member seeks the floor by indicating to the chair that they would like to speak, whether by rising, raising a hand, approaching a microphone, or whatever method is customary for that body. The default under Robert's Rules is to rise.[25]

The chair must recognize any member who seeks the floor while entitled to it.[26] Whether a member is entitled to the floor depends on what they want to do and what is happening at that point in the meeting. For example, if debate on a motion is ongoing, members may only claim the floor to speak in debate or to make a limited number of specialized motions. In those situations, the chair may ask the member why they are requesting the floor before granting it.[27]

Once a member has the floor, they may use it for any proper purpose or combination of proper purposes. For example, a member who obtains the floor during debate could speak on the merits of a motion and then, at the end of their remarks, move to close debate.[28]

2. Making the Motion

Motions should be worded in a concise, unambiguous, and complete form.[29] Members should always state the full substance of what they are proposing rather than simply saying "so moved" after another member floats a suggestion. Motions may not contain language that would be out of order in debate, such as personal attacks.[30]

A motion must also be in order. There are many reasons that a motion may not be in order. For example,

[24] RONR 42:2.
[25] RONR 42:2.
[26] RONR 42:2.
[27] RONR 42:3.
[28] RONR 42:5.
[29] RONR 10:9.
[30] RONR 10:9.

a motion would be out of order if it would conflict with any laws or rules that apply to the body.[31] A motion would also be out of order if it presented practically the same question as another motion that the body already decided at that same meeting.[32]

If a motion is in order, it may still need a second to be officially placed before the body. A member who seconds a motion is not necessarily saying that they will vote for the motion, they are simply indicating that the question deserves the body's attention. A second may only be withdrawn if the maker of the motion amends their own motion before the chair formally states the question.[33] If a second is required but none is given, it is as if the motion was never made. That means a member could technically make the motion again later in the same meeting.[34]

In committees and small boards, seconds are not required at all.[35] Robert's has a slightly different set of rules for small boards and committees. These rules apply automatically to a given body if it is considered a small board or a committee under Robert's Rules. Most municipal governing bodies in Wisconsin are considered small boards under Robert's Rules. For more information about these modified rules, see "Procedure in Small Boards" in the September 2025 edition of *Municipality* magazine.[36]

a. Before the Chair States the Question

There is a brief window of time between when a member makes a motion and the chair formally states the question. During this window, two special rules apply. First, the maker of the motion may modify or withdraw it without a vote of the body.[37] Second, other members may also informally request that the maker change the motion in some way.[38] This second rule is sometimes called a "friendly amendment."[39]

b. After the Chair States the Question

Once the chair states the question, the motion belongs to the body rather than to the individual who made it.[40] From that point forward, the motion may only be amended, withdrawn, or otherwise disposed of by a vote of the body.

3. Debate

Debate is where a body discusses the merits of a pending motion. Not all motions are debatable, but for those that are, Robert's Rules provides a structure for how debate should proceed.

The maker of the motion is entitled to speak first in debate.[41] After that, members who have not yet spoken are given preference over those who have.[42] If multiple members wish to speak and the order is not determined by the previous two rules, then the chair should alternate between those who support and those who oppose the motion.[43]

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[31] RONR 39:5.
[32] RONR 39:6.
[33] RONR 4:21.
[34] RONR 38:2.
[35] RONR 49:21, 50:25.
[36] League Opinion Governing Bodies 474.
[37] RONR 4:19.
[38] RONR 4:20.
[39] RONR 12:91.
[40] RONR 4:19.
[41] RONR 43:4.
[42] RONR 3:33(2).
[43] RONR 3:33(3).

Unless a local rule provides otherwise, every member may speak twice on each question for up to ten minutes per turn.[44] A member cannot give unused time to another member, though a member may yield some of their own time for questions.[45] In committees and small boards, however, members may speak an unlimited number of times.[46]

Debate must remain focused on the merits of the pending question. Everything a member says should speak directly to whether the motion should be adopted.[47] Equally important, debate is about issues, not people. Robert's Rules prohibits members from attacking the motives of other members during debate.[48] For example, a member may say there is strong evidence that another member is mistaken, but they may not say that another member is lying.

4. Voting

Once debate is exhausted or closed, the body votes. The general rule under Robert's Rules is that motions require a majority vote to pass.[49] Importantly, this means a majority of votes actually cast, not a majority of all members. If three members of a five-member board are present and two of them abstain, the one remaining vote is sufficient to pass the motion. Some motions require higher thresholds under Robert's Rules, state statute, or local ordinance.

When a motion does not appear to have any opposition, a lot of time can be saved by approving it through unanimous consent. To do this, the chair simply asks whether there is any objection to the motion. If someone objects, the body proceeds to a normal vote. If no one objects, the chair declares the motion adopted. It is worth noting that unanimous consent does not necessarily mean unanimous support. Members who oppose a motion may recognize that it has enough support to pass and agree to unanimous consent just to save time.

The default method of voting under Robert's Rules is by voice vote.[50] Wisconsin statutes, however, allow any member of a governmental body to demand a roll call vote.[51] Statutes also prohibit secret ballots except when electing a body's officers.[52]

I. Other Resources

This chapter covers the fundamentals, but parliamentary procedure is a big subject with too many details to cover in a single chapter. For more detailed information on specific topics, the League publishes a bimonthly column in *The Municipality* magazine called "For the Good of the Order," which covers parliamentary procedure issues relevant to Wisconsin municipalities. Articles cover topics such as:

- "Procedure in Small Boards."[53] This article covers the special rules for small boards. These rules also apply to all committees.

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[44] RONR 43:8.
[45] RONR 43:10.
[46] RONR 49:21, 50:25.
[47] RONR 43:20.
[48] RONR 43:21.
[49] RONR 44:1.
[50] RONR 45:11.
[51] Wis. Stat. § 19.88(2).
[52] Wis. Stat. § 19.88(1).
[53] League Opinion Governing Bodies 474.

- "Handling Inconvenient Motions."[54] This article covers objection to consideration, the previous question, motions to limit or extend debate, postponement, referral to committee, and tabling.
- "Changing Our Mind: Reconsider, Rescind, or Renew."[55] This article covers the motions to rescind or amend something previously adopted, reconsider, and renew.
- "Democracy is Appealing."[56] This article covers appeals of the chair's decisions.

These articles and others are available on the League's legal resource library. Municipal officials looking for guidance on a specific parliamentary question can submit a question to the League's online "Ask the Attorney" form or ask their municipal attorney.

The League also publishes a handout that lays out the features of some of the most frequently used motions in *Robert's Rules of Order Newly Revised, 12th Edition*. Below is a copy of the handout.

ROBERT'S RULES OF ORDER

	To Do This	Say This	Does Motion Interrupt Speaker?	Do You Need a Second?	Is It Debatable?	Can it Be Amended?	What Vote Is Needed?
1	Make a motion	I move that...	No	Yes	Yes	Yes	Majority
2	Change a motion	I move to amend by...	No	Yes	Yes**	Yes	Majority
3	Extend/Limit debate - pending question	I move to limit/extend debate as follows...	No	Yes	No	Yes	2/3
4	End debate	I move the previous question.	No	Yes	No	No	2/3
5	Refer/commit	I move to refer/commit the matter to the [...] committee...	No	Yes	Yes**	Yes	Majority
6	Lay on the table	I move to table...	No	Yes	No	No	Majority
7	Take up a matter previously tabled	I move to take from the table...	No	Yes	No	No	Majority
8	Postpone to time certain	I move to postpone the motion until...	No	Yes	Yes**	Yes	Majority
9	Postpone indefinitely	I move to postpone the motion indefinitely.	No	Yes	Yes	No	Majority
10	Reconsider a previous action	I move to reconsider the vote on... *(must be made within time limits)*	Yes	Yes	Yes**	No	Majority
11	Rescind/Repeal previously adopted motion	I move to rescind...	No	Yes	Yes	Yes	Majority w/ notice**
12	Suspend rules	I move to suspend the rules to...	No	Yes	No	No	2/3**
13	Verify vote results	I move for a division of the assembly.	Yes	No	No	No	No vote
14	Enforce rules	I rise to a point of order...	Yes	No	No**	No	Chair*
15	Challenge a ruling of the chair	I appeal the chair's decision.	Yes**	Yes	Yes**	No	Majority
16	Take a break – no question pending	I move to recess for/until...	No	Yes	Yes	Yes	Majority
17	Request information	Point of information...	Yes	No	No	No	Chair*
18	Request rules help	Parliamentary inquiry...	Yes	No	No	No	Chair*
19	Complain about heat, noise...	I rise to a question of privilege...	Yes	No**	No	No	Chair*
20	End meeting	I move to adjourn.	No	Yes	No	No	Majority

* Based on *Robert's Rules of Order Newly Revised, 12th Edition* (RONR).

** The chair does not vote but responds to the inquiry or requests assistance for a response.

*** See RONR for additional information.

[54] League Opinion Governing Bodies 428.
[55] League Opinion Governing Bodies 475.
[56] League Opinion Governing Bodies 476.

CHAPTER V

OPEN MEETINGS LAW

The basic commandment of Wisconsin's open meetings law is relatively simple: all meetings of governmental bodies must be held in open session and be preceded by public notice.

The open meetings law declares that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." To reinforce that mandate, the statute further directs that the law be liberally construed to achieve its purposes. Together, these are among the strongest policy directives in Wisconsin statutes. So, as a general rule, when in doubt, openness wins.

A. Governmental Body

The open meetings law applies to any entity that fits the definition of "governmental body." Common councils, police and fire commissions, library boards, volunteer fire departments created by ordinance, and citizen advisory groups created by order of a mayor or village president are all examples of "governmental bodies."

The definition of "governmental body" is broad. It is a "state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order." The critical inquiry is not what power a body holds, but how the body was created. Purely advisory bodies are subject to the law, even though they do not possess final decision-making power, as long as they were created by constitution, statute, ordinance, rule, or order.[1]

The definition also includes quasi-governmental corporations. These are corporations that significantly resemble governmental corporations in function, effect, or status. Whether a entity fits this definition is a fact-specific question dependent on the circumstances of each case.[2]

B. Meeting

A meeting is "the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body."[3] In *State ex rel. Newspapers Inc. v. Showers,* the Wisconsin Supreme Court established a two-part test for determining whether a gathering constitutes a meeting. This is often referred to as the *Showers* test; both parts must be satisfied.

1. The gathering must be held for the *purpose* of engaging in government business.

2. The *number* of members present must be sufficient to determine the body's course of action on the subject matter being discussed.[4]

[1] *State v. Swanson*, 92 Wis. 2d 310, 314 (1979).
[2] *State v. Beaver Dam Area Dev. Corp*, 2008 WI 90, 151.
[3] Wis. Stat. § 19.82(2).
[4] *State ex rel Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 80 (1987).

1. Purpose

"Governmental business" encompasses far more than making motions and taking votes. It includes any formal or informal action within the governmental body's realm of authority. Members need not actually discuss the matter or interact with one another; it is a meeting if enough members gather to simply hear information on a matter within the body's realm of authority.[5] A village board tour of potential sites for a new village hall, for example, would need to be noticed as a meeting even if no formal action were taken.

Chance and social gatherings, and conferences are not considered meetings, as long as they are not used to skirt the law's requirements.[6] Members should approach this exception with some caution. If members gather at a social event or by chance, and the talk turns to matters within the body's realm of authority, the gathering can convert to an improper meeting.

2. Numbers

a. Quorum and Negative Quorum

The second part of the *Showers* test requires that the number of members present be sufficient to determine the body's course of action. Typically, governmental bodies operate under a simple majority rule. Thus, one might assume that the open meetings law applies only to gatherings of a majority of the members of a body. That is not the case. The "power to control a body's course of action" refers to both the power to pass a proposal and the power to defeat a proposal.

The number sufficient to block an action is called a "negative quorum," and it is treated no differently from a quorum created by a majority. [7] For example, on a body with an even number of members, one-half of the members of the body constitutes a "negative quorum" because that number could prevent the adoption of an item. Similarly, when a super majority is required to adopt an item (e.g., a budget amendment), a mere minority of members could constitute a negative quorum.

b. Walking Quorum

The open meetings law is not intended to prohibit one-on-one conversations but members should proceed with caution in communicating with other governing body members outside of a meeting. The open meetings law's requirements cannot be evaded simply by breaking a quorum into smaller pieces. The risk is that such communications can cumulatively constitute a "walking quorum." A "walking quorum" is a series of gatherings among separate groups of members, each of which is less than quorum in size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.[8] The defining feature of a "walking quorum" is the element of agreement. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law.

c. Electronic Communications

Governmental body members do not need to be face to face for a meeting to occur. Depending on how they are used, electronic communications can constitute a "convening of members." Accordingly,

[5] *State ex rel. Badke v. Vill. Bd. of Greendale,* 173 Wis. 2d 553, 573 (1993).
[6] Wis. Stat. § 19.82(2).
[7] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.10 (2025).
[8] *Showers,* 135 Wis. 2d at 92.

email, texting, and social media present real compliance risks. While no Wisconsin court has directly addressed this question, the Attorney General has warned that electronic exchanges could closely resemble an in-person conversation, and that a court would likely consider the number of communications, the timeframe in which they occurred, and the degree to which they functioned as a back-and-forth discussion.[9]

Electronic communications also raise walking quorum concerns. Features like "reply all" and "forward" deprive the original sender of control over who ultimately receives a message, making it easy to inadvertently reach a quorum of members on a matter of governmental business.

For these reasons, the Attorney General strongly discourages using email to communicate about matters within the body's authority. Where email is used, it should principally serve to transmit information one-way to the membership, not to solicit responses or facilitate discussion.[10] To avoid inadvertently beginning a group email discussion, some members will send emails to themselves and only blind copy their intended recipients.

3. Attending Another Body's Meeting - "*Badke* Notices"

When members of a governmental body attend a meeting of a different body, a separate notice may be required if enough members will be present to constitute a quorum or negative quorum. This principle was first clearly established in the *Badke* case.[11] There, a quorum of the village board regularly attended plan commission meetings. Two of the seven trustees were on the plan commission, and two or more of the remaining trustees regularly attended commission meetings as "interested observers and citizens." The supreme court held that the presence of a quorum of the village board at such meetings was not a chance meeting because it was understood that trustees regularly attended plan commission meetings. Thus, the village should have also noticed the plan commission meeting as a meeting of the village board.

The court made clear that if a quorum of the village board were appointed members of the plan commission, it would not require every plan commission to also be noticed as a village board meeting. However, once the board knew that trustees who were not plan commission members would be in attendance and that the total number of trustees in attendance, including those on the plan commission, would likely be more than one-half of the village board, they were obligated to provide notice of the resulting village board meeting.

These types of notices are now often referred to as "*Badke* notices." The need for these notices can arise when members attend the meeting of a different governmental body (like the plan commission in *Badke*), or a non-governmental meeting such as a neighborhood association meeting or developer-organized public meeting on a project proposal.

Here is an example of *Badke* notice language:

Notice is hereby given that a majority of the [village board/committee/commission] [will/is expected to/may] be present at the meeting of the [governmental body/public event] scheduled for [date and time] to

[9] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.11-12 (2025).
[10] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.11-12 (2025).
[11] *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553 (1993).

gather information about a subject over which they have decision making responsibility. This constitutes a meeting of the [village board/committee/commission] pursuant to State ex rel. Badke v. Greendale Village Bd., 173 Wis. 2d 553 (1993), and must be noticed as such, although the [board/council] will not take any formal action at this meeting.

C. Notice

1. Timing of Notice

Notice must be given 24 hours in advance of a meeting unless for good cause it is impossible or impractical. "Good cause" is not defined, but it is probably something akin to an emergency. Mere inconvenience or oversight is not enough. Even when good cause exists, notice may never be given less than two hours before the meeting.[12]

When calculating the 24-hour notice period, Sundays and legal holidays are excluded.[13]

2. How Notice is Provided

The presiding officer or their designee must provide notice to three groups:

- Any news media who have filed written requests for notices,
- An official newspaper; if none exists, then to a news medium likely to give notice in the area. The body is not required to pay for, and the newspaper is not required to publish, such notice;[14] and
- The public.[15]

State statutes provide three methods for providing notice to the public:

- Posting the notice in *three* public places likely to give notice to affected persons;
- Posting the notice both electronically on the governmental body's web site and in one public place likely to give notice to affected persons; or
- Paid publication in a news medium likely to give notice to persons affected.[16]

3. Notice Contents

Meeting notices must specify the time, date and place of the meeting, and must identify the subject matter of the meeting. If items may be discussed in closed session, that should be stated in the notice.[17] If a topic is not included in the notice, governmental body members may not discuss it at the meeting.

The description of a topic must be "reasonably likely to apprise" the public of the matter to be discussed. There is no bright line rule on how specific a description must be. Courts evaluate the sufficiency of the description on a case by case basis, balancing the public's right to information with the government's need to conduct business efficiently. [18] The factors to be weighed include the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves a non-routine

[12] Wis. Stat. § 19.84(3).
[13] Wis. Stat. § 990.001(4)(a).
[14] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.14 (2025).
[15] Wis. Stat. § 19.84.
[16] Wis. Stat. § 19.84(1)(b).
[17] Wis. Stat. § 19.84(2).
[18] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.15-16 (2025).

action that the public would be unlikely to anticipate.[19] A good rule of thumb is to ask whether a person interested in a specific subject would be aware, upon reading the notice, that that subject might be discussed.

4. Agenda Control

For most governmental bodies the notice takes the form of an agenda. Though the presiding officer is responsible for providing the notice, the open meetings law only vests a presiding officer with authority to describe the topics, not to establish what they will be.[20] The responsibility for deciding what topics will appear on the agenda rests with the governing body as a whole. This leads to the question of how to establish an agenda without violating the open meetings law.

One common approach is for individual governing body members to submit agenda items to the presiding officer or their designee. The presiding officer coordinates the agenda and includes items received but does not exercise any decision-making authority over whether items make it on the agenda.

Some municipalities have passed an ordinance that requires two governing body members to support placing an item on the agenda. If two members support including an agenda item, there will likely be a motion and a second to open discussion at the meeting.

Another option is to circulate a request document. According to the Attorney General, merely signing a document asking that a subject be placed on an upcoming meeting agenda does not constitute a "walking quorum" as long as the signers have not engaged in substantive discussion or agreed on a uniform course of action.[21]

Regardless of what approach a municipality uses, it is best practice to memorialize the process in the body's bylaws or by resolution or ordinance.

D. Open Session

Wisconsin. Stat. § 19.82 defines "open session" to mean "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times."

1. Location

Meetings are in open session when they are "reasonably accessible to members of the public."[22] The attorney general has opined that public buildings are preferable as meeting venues. A body should meet on private premises only in exceptional cases, where the public's right to access is not compromised. Meeting rooms should be reasonably calculated to accommodate all who wish to attend. However, it does not violate the open meetings law if some are turned away because more people show up than had been anticipated.[23]

Under the open meetings law and the Americans with Disabilities Act, remote meetings and in-person

[19] *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71.
[20] League Opinion Governing Bodies 391R2.
[21] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.12 (2025).
[22] *State ex rel. Badke v. Village Bd. of Greendale*, 173 Wis. 2d 553 (1993).
[23] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.20 (2025).

meetings alike must be accessible to people with disabilities, including deafness or blindness, so governmental bodies should be prepared to make accommodations upon request.[24]

2. Virtual Meetings

Governing bodies may conduct meetings electronically on platforms such as Zoom or Microsoft Teams and may allow members to attend meetings electronically. However, all the requirements of the open meetings law still apply. The notice should affirmatively indicate that the meeting will be virtual and include instructions for how the public can access the meeting. The public should be able to monitor the meeting to the same extent as the members participate.[25] So, for example, telephone access to a video conference is likely insufficient, especially if the meeting will involve charts, graphs or other visual depictions. However, when conducting a video meeting, the Attorney General advises providing the public with an alternative telephone dial-in option so that lack of internet is not a barrier.

If a body convenes in closed session during a virtual meeting, it should be sure it has taken steps to ensure that the public is indeed excluded and the discussion is confidential.

3. Public Participation

While the open meetings law seeks to ensure public access to meetings, it does not give the public a right to participate in or speak at meetings. Outside of public hearings, if a governmental body wants to allow the public to address the body, it must include a public comment period in the meeting's notice.[26] A governmental body may discuss any matter raised in a public comment period.[27] However, if a member of the public raises a topic that is not on the meeting notice, the Attorney General advises that the discussion should be limited. Extensive discussion or deliberation should be deferred to a meeting specifically noticing the topic.[28]

For a detailed discussion of public comment periods, including whether and how limitations can be placed on them see League Legal Opinion Governing Bodies 410R1.

Governmental bodies must also make reasonable efforts to accommodate members of the public who wish to film, record or photograph a meeting, as long as it does not disrupt the meeting.[29]

4. Voting

In general, all voting must be conducted in open session. Even when the body has convened in closed session, the Attorney General has advised that votes should be taken in open session unless doing so would compromise the very purpose of the closed session.[30] For example, a council meeting in closed session to negotiate the purchase of property may vote on the maximum offer it is willing to make while still in closed session, since voting in open session would undermine the confidentiality the closed session was meant to provide.

Governmental bodies may not vote by secret ballot. The election of the body's own officers, such as

[24] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.21 (2025).
[25] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.21-22 (2025).
[26] Wis. Stat. § 19.84(2).
[27] Wis. Stat. § 19.83(2).
[28] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.23 (2025).
[29] Wis. Stat. § 19.90.
[30] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.31 (2025).

council president or similar position, is the one notable exception.[31] Email ballots are also not permitted, even if the result of the vote is later ratified at a properly noticed meeting.[32]

Motions and roll-call votes must be recorded whether they are made in open or closed session.[33] Typically, this record takes the form of written minutes. The law does not require detailed minutes such as a summary of the discussion.

E. Closed Sessions

1. Notice

If the presiding officer is aware that a closed session is possible, the topic and the statute authorizing closed session must be included in the notice.[34] If the body wishes to reconvene in open session following the closed session discussion, the subsequent open session must be included in the notice. Otherwise, the body may not reconvene in open session for at least 12 hours.[35] For that reason, if the notice did not specify that the topic might be considered in closed session, but a closed session becomes necessary, the body should first complete any other open session business.

2. Procedure for Entering Closed Session

All governmental body meetings must begin in open session. Convening a closed session then requires a motion, a second and a majority vote. Before the body votes, the presiding officer must announce the nature of the business to be discussed and the specific statutory exemption that authorizes the closed session. Stating only the statute section number is not sufficient.[36] The vote of each member must be recorded in the meeting minutes.[37]

Discussion in closed session must remain strictly on the topic that justified closing the meeting. Members should not veer into related subjects without first returning to open session.

3. Exemptions Allowing Closed Sessions

Wisconsin. Stat. § 19.85(1)(a-h), allows a governmental body to enter closed session in eleven specific circumstances. These statutory exceptions to the open session requirement are the only allowable reasons for a closed session. Closed session, however, is never required. Even if the topic would allow a closed session, the body is free to remain in open session.

The most common reasons for closed session for municipalities are:

a. Judicial or Quasi-Judicial Deliberations

A governmental body may enter closed session to deliberate on a case that was the subject of a judicial or quasi-judicial trial or hearing. The Supreme Court has held that "cases" are controversies between or among adverse parties, or proceedings designed to redress wrongs or enforce rights.[38]

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[31] Wis. Stat § 19.88.
[32] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.23 (2025).
[33] Wis. Stat. § 19.88(3).
[34] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.18 (2025).
[35] Wis. Stat. § 19.85(2).
[36] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.25 (2025).
[37] Wis. Stat. § 19.85(1).
[38] *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis. 2d 62, 73 (Wis. 1993).

This exemption does not authorize closed sessions for things like the considering a permit, or a tax assessment appeal.

b. Dismissal, Demotion, Discipline, and Licensing
A governmental body may enter closed session to consider dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission, or the investigation of charges against such a person, or formal action on any such matter.[39] If such a closed session will include an evidentiary hearing or final action, the governmental body must give the public employee or licensee actual notice of that fact. The person may request that the evidentiary hearing or final action be conducted in open session. If they do, the body cannot conduct it in closed session.[40]

c. Considering Employment, Promotion, Compensation, or Performance Evaluation
A governmental body may enter into closed sessions to consider employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.[41] This exemption applies when the body is considering a *specific* public employee; it does not apply to a discussion of position qualifications or salary ranges in general. It allows a body to enter closed session to interview and consider applicants for positions of employment. The Attorney General interprets "employee" to include unelected officers, like a police chief, and candidates for employment. Elected officials, however, do not qualify as "employees."[42]

d. Competitive Bargaining
A governmental body may enter closed session to deliberate or negotiate over the purchase of public property, the investment of public funds, or similar public business transactions, but only when competitive or bargaining interests genuinely require confidentiality. [43] Deciding on a negotiating strategy or setting a maximum offer for a land purchase are good examples. Inconvenience, embarrassment, or speculation about the odds of success do not justify closing a session. Nor is it sufficient that a private developer wants deal details kept confidential, or that competition is merely possible.[44]

e. Conferring With Legal Counsel Regarding Litigation
A governmental body may enter closed session to confer with its legal counsel about litigation strategy when the body is involved in litigation or has good reason to believe it soon will be. The mere presence of legal counsel at a meeting is not enough to invoke this exemption; counsel must actually be rendering strategic advice about specific litigation.[45]

f. Considering Financial, Medical, Social, or Personal Information
A governmental body may enter closed session to consider financial, medical, social, or personal information or disciplinary data about a specific individual; to give preliminary consideration of specific personnel problems; or to investigate charges against specific persons except where the

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[39] Wis. Stat. § 19.85(1)(b).
[40] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.27 (2025).
[41] Wis. Stat. § 19.85(1)(c).
[42] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.27 (2025).
[43] Wis. Stat. § 19.85(1)(e).
[44] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.29 (2025).
[45] Wis. Stat. § 19.85(g).

exemption under Section C. above applies. However, this exemption only applies when public discussion of such information would be likely to substantially damage the reputation of any person referenced in the information or involved in such problems or investigations.[46] The Attorney General has advised that this provision is extremely limited. "It applies only where a member of a governmental body has actual knowledge of information that will have a substantial adverse effect on the person mentioned or involved."[47]

4. Who Can Attend Closed Session

Attendance at closed session is limited to the governmental body, and anyone whose presence it determines is necessary for consideration of the item. The governmental body has wide discretion as to who fits that category.[48] However, a body cannot include someone whose presence would undermine the very purpose of the closed session; for example, entering closed session for negotiating strategy and including the party with whom it is negotiating. In addition, no duly elected or appointed member may be excluded from a meeting of the body, and subunits may not exclude members of the parent body unless the rules of the parent body provide otherwise.[49]

F. Penalties and Enforcement

Violations of the open meetings law may be prosecuted by the Attorney General and, upon the verified complaint of an individual, by the district attorney. If the district attorney does not act within 20 days of receiving a complaint, the individual who filed the complaint may bring an action to enforce the open meetings law.[50]

Violations of the open meetings law are punishable by a forfeiture. Additionally, a court may void any action taken at an illegal meeting if the court finds that the interest in enforcing the law outweighs any interest in maintaining the action's validity.[51]

G. Interpretations of the Law

Public officials and members of the general public may contact the Attorney General's office for advice on the open meetings law.[52] The statute expressly authorizes the Attorney General to respond to these requests for advice, and the Wisconsin Supreme Court considers these opinions important to its own interpretations of the law.[53]

[46] Wis. Stat. § 19.85(1)(f).
[47] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.28 (2025).
[48] Wisconsin Dep't of Just., *Wisconsin Open Meetings Law Compliance Guide* p.31 (2025).
[49] Wis. Stat. § 19.89.
[50] Wis. Stat. § 19.97.
[51] Wis. Stat. § 19.97(3).
[52] Wis. Stat. § 19.98.
[53] *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90 (2008).

CHAPTER VI
PUBLIC RECORDS LAW

A. Introduction

The public records law is one of the two pillars of Wisconsin's commitment to open government. The law declares that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them."[1] It creates a strong presumption that public records will be disclosed and provides that denial of records is only allowed in "exceptional" cases.[2]

In practice, this means that officials should err on the side of treating materials as public records, retain those records for at least as long as the law requires, and respond to records requests promptly and in good faith.

This chapter is designed to give village officials a general understanding of the public records law. It is not, however, a comprehensive guide to administering the law. Most records requests are routine and can be handled without difficulty, but when a request raises novel or complex issues, officials should consult the Wisconsin Department of Justice's Wisconsin Public Records Law Compliance Guide and their village attorney.

B. Who Is Subject to the Public Records Law?

The public records law applies to "authorities" and its provisions are carried out by "legal custodians." An authority is always an entity like an office, agency, department, board, commission, council, or corporation. An entity is an "authority" subject to the public records law if it is (1) created by the constitution or by some other law, ordinance, rule or order and (2) has custody of a public record.[3]

C. Identifying Public Records

1. What Is a Record?
The statutes intentionally define a public record very broadly. With limited exceptions, a "record" includes any material on which information is recorded or preserved, that is created or being kept by an "authority" in connection with its official duties.[4] The form of record does not matter; the definition includes, among others, written, printed, drawn and electronic information.

The consequences of this broad definition can be surprising to some village officials because the location alone of the material is not determinative of whether it is a record. For example, an email about village business sent by a village official from a personal email account is a public record even though it was never on a village system. Similarly, a text message to a fellow board member about an upcoming vote is a public record even if it was sent from and to a personal phone. A photo of some road damage would be a public record if it was sent to a relevant village official regardless of who took the photo.

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[1] Wis. Stat. § 19.31.
[2] *Id*.
[3] Wis. Stat. § 19.32(1).
[4] Wis. Stat. § 19.32(2).

2. What Is Not a Record?

The statute excludes a few categories from the definition of "record." Drafts, notes, preliminary computations, and similar materials prepared for the personal use of the person who created them are not public records. Materials that are purely personal and have no relation to a person's office are also excluded from the definition of a record.[5] Also, materials to which access is limited by copyright, patent, or bequest are excluded from the definition of a public record.[6] All of these exclusions are interpreted very narrowly.

A classic example is notes that someone took at a meeting to help them remember what happened. Those notes are not public records so long as they are only used by that person or their direct supervisor.[7] But if that person distributes those notes to anyone else, the records lose their personal-use character and are subject to disclosure.[8]

Another example is purely personal material. For example, personal emails on a personal email account are not public records, even if the account is owned by a public official. However, personal emails sent by or received on a public system would be a record.[9] Generally speaking, these emails are not required to be disclosed if their contents are purely personal. However, personal emails are subject to disclosure if they offer any evidence of some violation of law or policy.[10]

Every exception to the public records law is interpreted narrowly and courts do not look kindly on attempts to skirt the law. For example, an authority cannot avoid disclosure by leaving something in draft form indefinitely or by simply labeling a finished product as a "draft."[11] If a document has been used for the purpose for which it was created, it is a record regardless of what anyone calls it.

Villages also cannot avoid the public records law by shifting record creation or custody to a third party. Any record produced or collected by a contractor under a contract with a village is subject to the public records law as if the village had created the record itself.[12] This extends to subcontractor records if the information is required by or provided to the village under the general contract.[13] The main point is that a government entity cannot evade its public records responsibilities by outsourcing the work that generates those records.

D. Record Retention

1. Who Is Responsible for Retaining Records

The records retention statutes are not part of the public records law but are closely related. Every village officer is responsible for ensuring that the records of their office are kept and preserved according to law.[14] Village officers are also responsible for turning over public records to their successor, if the successor asks.[15]

[5] Wis. Stat. § 19.32(2).
[6] *Id.*
[7] *Id.*
[8] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.5-6 (2025).
[9] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.6 (2025).
[10] *Id.*
[11] *Fox v. Bock,* 149 Wis. 2d 403, 417 (1989).
[12] Wis. Stat. § 19.36(3).
[13] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.4 (2025).
[14] Wis. Stat. § 19.21(1).
[15] Wis. Stat. § 19.21(2).

An office's records include any records in lawful possession of the officer or their deputies. It also includes any record required by law to be filed, deposited, or kept in that office regardless of whether the record has actually been delivered to the officer.[16] Because officers are responsible for records held by their deputies, officers should establish procedures and train staff to ensure that records are retained properly.

Officers who violate this requirement can be subject to a fine between $25 and $2,000.[17] However, anyone who destroys, damages, removes, or conceals a public record with intent to injure or defraud would be guilty of a Class H felony, punishable by a fine up to $10,000, imprisonment up to 6 years, or both.[18]

2. How Long Records Must be Retained

Authorities must retain all public records for a certain amount of time, but how long can vary widely. Villages must retain records for the amount of time required by federal law, state law, or their own local ordinance, *whichever is longest*.

Federal law sets minimum retention periods for some public records, especially for records related to employment. For example, federal law sets minimum retention periods for payroll records, federal tax records, and the immigration form I-9.[19] Certain state laws and administrative rules require that authorities retain certain records for specific periods. For example, state law sets minimum retention periods for public records related to elections.[20] It also sets a minimum of two years for water stubs, receipts of current billings and customer ledgers of any village utility.[21]

If neither state nor federal law sets a minimum retention time for a given record, then villages have some flexibility to set a minimum retention period themselves. However, villages cannot set that retention period lower than 7 years unless specifically authorized by the Public Records Board (PRB).[22] Fortunately, the PRB has pre-authorized different (and sometimes shorter) retention periods for a wide variety of village records. These retention periods are prescribed in the PRB's Local Unit General Records Schedule. Thus, the easiest approach for villages is to enact an ordinance that adopts that PRB schedule. Alternatively, a village could request approval from the PRB for a special retention period for certain documents.

For more information on the village public records retention schedule and a model ordinance adopting the PRB records schedule, see League Opinion Public Records 151.

3. Destroying Records

If a village wants to destroy old records, it must first adopt an ordinance prescribing the time period records must be retained.[23] After the required retention period expires, records may be destroyed. However, an authority must first provide 60 days' written notice to the Wisconsin Historical Society

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[16] *See* Wis. Stat. § 19.21(1).
[17] Wis. Stat. § 19.21(3).
[18] Wis. Stat. §§ 946.72, 939.50(3)(h).
[19] 29 CFR § 516.5 (payroll records), 26 CFR § 31.6001-1 (federal tax records), 8 CFR § 274a.2 (form I-9).
[20] Wis. Stat. § 7.23.
[21] Wis. Stat. § 19.21(4)(b).
[22] *Id.*
[23] Wis. Stat. § 19.21(4)(a).

before any records are destroyed.[24] The Historical Society may choose to preserve any records it determines to be of historical interest, and may even take title to those records.[25] The Historical Society may also waive this notice requirement, and has done so for many categories of village records.[26] The PRB's Local Unit General Records Schedule is a useful reference for identifying which record series the Historical Society has waived notice for and which still require notification.

There are some additional restrictions on destruction. No authority may destroy a record after receiving an open records request for that record until the request has been granted or at least 60 days after the request is denied.[27] If the authority receives written notice that a lawsuit has been filed relating to the record, the record may not be destroyed until after the court's order is issued and all appeals are exhausted.[28] There is also a special rule that assessment rolls containing forest crop acreage may not be destroyed without prior approval of the Department of Revenue.[29]

E. What Is Required to Make a Records Request?

The public records law gives anyone the right to inspect or obtain copies of public records.[30] This section provides a practical overview of how records requests work. For complex or contested requests, village officials should consult their village attorney and the Department of Justice's *Wisconsin Public Records Law Compliance Guide*.

The law purposefully makes requesting public records easy. A public records request may be made orally or in writing.[31] The requester does not have to identify themselves or explain why they want the records.[32] Requesters are also not required to use any specific format or "magic words."[33]

However, the request also must be clear. Authorities are not required to guess what a requester is asking for.[34] An authority may reach out to requesters to clarify the scope of a confusing request, but they should be careful not to communicate in a way that could be interpreted as discouraging the requester from exercising their rights.[35]

F. Who Handles Requests for Public Records?

The legal custodian is responsible for responding to public records requests made to the authority. Wisconsin Stat. § 19.33 designates certain individuals as custodians. Elected officials, or their designees, are the legal custodians of their own records.[36] The chairperson of a committee of elective officials, or their designee, is the custodian of the committee's records.[37] Likewise, co-chairpersons of a joint

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[24] *Id*.
[25] Wis. Stat. §§ 19.21(4)(a), 19.23(2).
[26] Wis. Stat. § 19.21(4)(a).
[27] Wis. Stat. § 19.35(5).
[28] *Id*.
[29] Wis. Stat. § 19.21(4)(a).
[30] Wis. Stat. § 19.35(1)(a).
[31] Wis. Stat. § 19.35(1)(h).
[32] Wis. Stat. § 19.35(1)(i).
[33] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.14 (2025).
[34] *Seifert v. School Dist. of Sheboygan Falls*, 2007 WI App 207, ¶ 42.
[35] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.14 (2025).
[36] Wis. Stat. § 19.33(1).
[37] Wis. Stat. § 19.33(2).

committee of elective officials, or their designee, are the custodians of the joint committee's records.[38] In all other instances, the law requires authorities to designate their legal custodian. If they fail to do that, the authority's highest-ranking officer and the chief administrative officer, if any, are the custodians.[39] In many villages, the clerk is designated as the legal custodian for the whole village.

G. How Are Requests Analyzed?

The public records law presumes that records are open to the public, with limited exceptions. When a custodian receives a request, the first step is to determine whether responsive records exist and whether the request is reasonably specific. If so, the custodian must then determine whether disclosure is required by law, prohibited by law, or governed by the balancing test. In some cases, the custodian may also have a duty to notify certain persons before releasing a record.

1. Are There Responsive Records?

The public records law only provides access to records that already exist. Authorities are not required to create new records or compile information from existing records into a new format in response to a request.[40] This logic extends to requests for future records that have not been created yet, even if they certainly will.[41] For example, if a requester asked for the meeting minutes from the past three meetings and all future meetings of the Village Board, the village would not be under a continuing obligation to send meeting minutes. The minutes from the previous three meetings would need to be provided, but the minutes from future meetings would not because they don't exist yet.

2. Is the Request Reasonably Specific?

Requests must be reasonably specific as to subject matter or length of time involved,[42] but a custodian may not deny a request just because it could be narrowed. Similarly, a request may not be denied because it will generate a large volume of records. However, if such a request is so broad it creates an undue burden on the custodian, it may be possible to deny the request. The question is whether complying with the request would severely impair the normal functioning of the office.[43] This is a case-by-case determination and is highly fact dependent. A custodian should always discuss the request with their village attorney before denying a request on these grounds.

3. Does the Law Require Disclosure?

Some records are specifically required to be disclosed by statute or court decision. For example, state law requires disclosure of uniform traffic accident reports, and courts have required disclosure of police departments' daily arrest logs.[44] Where a statute or court decision expressly requires access, the analysis ends, and the record must be produced.

4. Does the Law Prohibit Disclosure?

Wisconsin statutes and case law also specifically prohibit certain records from being disclosed. Statutory

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[38] Wis. Stat. § 19.33(3).
[39] Wis. Stat. § 19.33(4).
[40] Wis. Stat. § 19.35(1)(L).
[41] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.15 (2025).
[42] Wis. Stat. § 19.35(1)(h).
[43] *Schopper v. Gehring,* 210 Wis. 2d 208, 213 (WI App 1997).
[44] Wis. Stat. § 346.70(4)(f) (uniform traffic accident reports); Wis. Stat. § 59.20(3)(a) (books and papers required to be kept by certain county officers); *Newspapers, Inc. v. Breier,* 89 Wis. 2d 417 (1979) (daily arrest logs).

exemptions are narrowly construed, and custodians should exercise caution to ensure they apply to the requested record. Some of the most commonly encountered exemptions for villages include the home address, home email, home phone number, and social security number of employees;[45] information related to ongoing investigations of possible employee misconduct;[46] and staff management records like performance evaluations and compensation recommendations.[47]

5. What Does the Balancing Test Say?

If a record is not explicitly required to be disclosed or prohibited from being disclosed, then a custodian will apply the balancing test. The balancing test is a process where custodians weigh the public's interest in disclosure against any public interest favoring nondisclosure.[48] Remember that the public records law strongly favors disclosure, so this analysis always begins with the assumption that a record will be disclosed. The law also prohibits blanket policies that determine how the balancing test is applied in a given situation, so the analysis must be done on a case-by-case basis.[49]

The test focuses only on the *public* interest. This means the interests of a particular person, such as a record subject, are not considered when conducting the balancing test. However, there could be a public interest in protecting some individual's privacy or reputation. For example, a village may find that there is a public interest in not disclosing certain records of public employees. But the reason to withhold the records would not be to protect the employees' interests. There would need to be a reason that the public would want to withhold those records, like if disclosing the records would discourage people from applying and serving in those positions.[50]

There are dozens of considerations that a custodian could potentially encounter that would push them towards withholding a record. For example, custodians may consider policy considerations expressed in other areas of law. This could include evidentiary privileges such as attorney-client, health care provider-patient, husband-wife, and clergy-penitent among others. Other relevant policies include those contained in the open meeting exemptions in Wis. Stat. § 19.85. For example, there are exemptions for personnel matters, public business where competitive or bargaining reasons require a closed session, and deliberations on judicial or quasi-judicial trials or hearings among others. There are also a variety of laws that protect privacy and reputational interests of certain individuals, such as witnesses, complainants, children and juveniles, and crime victims and their families.[51]

But there are still other situations that could push a custodian towards disclosure. For example, the law gives many people special rights to access records about themselves. This includes accessing records with personally identifiable information about the requestor,[52] students and their parents,[53] and patients accessing their own mental health treatment records.[54]

If after conducting this analysis, the custodian can articulate that the public interest in nondisclosure

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[45] Wis. Stat. § 19.36(10)(a) (home address, home email address, home telephone number, and social security number of employees).
[46] Wis. Stat. § 19.36(10)(b). This exemption does not apply to investigations involving holders of a local public office.
[47] Wis. Stat. § 19.36(10)(c). Again, this exemption does not apply to holders of a local public office.
[48] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p. 32 (2025).
[49] *Id*.
[50] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p. 33 (2025).
[51] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p. 36-44 (2025).
[52] Wis. Stat. § 19.35(1)(am).
[53] Wis. Stat. § 118.125(2).
[54] Wis. Stat. § 51.30(4)(d).

outweighs the public interest in disclosure, the request may generally be denied.

6. Duty to Notify Certain Persons

As a general rule, an authority is not required to notify a record subject prior to allowing access to a record containing information about that person. However, the law carves out a few specific situations in which notice is mandatory. For example, pre-release notice is required when records contain information relating to an employee that is the result of an investigation into a disciplinary matter or possible employment-related violation. It is also required when the record relates to a record subject who is an officer or employee of the authority holding a local public office or a state public office. The statutes then require certain waiting period and rights once notice is provided.[55]

H. Denying a Request

There are only two ways to respond to a records request: fulfilling the request or denying it. If an authority wants to deny a request, then it must give "specific and sufficient" reasons for that denial. What this means depends on the reasons for the denial. For example, if a statute specifically prohibits disclosure, it is enough to just cite that statute in the denial. But if the denial is based on the balancing test, then the authority must give the specific policy reasons that supported denial of the records.[56]

If a custodian believes that part of a record must be disclosed but another part cannot, then the custodian must redact the portion of the record that cannot be disclosed and release the rest.[57] This is considered a partial denial of the request, and the custodian must treat it accordingly by giving specific and sufficient reasons for the denial of the redacted portion.

If the request was made in writing, the response must be in writing as well. Written denials must inform the requester that the denial is subject to review by a court through an action under Wis. Stat. § 19.37(1) or by application to the attorney general or local district attorney.[58]

I. Fees

Authorities have very limited ability to charge fees to cover the cost of responding to records requests. The law only allows authorities to charge fees for a few specific tasks identified in statute.[59] For example, the statutes allow authorities to charge for copying and transcription. These fees are limited to the "actual, necessary, and direct cost." Similarly, the statutes allow charges for the actual necessary and direct costs of locating records, but only if the costs would total $50 or more. Authorities are not allowed to charge for redaction, though there is a narrow exception for law enforcement agencies redacting audio and video content.[60] When it is allowable to charge for staff time, the Attorney General has stated that the authority may only charge based on the pay rate of the lowest paid employee capable of performing the task.[61]

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[55] Wis. Stat. § 19.35(6).
[56] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.16-17 (2025).
[57] Wis. Stat. § 19.36(6).
[58] Wis. Stat. § 19.35(4)(b).
[59] Wis. Stat. § 19.35(3).
[60] Wis. Stat. § 19.35 (3)(h).
[61] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.74 (2025).

Authorities may require prepayment of fees that are expected to exceed $5.[62] This can be a very helpful tool for authorities that are subjected to constant records requests. On the other hand, authorities may choose to waive or reduce fees if they determine it is in the public interest, but they are not required to do so.[63]

J. Timing

The public records law requires that responses be provided "as soon as practicable and without delay."[64] The statute does not prescribe a specific deadline. The Wisconsin Department of Justice has stated that ten working days is generally a reasonable time to respond to a simple request for a limited number of easily identifiable records. However, what is reasonable depends on the totality of the circumstances, including the nature of the request, the staff and other resources available to the authority to process the request, and the extent of the request.[65]

Requesters cannot set their own deadlines by saying, for example, that they will consider a request denied if no response is received by a certain date.[66]

K. Enforcement

The public records law provides meaningful enforcement mechanisms. A requester who is improperly denied access to records may bring a mandamus action in court seeking an order compelling disclosure or request that the Attorney General or the local district attorney bring the action on their behalf.[67]

If the requester prevails, they may be entitled to recover their attorney fees.[68] The statute also provides for fines against custodians who fail to comply with the law, and an arbitrary or capricious denial or delay may result in punitive damages.[69]

[62] Wis. Stat. § 19.35(3)(f).
[63] Wis. Stat. § 19.35(3)(e).
[64] Wis. Stat. § 19.35(4)(a).
[65] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.15-16 (2025)
[66] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.15 (2025).
[67] Wisconsin Dep't of Just., *Wisconsin Public Records Law Compliance Guide* p.75 (2025).
[68] Wis. Stat. § 19.37(2)(a).
[69] Wis. Stat. § 19.37(3).

CHAPTER VII

ETHICS & CONFLICTS OF INTEREST

Local government officials – and in some cases employees – are subject to ethical requirements drawn from three primary sources: the state ethics code, local ethics codes, and various statutes governing specific conduct.

The state ethics code establishes minimum standards. There may be situations where the law does not clearly prohibit certain conduct but engaging in that conduct may cast the official in a bad light or serve to undermine public confidence in local government. In situations like these, local officials should balance the benefits of involvement (e.g., representing constituents, using the official's experience) against the potential drawbacks (e.g., adverse public perception, the risk of violating the law). An official who is uncertain about a particular situation should seek advice from the municipal attorney.

A. State Ethics Code

The state ethics code for local public officials is found in Wis. Stat. § 19.59. It establishes minimum standards of ethical conduct, prohibiting local public officials from using their public office to benefit or enrich themselves, their immediate family, or organizations with which they're associated.

The state ethics code applies to anyone holding a local public office.[1] "Local public office" is statutorily defined to include, among others:

- an elective village office;
- a village manager position;
- an appointive office or position of a village in which an individual serves for a specified term (except a position limited to the exercise of ministerial action or a position filled by an independent contractor); and
- an appointive office or position of a village that is filled by the village board or the executive or administrative head of the village and in which the appointee serves at the pleasure of the appointing authority (except a clerical position, a position limited to the exercise of ministerial action or a position filled by an independent contractor).[2]

Police and fire chiefs are not subject to the state ethics code because they do not serve for a specified term, and they do not serve at the pleasure of the appointing authority.[3] Municipal judges are considered state public officials and are governed by the ethics code applicable to state officials.

1. Scope and Definitions
Before examining what conduct the state ethics code prohibits, it is helpful to understand the key terms the statute uses. Four definitions are particularly important.

a. Anything of Value
"Anything of value" means "any money or property, favor, service, payment, advance, forbearance,

[1] Wis. Stat. § 19.42(7x).
[2] Wis. Stat. § 19.42(7w).
[3] Wis. Stat. § 62.13(3).

loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under Ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization."[4]

b. Associated

"Associated," when used with reference to an organization, "includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10 percent of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent."[5]

c. Immediate Family

"Immediate family" means: (a) an individual's spouse; and (b) an individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.[6]

d. Substantial Value

"Substantial value" means anything of more than token or inconsequential value.[7]

2. Prohibited Conduct

a. Using Office for Financial Gain

Wisconsin Stat. § 19.59(1)(a) prohibits local officials from using their office to obtain financial gain or anything of substantial value for the private benefit of themselves, their immediate families, or organizations with which they are associated.

The restriction on "using" an office encompasses more than voting. The Wisconsin Ethics Commission (WEC) interprets this to prohibit a local official from accepting any item or service, including food or drink, and travel, of more than nominal value offered and available because the official holds public office.[8] WEC guideline ETH-1219 suggests that officials ask themselves the following questions regarding any item or service being offered:

1. Is it being offered because of my public position?
2. Is it of more than nominal or insignificant value?
3. Is it primarily for my personal benefit rather than for the benefit of my local unit of government?

If the answer to all three questions is yes, the official may not accept the item or service. This provision does not prohibit a local public official from using the title or prestige of their office to obtain permitted campaign contributions that are reported as required by state law. It also does

[4] Wis. Stat. § 19.42(1).
[5] Wis. Stat. § 19.42(2).
[6] Wis. Stat. § § 19.42(7).
[7] 2008 GAB 02, par. 4.
[8] Wisconsin Ethics Commission Guideline ETH-1219: Receipt of Food, Drink, Favors and Services, available online at https://ethics.wi.gov/Resources/1219-ReceiptOfItemsAndServicesByLocalOfficials.pdf

not prohibit a local public official from obtaining anything of value from the Wisconsin Economic Development Corporation or the department of tourism, as provided under Wis. Stat. § 19.56(3)(f).

b. Offering or Receiving Anything of Value

Wisconsin Stat. § 19.59(1)(b) prohibits local officials from receiving "anything of value" if it could reasonably be expected to influence the local public official's vote, official action or judgment, or could reasonably be considered as a reward for any official vote, action or inaction.

As noted above, "anything of value" is defined broadly. To analyze this, WEC guideline ETH-1219 suggests that officials ask themselves whether it would be reasonable for someone to believe that the item or service is likely to influence their judgment or that it is a reward for action. If the answer is yes, the official may not accept the item or service. Note that the standard for judging behavior is what is objectively reasonable and not the official's subjective belief.

c. Taking Action That Affects a Private Interest

Wisconsin Stat. § 19.59(1)(c) contains two related but distinct prohibitions designed to prevent officials from leveraging their public authority for private advantage. First, an official may not take any official action on a matter in which the official, an immediate family member, or an associated organization has a substantial financial interest. Second, an official may not use the power of their office to produce a substantial benefit, direct or indirect, for themselves, their immediate family members, or an associated organization. The two provisions each reach conduct the other does not. The first is broader in that it applies whenever a financial interest exists, regardless of whether any actual benefit results. The second is broader in a different respect; it extends to any substantial benefit, not just financial ones.

The statute provides a limited exception for taking official action on lawful payments of salaries, expenses, benefits, or reimbursements, or actions on proposals to modify an ordinance. WEC guideline ETH-1232 suggests that local officials may take action in situations where they are part of a similarly situated class of interests if their interest is not significantly greater or less than other members of that class and the effect on their interest is not significantly greater or less than other members of the class. For purposes of this exception, the guideline distinguishes between making policy and applying policy.

When a matter in which a local official should not participate comes before a body the official is a member of, the official should refrain from discussion, deliberations, and votes related to the matter and request that the body's minutes reflect the member's withdrawal.[9]

d. Influence in Exchange for Campaign Contributions

Wisconsin Stat. § 19.59(1)(br) prohibits local officials from giving or offering their vote or influence in exchange for a campaign contribution.

3. Enforcement and Penalties

A local governmental body is not statutorily empowered to discipline, sanction or otherwise prevent a

[9] Wisconsin Ethics Commission Guideline ETH-1232: Mitigating Conflicting Interests: Private Interest vs. Public Responsibility, available online at https://ethics.wi.gov/Resources/ETH-1232.pdf.

vote because it believes the vote or activity is contrary to the state ethics code. The state ethics code is enforced by the local district attorney upon verified complaint of any person. If the district attorney fails to commence an action within 20 days after receiving such complaint or refuses to commence an action, the person making the complaint may petition the attorney general to act on it.[10]

A person who violates § 19.59(1) may be required to forfeit not more than $1,000 for each violation. A person who intentionally violates § 19.59 is subject to fines and imprisonment.[11]

B. Local Ethics Ordinances

The state ethics code sets a floor, not a ceiling. Municipalities are free to impose stricter ethical standards through local ordinances, and many have done so. These ethics codes may prescribe behavior by local public officials, municipal employees, and candidates for municipal elective office. They can be more stringent than state law but cannot be less restrictive.[12]

Wisconsin Stat. § 19.59(3) explicitly authorizes local ethics codes to contain the following provisions, but it does not limit municipalities from including other provisions:[13]

- Financial disclosure requirement.
- A provision directing the municipal clerk or board of election commissioners to omit from an election ballot the name of any candidate who fails to disclose economic interests as required by the ordinance.
- A provision directing the treasurer to withhold payment of salary or expenses to any local public official or municipal employee who fails to disclose economic interests as required by the ordinance.
- A provision vesting administration and civil enforcement of the ordinance with an ethics board. Such a board may issue subpoenas, administer oaths and investigate any violation of the ordinance on its own motion or upon complaint by any person. The ordinance may empower the board to issue opinions upon request. Records of the board's opinions, opinion requests and investigations of violations of the ordinance may be closed in whole or in part to public inspection if the ordinance so provides.
- Provisions prescribing ethical standards of conduct and prohibiting conflicts of interest on the part of current and former local public officials and municipal employees.
- A provision prescribing a forfeiture for violation of the ordinance in an amount not less than $100 for each offense and not greater than $1,000 for each offense.

C. Advisory Ethics Opinions

Individuals may request an advisory opinion from the municipal ethics board or, if there is none, the municipal attorney regarding the propriety of any matter to which the requester is or may become a party. The identity of the person requesting an advisory opinion is confidential. Requests for opinions and the opinions themselves must be in writing.[14]

[10] Wis. Stat. § 19.59(8).
[11] Wis. Stat. § 19.58.
[12] Wis. Stat. § 19.59(1m).
[13] Wis. Stat. § 19.59(3), (4).
[14] Wis. Stat. § 19.59(5)(a).

Compliance with an advisory opinion is strong evidence of intent to comply with the ethics laws when the material facts are as stated in the opinion request.[15]

D. Private Financial Interests in Public Contracts (Wis. Stat. § 946.13)

State law makes certain conduct by municipal officials and employees a criminal offense, including bribery[16] and misconduct in public office.[17] Wisconsin Stat. § 946.13 is different and warrants special attention. Most criminal statutes require a person to have knowledge of wrongdoing or a criminal intent. However, Wis. Stat. § 946.13 is a strict liability felony. An official or employee can violate it without knowing they have done anything wrong. It is like speeding: an officer does not have to prove that you were going above the speed limit on purpose, just that you were.

Known as the "pecuniary interest" statute, Wis. Stat. § 946.13 prohibits public officials and employees from having a private financial interest in a public contract. The law contains two prohibitions; it prohibits conduct taken in the employee or official's *official* capacity, and conduct taken in their *private* capacity. The rules for each context are different.

1. Official Action

Wisconsin Stat. § 946.13(1)(b) prohibits a public official or employee from participating in his or her official capacity in the making of a contract in which the officer or employee has a private pecuniary interest, whether direct or indirect. It also prohibits performing a function requiring the exercise of discretion in relation to such a contract. Since this prohibition relates to official action, abstaining from all activity (e.g., discussion, review, voting) related to the contract will prevent a violation of the law.

2. Private Action

For actions in an employee or official's private capacity, the law is stricter. Wisconsin Stat. § 946.13(1)(a) prohibits a public official or employee from negotiating, bidding for or entering into a contract in which they have a private pecuniary interest, direct or indirect, if at the same time they are authorized or required by law to participate in their official capacity in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part.

Here, abstention cannot cure or prevent a violation. The private capacity prohibition does not require that an official or employee actually take any official action in regard to the contract. The statute imposes liability when an official or employee takes private action while authorized to participate in the making of the contract. Additionally, a violation does not require that a contract be executed. Negotiating, even preliminary negotiations, or bidding for the contract is enough to violate the law.

A public official or employee cannot avoid violating the law by having someone else negotiate or bid for the contract on their behalf. The law "forbids a public officer or employee from accomplishing through an agent that which the law prohibits [the officer or employee] from doing directly."[18] This means that if another person or entity is acting as agent for the public official or employee, then the actions of that

[15] Wis. Stat. § 19.59(5)(a)
[16] Wis. Stat. § 946.10(2)
[17] Wis. Stat. § 946.12
[18] 75 Op. Att'y Gen. 172(1986).

person or entity will be deemed those of the official or employee.

3. Exceptions

The law contains a number of exemptions, most of which relate to very specific situations. There are two exceptions of more general applicability worth noting here. First, the law does not apply to contracts that do not involve receipts and disbursements aggregating more than $15,000 in any year.[19] Second, the prohibition on *official action* does not apply to a public officer or employee solely by reason of their holding not more than 2 percent of the outstanding capital stock of a corporate body involved in such contract.[20]

These exceptions should not be viewed as authorizations. They remove the conduct from the scope of the pecuniary interest statute, but they do not immunize the behavior from other applicable restrictions such as the state ethics code or local ordinances and rules.

4. Effects of Violation

A contract entered in violation of Wis. Stat. § 946.13 is void. A municipality that is a party to such a contract is not bound by it.[21]

An officer or employee who violates § 946.13 is guilty of a Class I felony, which is punishable by a fine not to exceed $10,000 or imprisonment not to exceed 3 years and 6 months, or both.[22] A conviction would also lead to an automatic vacation of an elective office since the official would be constitutionally and statutorily barred from holding public office.[23]

[19] Wis. Stat. § 946.13(2)(a).
[20] Wis. Stat. § 946.13(5).
[21] Wis. Stat. § 946.13 (3).
[22] Wis. Stat. § 939.50(3)(i).
[23] Wis. Const. art. XIII, sec. 3(3); Wis. Stat. § 17.03(5).

CHAPTER VIII
BASIC MUNICIPAL FINANCE

Managing the village's finances is one of the most consequential responsibilities of village government. State law shapes much of how that work gets done. This chapter covers the basics to help village officials understand the financial framework they are working within.

A. Sources of Revenue

Understanding what funding tools are available and the restrictions that govern them is essential for municipal officials as they plan and manage their budgets. Wisconsin municipalities draw on three primary sources of funding: local taxes, local fees, and state aid. Each comes with its own rules and limitations set by state statute.

1. Local Taxes
Municipal taxing power is very limited. Cities may levy only those taxes that are authorized by state statute, and they are explicitly prohibited from levying a tax on income.[1]

a. General Property Tax
The property tax is the primary source of revenue for municipalities, typically accounting for the majority of the village's funding.

With exception of agricultural property, the Wisconsin constitution requires all property to be taxed uniformly.[2] Residential property, for example, cannot be assessed or taxed at a lower rate than commercial or industrial property. This also means that cities cannot offer special property tax treatment such as property tax refunds or abatements.

The municipal assessor will determine market value for every property in the village based on its "highest and best use." A property's assessed value is then multiplied by the tax rate to determine the amount of tax each property owes.

For a discussion of assessment challenges, open book, and the Board of Review, see League Opinion Taxation 106R2 and 1054.

b. Levy Limits

1. General
The property tax levy is the total dollar amount the village chooses to raise through property taxation. State statutes cap the amount that municipalities can increase their levy each year. Generally, the annual levy increase is limited to the percentage change in net new construction.[3] Thus, if total property values in your village rise due to a hot real estate market, you cannot capture that growth in revenue. Similarly, if your village experiences no or little growth, the levy may remain flat regardless of inflation.

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[1] *Plymouth v. Elsner,* 28 Wis.2d 102 (1965), Wis. Stat. § 66.0611.
[2] Article VIII, sec. 1. Wis. Const.
[3] Wis. Stat. § 66.0602.

With limited exceptions, a village may only exceed its levy limit through referendum. The village board must approve a resolution to that effect, and the resolution must be approved by the voters. This process is set out in Wis. Stat. § 66.0602(4).

2. Debt Service

Generally speaking, debt service is not included in the village's levy limit calculation.[4] In practical terms, this means that when a municipality levies taxes to repay bonds or other debt, those dollars are not counted against the levy limit. However, municipal borrowing is subject to its own set of legal constraints, including a constitutional limit on debt not exceeding 5% of the equalized value of taxable property in the village.

3. Negative Adjustments for Fees

The levy limit law also functions as a check on certain fees. Specifically, if a village creates a new fee or increases an existing one for certain "covered services," the levy limit goes down by the amount of revenue that fee is expected to generate. Think of it as a dollar-for-dollar trade: every dollar the village collects through the new or increased fee is a dollar it can no longer raise through the levy. "Covered services" are garbage collection (but not recycling), fire protection, snow plowing, street sweeping, or stormwater management.

This rule only applies, however, if the village was already using property tax revenue to fund the covered service, at least in part, as of 2013. If a service has always been funded entirely through fees, the fee-for-levy trade-off does not come into play.

There is also a ceiling on how much the levy limit can decrease. The reduction cannot exceed the total amount of levy funding the village devoted to that service in its 2013 budget.[5]

4. Carryover

If a village does not use all of its allowable levy, the law allows a small amount of carryover. The unused amount may be used in the next budget cycle, but is limited to the actual unused amount, or 1.5 percent of the prior year's actual levy, whichever is less.[6]

c. Optional Local Taxes

1. The "Wheel Tax" (i.e., a Vehicle Registration Fee)

State law permits any municipality to impose a flat, annual registration fee on automobiles and trucks of not more than 8,000 pounds that are customarily kept within the jurisdiction.[7] This is a statutorily authorized fee, but it is commonly referred to as a wheel tax.

There is no limit on the amount of the wheel tax, but revenues from the wheel tax must be used for transportation-related purposes.[8] The Department of Transportation (DOT) collects the fee along with the annual state registration fee. DOT retains a small amount for administrative costs; the rest is remitted to the municipality.

[4] Wis. Stat § 66.0602(3).
[5] Wis. Stat. § 66.0602(2m).
[6] Wis. Stat. § 66.0602(3)(f).
[7] Wis. Stat. § 341.35.
[8] Wis. Stat. § 341.35(6r).

2. The Room Tax

A municipality may impose room tax on the sales price from selling rooms or lodging for less than one month. This includes short-term rentals through sites such as Airbnb and VRBO. See League Opinion Taxation 1053 for a discussion of the practical challenges related to Airbnb and VRBO. With limited exceptions, the room tax is capped at 8 percent.[9]

Municipalities may keep up to 30% of the room tax to be used for general purposes. The remaining 70% must be spent on "tourism promotion and tourism development."[10] "Tourism promotion and tourism development" is narrowly defined by statute. Generally, it includes marketing to tourists, efforts to recruit conventions and events, and tangible municipal developments like convention centers.[11]

Spending on "tourism promotion and tourism development" cannot be done directly by the village. Those decisions must be made by either a "tourism commission" or a "tourism entity."[12] A "tourism entity" is a nonprofit organization that meets certain statutory requirements.[13] In many villages this is the visitor and convention bureau or chamber of commerce. A "tourism commission" is a municipal body. By statute, a commission must consist of 4 to 6 members, one of whom must represent the Wisconsin hotel and motel industry. Members are appointed by the president, to serve one-year terms at the pleasure of the appointing official.[14]

Two or more municipalities may form a "tourism zone." This is an area that the municipalities agree is a single destination as perceived by the traveling public. Each municipality within a zone must levy the same percentage of room tax. In addition, the municipalities must enter into a contract under Wis. Stat. § 66.0301 to create a commission to coordinate tourism promotion and development within the zone.[15]

3. Premier Resort Tax

The premier resort tax is a local sales tax that applies to certain goods and services. With certain exceptions and special statutory carveouts, only a village that has at least 40% of the equalized assessed value of its taxable property used by tourism-related retailers may enact the tax. The proceeds of this tax may only be used to pay for infrastructure expenses.[16]

2. Local Fees

The primary difference between a tax and a fee is the purpose for imposing it. Taxes are imposed for the purpose of raising revenue. A fee is generally imposed to pay for or defray the costs of providing services or for regulation and enforcement in a particular area.

The amount of a fee must bear a reasonable relation to the service for which the fee is imposed.[17] The fee may not exceed the actual costs of issuing a license or permit, and enforcing the regulations pertaining

[9] Wis. Stat. § 66.0615(1m).
[10] Wis. Stat. § 66.0615(1m)(d).
[11] Wis. Stat. § 66.0615(1)(fm).
[12] Wis. Stat. § 66.0615(1m)(d)2.
[13] Wis. Stat. § 66.0615(1)(f).
[14] Wis. Stat. § 66.0615(1m)(c).
[15] Wis. Stat. § 66.0615(1m)(b)2.
[16] Wis. Stat. § 66.1113.
[17] Wis. Stat. § 66.0628(1)-(2).

to the license or permit. If the charge is not reasonably related to the expenses incurred by the village, or the amount collected clearly and materially exceeds the cost of regulation, it will be considered an illegal tax.[18] The only exception to this is when a state statute sets a specific fee range, as, for example, in the case of alcohol beverage licenses. Here, municipalities are free to set their fees anywhere within that statutory range.[19]

3. Special Assessments

Special assessments are charges levied against real property to recover some or all of the costs of a public work or improvement. They may be levied against any property, including tax exempt parcels, as long as two basic requirements are met: 1) the property is in fact specially benefited by the improvement; and 2) the amount of the assessment is made on a "reasonable basis."[20]

The procedure for levying special assessments is set forth in Wis. Stat. § 66.0703 and must be strictly followed. However, the statutes also allow the village board to establish local special assessment procedures by ordinance provided that the ordinance includes a provision for reasonable notice and hearing.[21] The statutes also provide a simplified procedure to order sidewalks constructed or repaired at the abutting property owners' expense.[22]

4. Special Charges for Current Services

State law allows municipalities to impose special charges against property for municipal services provided to the property. "Services" include, among other things, snow and ice removal, weed elimination, street sprinkling, oiling and tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, recycling, storm water management, tree care, and removal of dead animals.[23] The procedure for imposing such charges is less involved than the process for levying special assessments. Delinquent special charges, like delinquent special assessments, can be placed on the property tax roll.

5. Impact Fees

Impact fees are one-time charges imposed by municipalities on new developments to help fund the capital costs of public facilities required to serve the new growth. Impact fees may be imposed to pay for "highways and other transportation facilities, traffic control devices, facilities for collecting and treating sewage, facilities for collecting and treating storm and surface water, facilities for pumping, storing and distributing water, parks, playgrounds, lands for athletic field, solid waste and recycling facilities, fire protection facilities, law enforcement facilities, emergency medical facilities and libraries."[24]

Wisconsin Stat. § 66.0617(6) sets standards for impact fees. Among other things, impact fees:

- Must bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.
- May not include amounts for an increase in service capacity greater than the capacity necessary to serve the development for which the fee is imposed.

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[18] *City of Milwaukee v. Milwaukee & Suburban Transport Corp*., 6 Wis. 2d 299 (1959).
[19] *Sluggy's Lake Front Inn, Inc. v. Delavan*, 125 Wis. 2d 199 (Ct. App. 1985).
[20] *CIT Group v. Village of Germantown*, 163 Wis. 2d 426 (Ct. App. 1991).
[21] Wis. Stat. § 66.0701.
[22] Wis. Stat. § 66.0907.
[23] Wis. Stat. § 66.0627.
[24] Wis. Stat. § 66.0617(1)(a).

- May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land.
- May not include amounts necessary to address existing deficiencies in public facilities.

Before enacting an impact fee ordinance, a municipality must prepare a needs assessment and hold a public hearing.[25] Revenues from impact fees must be held in a segregated account. They may only be spent on the capital costs for which they were imposed.[26] If an impact fee is not used within eight years, it must be refunded, with interest, to the current owner of the property.[27]

6. State Aid

a. Shared Revenue

One of the most significant sources of state aid is the county and municipal aid program, often referred to as shared revenue. As a result of 2023 Act 12, the program now has two components: the county and municipal aid program, and the newly-created supplemental county and municipal aid program. Both components provide aid to every municipality in the state.

The county and municipal aid component is entirely unrestricted, which means these funds may be used for any activity approved by the village board. By contrast, the supplemental aid component is restricted. Supplemental aid may only be used for law enforcement, fire protection, emergency medical services, emergency response communications, public works, courts, and transportation. However, supplemental aid may be used to supplant other, unrestricted revenue sources.

Act 12 tied the amount of aid each municipality receives to state sales tax collections. Each year, a municipality's payment is adjusted by the percentage change in the estimated amount of state sales and use tax revenues for the previous fiscal year compared to the preceding fiscal year.

2023 Act 12 also created maintenance of effort requirements. All municipalities are required to certify that they have maintained a level of fire protective services and emergency medical services that is at least equal to the level provided in the previous year. In addition, municipalities with populations over 20,000 are required to certify that they have maintained a level of law enforcement services that is at least equivalent to the level provided in the previous year.

For a detailed discussion of Act 12, including an historical overview of state aid, see Wisconsin Legislative Fiscal Bureau, *County and Municipal Aid* Informational Paper 24 (Jan. 2025).

b. Expenditure Restraint

The expenditure restraint program was originally designed to serve as an incentive program for municipalities to keep increases in spending low. To qualify for this aid a municipality must have a tax rate that exceeds $5 per $1000 of value, and it must restrict the rate of year-to-year growth in its budget to a percentage determined by statutory formula.

[25] Wis. Stat. § 66.0617(3), (4).
[26] Wis. Stat. § 66.0617(8).
[27] Wis. Stat. § 66.0617(9).

c. Utility Aid

Utility aid compensates local governments for costs they incur in providing services to public utilities. These costs cannot be directly recouped through property taxation since utilities are exempt from local taxation.

d. Computer Aid & Exempt Property Aid

Typically, when property becomes exempt from taxation, the taxes that would have been levied on that property are shifted to the properties that remain taxable, resulting in higher property tax bills. When the state exempted computers from taxation and then exempted all personal property from taxation, it established funding programs to help compensate municipalities for the lost tax base.

For more detailed information see Wisconsin Legislative Fiscal Bureau, *Targeted Local Government Aid Programs (Expenditure Restraint, Utility Aid, and Exempt Property Aid),* Informational Paper 25 (Jan. 2025).

e. Payments for Municipal Services Program

The payments for municipal services program is designed to reimburse municipalities for the cost of providing critical services to tax-exempt state facilities. Payments are made for fire and police protection, extraordinary police services, garbage and trash collection and disposal.

For more detailed information on the municipal services program, see Wisconsin Legislative Fiscal Bureau *Payments for Municipal Services Program,* Informational Paper 26 (Jan. 2025).

f. Transportation Aids

Local governments have jurisdiction over the majority of the state's roads and streets. General transportation aid is paid to local governments to assist in the maintenance, improvement, and construction of local roads. General transportation aid is restricted; it may only be used for transportation-related expenditures. Each municipality must establish and administer a separate, segregated account. All moneys received from the state and the federal government for local highways must be deposited in this account.

For more detailed information on Transportation Aids, see Wisconsin Legislative Fiscal Bureau *Transportation Aids (General Transportation and Connecting Highway Aid),* Informational Paper 42 (Jan. 2025).

g. Other Transportation and Transit Programs

There are a number of transportation-related aid programs that are more specifically targeted. These include the Local Roads Improvement program (LRIP), which provides grants for capital improvements on existing roads; Local Roads Improvement Program – Agricultural Roads (ARIP) for roads that provide access to agricultural lands or facilities used for the production of agricultural goods, and are used by at least one agricultural producer; and the Surface Transportation Program, which provides grants of federal funds.

For more detailed information on all these programs see Wisconsin Legislative Fiscal Bureau *Local Transportation Assistance Programs,* Informational Paper 45 (Jan. 2025).

For a discussion of the various state aid programs for transit, including shared ride taxis, see Wisconsin Legislative Fiscal Bureau *Transit Assistance* Informational Paper 43 (Jan. 2025).

B. Spending Money

1. Budgeting

a. Budget Formulation

The budget process is one of the most important activities undertaken by local governments. The statutes are silent as to the process a village must use to formulate a proposed budget. This absence of a statutorily prescribed process leaves substantial discretion to local governments. Consequently, there are wide differences in budget practices among municipalities. Many villages have developed formal procedures set out in ordinances or resolutions and guidelines. The budget process in smaller municipalities is often less formal.

b. Budget Contents

By statute, the following information must be included in the village budget:

- All existing indebtedness and all anticipated revenue from all sources during the ensuing year;
- All proposed appropriations for each department, activity and reserve account during the ensuing year;
- Actual revenues and expenditures for the preceding year, actual revenues and expenditures for not less than the first six months of the current year and estimated revenues and expenditures for the balance of the current year; and
- All anticipated unexpended or unappropriated fund balances, and surpluses.[28]

c. Budget Hearing

Before adopting the annual budget, the village must hold a public hearing on the proposed budget. At this meeting "any resident or taxpayer of the governmental unit shall have an opportunity to be heard on the proposed budget."[29]

At least 15 days before the date of the public hearing, the village must publish a class 1 notice that contains:

- A budget summary that includes information specified by state law;
- A notice of the place where the proposed budget in detail may be inspected (e.g., the clerk's office);
- A notice of the time and place of the budget hearing.[30]

Sometime after the public hearing, either at the same meeting or at a subsequent one, the budget ordinance or resolution is formally adopted by the village board.

d. Budget Summary

Wisconsin Stat. § 65.90(3) prescribes the information that must be contained in a budget summary.

[28] Wis. Stat. § 65.90(2).
[29] Wis. Stat. § 65.90(4).
[30] Wis. Stat. § 65.90(3)(a).

The village may publish additional information, but the additional information must be reported separately from the statutorily required information.[31]

e. Deadline for Adopting a Municipal Budget

The budget should be adopted by the end of November or, at the latest, early December. State statutes do not set a formal deadline for adopting the budget, but the practical deadline is driven by the tax billing process. For example, village boards must determine the village's tax levy by December 15.[32] Also, the municipal clerk must transfer the tax roll to the municipal treasurer by December 8,[33] and many municipalities have their tax bills printed by the county or a private service provider who will have their own deadlines.

f. Budget Changes

A budget amendment is required when altering the amount of tax to be levied, the amounts of the various appropriations, and the purposes for such appropriations stated in the budget. This requires a two-thirds vote of the entire village board. Within 15 days after the change is made, the village must either publish a class 1 notice of the change, or post notice on the village's website. Failure to comply invalidates the change.[34]

g. Prohibition on Accumulating Funds

In general, municipalities may not accumulate unappropriated surplus funds. However, cities may maintain reasonable amounts of unappropriated funds on hand to meet immediate cash flow needs, and may accumulate needed capital in non-lapsing funds to finance specifically identified future capital expenditures (e.g., new fire truck, village hall or library).[35] If a village accumulates unappropriated funds for these purposes, it is a good practice to establish a policy on how much money it keeps, why it keeps it, and when it may be used.

h. Best Practices

The budget process is about more than numbers; it is, arguably, the most important policy document that the village produces. Ideally, it should be strategic rather than simply an annual exercise in balancing revenues and expenditures. The quality of budget decisions and the degree to which they are accepted by the public depend heavily on how the process is conducted. A strong budget process should incorporate a long-term perspective, link spending decisions to organizational goals, and promote meaningful communication with stakeholders. Residents, elected officials, employees, businesses, and citizen groups should be actively involved throughout. Regular communication builds accountability, educates the public, and strengthens confidence in local government.

For a more detailed discussion on the process of budgeting, see:

- The chapter on incorporating planning into budgeting in *Basic Financial Administration for Wisconsin Local Governments,* which is available from the League.
- *Recommended Budget Practices: A Framework for Improved State and Local Governmental Budgeting* which is available from the Government Finance Officers Association (GFOA).

[31] Wis. Stat. § 65.90(3)(d).
[32] Wis. Stat. § 61.46.
[33] Wis. Stat. § 74.03(1).
[34] Wis. Stat. § 65.90(5).
[35] *Blue Top Motel, Inc. v. City of Stevens Point,* 107 Wis. 2d 392 (1982).

- *A Local Official's Guide to Public Engagement in Budgeting,* published by Institute for Local Government, which describes approaches to involve residents in the budget process.

2. Public Construction

Public construction contracts require special attention because they are subject to special statutory procedures. State statutes establish minimum requirements, and many municipalities impose additional local requirements. In addition, projects involving state or federal funding may trigger separate competitive bidding or procurement rules tied to that funding.

Contracts for "public highway construction" are subject to the following requirements:

- Over $25,000: Must be awarded to the lowest responsible bidder following applicable bid procedures.
- $5,000-$25,000: Formal advertising for bids is not required, but a Class I notice of the proposed public highway construction must be published before the contract is executed.
- Below $5,000: Competitive bidding requirements do not apply.[36]

"Public highway construction" is defined as a public construction project involving the construction, improvement, repair, or maintenance of a highway. "Highway" is defined as a public way or thoroughfare, including any bridges on the public way or thoroughfare.[37]

Contracts for "public construction" are subject to the following requirements:

- Over $50,000: Must be awarded to the lowest responsible bidder following applicable bid procedures.
- $10,000–$50,000: Formal advertising for bids is not required, but a Class 1 notice of the proposed public construction must be published before the contract is executed.
- Below $10,000: Competitive bidding requirements do not apply.[38]

These expenditure thresholds may not be artificially reduced by contract splitting or other means.[39]

Although the statutes provide a limited definition of "public highway construction," the term "public construction" is not comprehensively defined by statute or case law. A commonly cited legal treatise defines "public construction" as "activities concerned with the erection of buildings and bridges, the construction of streets and highways, and other similar public improvements which require the combining of materials, supplies and public labor."[40] No court has formally adopted this definition, but the League has cited it as useful guidance.

In practice, "public construction" encompasses more than the erection of all or part of a new building or structure. It also includes the reconstruction or renovation of an existing structure and the purchase of equipment or materials to be incorporated into a specific project.[41]

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[36] Wis. Stat. § 62.15(1)(b), (c).
[37] Wis. Stat § 62.15(1)(b).
[38] Wis. Stat. §§ 62.15(1)(a) and 61.54.
[39] *See Menzl v. City of Milwaukee,* 32 Wis. 2d 266 (1966); League Opinion Contracts 364.
[40] Natkins, Smith and Van Swearingen, Public Construction in Wisconsin, 50 (1985).
[41] League Legal Opinion Contracts 340C; *Knuth v. Fidelity & Casualty Co*., 275 Wis. 603 (1957).

Several common municipal expenditures fall outside the definition of public construction and are therefore not subject to competitive bidding. A municipality that stockpiles materials, such as blacktop, for use on future projects on a project-by-project basis is one example. The purchase of vehicles and equipment, such as a road grader, is also excluded, even if that equipment will later be used to perform construction work.[42] Contracts for professional services such as engineering or architecture are likewise exempt, even when the services are directly connected to a public construction project.[43]

Because the definition of "public construction" is not clearly defined by statute or case law, municipalities should consult legal counsel when uncertainty exists regarding whether competitive bidding requirements apply.

Certain public construction contracts are statutorily exempt from the competitive bidding requirements. These include situations such as donated materials and volunteer labor,[44] public emergencies, and construction performed by municipal workers.[45]

3. Tax Incremental Financing

Tax Incremental Financing (TIF) is the primary tool municipalities have for encouraging development. It is complex, long-term, and comes with specific statutorily prescribed constraints.

In very general terms, a TIF district (TID) is an area that has been specifically delineated and approved for economic development. Once a TID is established, the assessed value of all property within a TID at the time the district was created is considered the "base value." As development occurs in the district, property values rise. The increased tax revenue generated from that growth is called the "increment." The increment is used to pay for things like infrastructure, land acquisition, environmental remediation, or developer incentives that made the development possible. These are called "project costs." Both the "project costs" and the initial establishment of the TID must be approved by the joint review board, which has members from the village, the county, the school board and the technical college.

State statutes limit how much property in a village can be included in TIDs. The "12% rule" generally limits the amount of property in TIDs to 12% of the village's total equalized value.[46]

For more detailed information on TIF, see the Wisconsin Department of Revenue's *Tax Incremental Financing Manual*.

C. Borrowing

Article XI, § 3 of the Wisconsin constitution limits municipal general obligation debt to 5% of the equalized value of taxable property in the village.

Municipal borrowing can be either long-term or short term. Long-term borrowing facilitates the equitable distribution of costs between current and future beneficiaries of projects such as wastewater

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[42] League Legal Opinion Contracts 340C.
[43] *Aqua-Tech, Inc. v. Como Lake Protection and Rehabilitation District,* 71 Wis. 2d 541, 546 (1976).
[44] Wis. Stat. §§ 61.54 and 62.15(1)(a).
[45] OAG-5-09 ¶ 14-15, See League Opinions Contracts 307 and 323.
[46] Wis. Stat. § 66.1105(4)(gm)4.c.

treatment, streets, and government buildings. Additionally, by spreading costs over a greater period, long-term borrowing helps municipalities avoid large year-to-year fluctuations in their property tax levies. Short-term borrowing, by contrast, allows municipalities to manage interim financial periods, and helps municipalities deal with fluctuations in the financial market.

There are a number of financial instruments that municipalities may use. They differ from each other in the purposes for which the borrowing may be undertaken, the source of repayment, the requirements necessary to authorize the borrowing, and the permissible terms.

Municipalities that issue long-term debt are often evaluated by bond rating agencies such as Moody's or Standard & Poor's. A bond rating reflects the agency's assessment of the municipality's financial health and its ability to repay its debt obligations. Higher ratings generally allow municipalities to borrow at lower interest rates, reducing the overall cost of financing to taxpayers. Factors that influence a municipality's rating include its tax base, debt burden, fund balances, and general fiscal management practices.

For a more detailed discussion see the chapter on municipal borrowing in *Basic Financial Administration for Wisconsin Local Governments,* which is available from the League.

D. Investments

Wisconsin law strictly limits how villages may invest public funds. Under Wis. Stat. § 66.0603, local governments may only invest in instruments specifically authorized by law; if an investment type is not on the approved list, it is not permitted. The village may delegate investment authority to a qualified bank or trust company, but must annually renew the agreement and review the performance of the institution.[47] Municipalities may also opt to invest through the State Investment Fund, managed by the State of Wisconsin Investment Board.[48] Municipal officials should work closely with their legal counsel and financial advisors to ensure that investment decisions stay within the bounds of what the statutes permit. Further, it is a good practice to establish an investment policy.

For a more detailed discussion, see the chapter on cash management in *Basic Financial Administration for Wisconsin Local Governments,* which is available from the League.

E. Audits

There is no general rule requiring villages to have an annual audit; however, audits are required in certain circumstances:

- Villages with a population of 25,000 or more must have an annual audit of the financial status and activities of all funds. The audit must be conducted according to generally accepted auditing standards and submitted to the Department of Revenue.[49]
- Villages that have adopted the alternative system of approving financial claims under Wis. Stat.

[47] Wis. Stat. § 66.0603(2).
[48] Wis. Stat. § 25.50.
[49] Wis. Admin. Code Tax §§ 16.02 and 16.05.

§ 66.0609 must adopt an ordinance requiring an annual audit of their financial transactions and accounts.[50]

- A program audit may be required as condition of receiving certain state or federal grants. For example, municipalities that spend $1,000,000 or more in federal financial assistance in a fiscal year are subject to a single audit under federal Uniform Guidance.[51]

Where an audit is not legally required, there are still often good governance reasons to obtain an outside financial examination. For example, combining offices such as the clerk and treasurer raises issues of financial control because the extra check under the bookkeeping system used in most municipalities does not exist if one individual handles all the financial records. Although the misappropriation of public funds is a rare occurrence in Wisconsin, it is advisable, though not mandatory, for municipalities that combine the offices of clerk and treasurer to specify in the charter ordinance creating the office that an annual audit of records be made by a certified public accountant. However, not every situation requires a full audit. A "review," for example, is a less intensive process that provides limited assurance at substantially lower cost. Municipalities should discuss with their accountant and legal counsel what level of financial examination would meet their needs.

For a more detailed discussion, see the chapter on cash management in *Basic Financial Administration for Wisconsin Local Governments,* which is available from the League.

[50] Wis. Stat. § 66.0609(3).
[51] 2 C.F.R. Part 200, Subpart F.

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