



**A LEAGUE
HANDBOOK**

The Powers and Duties of Wisconsin Mayors

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Introduction

This handbook is a survey of the statutory provisions relating to the mayor's office in Wisconsin cities operating under the mayor-council form of government. It is a revision of a handbook last published in April 1988.

Its aim is to give a general summary of the mayor's powers and duties as provided by state statute and judicial interpretations. No attempt has been made to indicate which of the statutory provisions are subject to change by home rule charter ordinance in accordance with sec. 66.01, Stats. The special provisions in force in Wisconsin's sole city of the first class, Milwaukee, and in cities operating under the council-manager or commission plans of government (ch. 64, Stats.) have not been included. Also, since this is a survey, full details of the powers and duties of the mayor are not included on each point.

All numerical statutory citations are references to the 1993-94 Wisconsin statutes. This handbook is current for legislative acts published through March 31, 1996. Other references are to the published opinions of the attorney general of Wisconsin, e.g., 66 Op. Att'y Gen. 24 (1977); the published decisions of the Wisconsin Supreme Court and Court of Appeals, e.g., *Geyso v. Cudahy*, 34 Wis.2d 476, 149 N.W.2d 611 (1967); written opinions of the League's legal staff, e.g., Salaries #399; and a municipal law treatise, e.g., McQuillin, *Municipal Corporations*, sec. 16.32 (3rd ed.).

Mayors will want to become familiar with those statutes affecting city government (chs. 62—the city charter law, 66—general municipal provisions, 67—municipal borrowing, 70 and 74—property taxation, 125—alcohol beverages, etc.). A copy of the latest biennial edition of the Wisconsin statutes is provided by the state to each city clerk.

Information on the conduct of city affairs also can be obtained by consulting two other League publications: the *Handbook for Wisconsin Municipal Officials*; and the *The Conduct of Common Council Meetings* handbook. These publications were distributed to member municipalities and additional copies are available from the League for a minimal charge.

1. THE OFFICE OF MAYOR

Election and Qualifications

The mayor is the chief executive officer of a city and is elected by the voters on the first Tuesday in April, usually in even-numbered years. Secs. 5.02(21), 62.09 (3)(a), (5)(a) and (8)(a), Stats. A mayoral candidate must be a citizen of the United States and of Wisconsin and an elector of the city. Sec. 62.09(2)(a), Stats. Electors must be 18 years of age, and must have resided in the state and the city for at least 10 days. 26th Amendment, U. S. Const.; Art. III, sec. 1, Wis. Const.; sec. 6.02(1), Stats.

A person may be a candidate for more than one office at an election. Sec.8.03(2m), Stats. For example, it is possible for the same person to be a candidate for the offices of alderperson and mayor at the same election. If elected to both offices, however, the person can only qualify for one. A vacancy is created in the office for which the person was elected but does not qualify. A current alderperson whose term is not expiring can also run for the office of mayor; however, that person vacates his or her seat on the council when qualifying for the office of mayor. *State ex rel. Stark v. Hines*, 194 Wis. 34, 215 N.W. 447 (1927).

Such a vacancy is filled by a majority vote of the common council until a spring special election is held. The appointee, though, would serve for the remainder of the term if the vacancy occurs after the December 1st preceding the last full or part year of the term. Sec. 17.23(1)(a), Stats.

Oath, Term

To qualify for office, the mayor must take and file the official oath with the city clerk within 10 days after receiving notice of election or appointment from the city clerk. Secs. 62.09(4)(a), 19.01(1), and (4)(f), Stats. The certificate of election issued by the city clerk under sec. 7.53(4), Stats., is not essential to qualification. *State ex rel. Burdick v. Tyrrell*, 158 Wis. 425, 433, 149 N.W. 280 (1914). However, the filing of the oath is essential. *Burton v. State Appeal*

Board, 38 Wis.2d 294, 156 N.W.2d 386(1968). A vacancy is created when a person elected or reelected to the office of mayor neglects to take and file the official oath within the time prescribed by law. Sec. 17.03(7), Stats. The term of the mayor commences on the third Tuesday in April in the year of election and runs for two years unless a shorter or longer term has been fixed by charter ordinance. Sec. 62.09(5)(a)& (b), Stats. According to information compiled by the Wisconsin Taxpayers Alliance in 1991, approximately 18 Wisconsin cities with populations above 15,000 provide for a four-year term for the mayor.

Salary

The initial determination to pay the mayor a salary requires a 3/4 vote of all the council members. Sec. 62.09(6)(a), Stats. Once established, the salary may be changed no later than the first regular meeting in February in the year of election by ordinance enacted by a simple majority of the members voting, unless a local ordinance requires a greater vote. Sec. 62.09(6)(b), Stats., Salaries #404 and #417R. Although the action to increase or diminish the mayor's salary may not take effect during the mayor's current term of office, the salary may be changed to take effect in the *subsequent* term. Sec.66.196, Stats. Cost of living adjustments for the mayor and other members of the common council are prohibited. Sec. 66.199, Stats.; Salaries #391, #413 and #417R.

The courts have recognized a distinction between salary and expenses and therefore the prohibition against increasing or decreasing salaries during the term of office does not apply to expenses. Salary is defined as "a fixed periodical compensation paid for services rendered." *Geyso v. Cudahy*, 34 Wis.2d 476, 483, 149 N.W.2d 611 (1967). In contrast, an expense is a charge incurred in performing those services. *Id.* The payment of a reasonable expense allowance or an upward adjustment of expenses is not deemed a mid-term salary increase and is therefore allowable. *Id.*

Expense payments can be a defined amount (e.g., a fixed per meeting payment) which represents an estimate of the charges incurred in performing official duties rather than the exact expenses incurred. However, it is important

that the fixed amount be reasonable and related to actual expenses incurred in the performance of duties. *Id.* Courts will look beyond the label of "expenses" or "salary" to see what the payment is for. It is possible that an ordinance which increases per meeting payments might be viewed as a salary increase, rather than an expense reimbursement. Salaries #412 and #417 and #417R. Also, it should be noted that under the federal Internal Revenue Code, expense reimbursements made to municipal officers are exempt from social security and income tax withholding only if the expense allowance arrangement complies with certain requirements (i.e., there is a municipal connection, substantiation of expenses and return of amounts received in excess of substantiated expenses). 26 U.S.C. sec. 62(c).

Incompatible Public Offices and Positions

During the mayor's term of office, the mayor may not hold or accept another public office or position which is incompatible with the mayor's office. The compatibility doctrine prohibits the same person from holding two offices or an office and a position where one post is superior to the other or where, from a public policy perspective, it is improper for one person to act under both posts. *Otradovec v. City of Green Bay*, 118 Wis.2d 393, 347 N.W.2d 614, 616 (Ct. App. 1984).

In general, the office of mayor, in the absence of statutory authorization, is incompatible with all other city offices and positions. Compatibility of Offices #583. The reason for this is that the mayor and common council exercise control over such matters as the salaries, duties, and removal or discipline of most other municipal officers or employees. Even where a department is under the control of a board or commission, the mayor and common council typically appoint the board or commission and exercise budgetary control over the department. Compatibility of Offices #583.

If a mayor accepts an incompatible public office or position, a vacancy in the mayor's office is created. Likewise, by accepting the mayor's office, a person

vacates any incompatible public office or position which he or she may have held. *Otradovec, supra*.

As a member of the council, the mayor is not eligible for any office or position which during the elected term was created by, or the selection to which is vested in, the council. Sec. 66.11(2), Stats. The mayor may take an *appointive* city office or position only if he or she resigned prior to the selection and the office or position was created prior to the beginning of his or her present term of office. However, the mayor and other members of the common council may serve on city commissions and boards where no additional remuneration is paid. Sec. 66.11(2), Stats.

If an *elective* office is created during the mayor's term, the mayor may run for that office, although he or she would vacate the office of mayor by taking an incompatible office. Sec. 66.11(2), Stats.

A limited statutory exemption to the compatibility doctrine allows an elected city official, such as the mayor, to serve as a volunteer firefighter or emergency medical technician in the city, as long as the compensation for such position does not exceed \$2,500 per year, including fringe benefits. Sec.66.11(4), Stats.

The following non-municipal offices have been held to be *compatible* with that of the mayor:

- (1) Chair of County Board, 15 Op. Att'y Gen. 172 (1926).
- (2) Clerk of Circuit Court, 18 Op. Att'y Gen. 48 (1929).
- (3) County Supervisor, Compatibility of Offices #229 and #494; 28 Op. Att'y Gen. 138 (1939).
- (4) State Legislator, Compatibility of Offices #474.

Personal Liability

As a general rule, mayors need fear no personal loss or liability for the honest performance of their official duties and the exercise of powers granted by law. Local officials are often shielded from liability for injuries arising out of acts performed within the scope of their public employment by various statutes

and judicially imposed immunities. For example, municipalities and their officers are immune from liability for acts done in the exercise of legislative, quasi-legislative, judicial and quasi-judicial functions. Sec.893.80(4), Stats. For purposes of sec. 893.80(4), Stats., the terms "legislative," "quasi-legislative" and "quasi-judicial" mean the same thing as "discretionary." *Envirologix Corp. v. City of Waukesha*, 192 Wis.2d 277, 531 N.W.2d 357, 363 (Ct. App. 1995).

Thus, in Wisconsin a public officer is immune from personal liability for injuries resulting from acts performed within the scope of the individual's public office. *Barillari v. City of Milwaukee*, 194 Wis.2d 247, 533 N.W.2d 759, 763 (1995). There are three exceptions to this general rule. A public official is not immune from liability if the official:

- (1) engages in conduct which is malicious, willful or intentional;
- (2) negligently performs a ministerial duty ("A duty is ministerial when it is absolute, certain and imperative, involving only the performance of a specific task when the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment and discretion." *Barillari*); or
- (3) is aware of a danger that is of "such quality that the public officers' duty to act becomes absolute, certain and imperative." *Barillari*, 533 N.W.2d at 763.

In addition to liability under state law, the federal Civil Rights Act of 1871, 42 U.S.C. sec. 1983, may subject municipal officers to personal liability for acts done in their official capacity and under color of state or local law which deprive anyone of his or her rights as guaranteed by the federal constitution and laws. *Monroe v. Pape*, 365 U.S. 167 (1961). Special areas of concern for sec. 1983 liability are law enforcement, licensing, employment and land use regulation. Mere negligence, however, does not give rise to a sec. 1983 claim. *Daniels v. Williams*, 474 U.S. 327 (1986).

As under state law, certain immunities are available to public officers in defending against a civil rights suit. Absolute immunity is available for legislators acting within the traditional legislative capacity. See *Lake Country*

Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979) (reasoning in this case would apply to local legislators). Qualified immunity is available where conduct did not violate clearly established constitutional or statutory rights of which a reasonable person would have known. *Harlowe v. Fitzgerald*, 457 U.S. 800 (1982).

Liability Limits

The amount recoverable by a person in an action for damages against a city, or other local governmental unit, and their officers, agents and employees is limited to \$50,000 per cause of action. Sec. 893.80(3), Stats.; *Keefer v. State Farm Fire & Casualty Co.*, 127 Wis.2d 41, 377 N.W.2d 632 (Ct. App.1985). Bear in mind, however, that multiple causes of action may arise out of a single wrongful or negligent act. Thus, for example, if three persons are injured in a particular accident caused by a city official, all three persons may recover up to the statutory limit. No punitive damages (damages intended as punishment) are allowed under sec. 893.80(3), Stats.

A higher liability limit applies when a motor vehicle owned or leased by the city is involved in an accident. In such a case, a plaintiff may recover up to \$250,000 in an action for damages. Sec. 345.05, Stats. A mileage reimbursement for a personal vehicle which was being used for official city business at the time of an accident is a factor courts consider in determining whether the motor vehicle was "leased" to the city. See *Manor v. Hanson*, 123 Wis.2d 524, 368 N.W.2d 41 (1985).

These statutory liability limits do not apply to civil rights claims under 42 U.S.C. sec. 1983. *Thompson v. Village of Hales Corners*, 115 Wis.2d 289, 340 N.W.2d 704 (1983). Furthermore, in civil rights cases, courts may award reasonable attorney fees to the prevailing party under 42 U.S.C. sec. 1988.

Indemnification/Reimbursement

The statutes require a city to pay any judgment for damages and costs entered against a mayor for acts performed by the mayor within the scope of his

or her public employment. Secs. 895.46(1)(a) and 62.25, Stats. The scope of employment requirement has been interpreted broadly to require indemnification even when the public official has engaged in intentional wrongdoing. See *Hibma v. Odegaard*, 769 F.2d 1147 (7th Cir. 1985).

Whenever the mayor is sued in his or her official capacity, the city (or its insurer) must, at the outset of the lawsuit, decide whether to provide legal representation for the mayor. If the city decides not to, it will be responsible for costs and attorney fees, regardless of the results of the litigation, as long as there is no finding that the mayor was acting outside the scope of employment. Secs. 895.46(1) and 62.115, Stats. However, if the mayor does not give notice to the city of the lawsuit, the mayor may not recover attorney fees and costs incurred in defending the lawsuit. If the city offers the mayor legal counsel and the mayor refuses, the mayor cannot recover attorney fees and expenses from the city. Additionally, if the mayor does not cooperate in his or her defense, the mayor is not eligible for any indemnification or the provision of legal counsel by the city. Sec.895.46(1)(a), Stats.

The indemnification statute applies in cases where a civil forfeiture was sought. *Crawford v. City of Ashland*, 134 Wis.2d 369, 396 N.W.2d 781 (Ct.App. 1986). The indemnification requirement also applies to actions brought under 42 U.S.C. sec. 1983. *Desotelle v. Continental Casualty Co.*, 136 Wis.2d 13, 400 N.W.2d 524 (Ct. App. 1986). In sec. 1983 actions, the city is directly liable only when the official acted pursuant to a city policy or custom. *Monell v. Dept. of Health and Social Services*, 436 U.S. 658 (1978). Otherwise the officer is liable, but he or she may seek indemnification. However, the indemnification requirement has been held applicable if the officer or employe acted "under color of law" even if it was not pursuant to a local policy or custom. *Hibma v. Odegaard*, 769 F.2d 1147 (7th Cir. 1985).

If an action against the mayor is dismissed, discontinued or otherwise decided in the mayor's favor or the mayor is reinstated, the city may, but is not required to, reimburse the mayor for any expenses incurred in defending the charges. Even if the mayor loses the action, the common council may authorize

reimbursement of legal fees and expenses if the action involved the constitutionality of a statute not previously tested. Sec. 895.35, Stats.

Under the voluntary indemnification provisions of sec. 895.35, Stats, the mayor may, at the discretion of the council, receive reimbursement of expenses in criminal as well as civil actions. *Bablitch and Bablitch v. Lincoln County*, 82 Wis.2d 574, 263 N.W.2d 218 (1978). It is not clear whether an officer in a criminal suit must be reimbursed if acting within the scope of employment. The court in *Bablitch* held that mandatory reimbursement under sec. 895.46(1), Stats., was inapplicable to criminal actions, but the court later questioned this holding. *Schroeder v. Schoessow, supra*.

Prohibited Conduct

Persons serving in the office of mayor are prohibited from engaging in certain conduct by various ethics, conflict of interest and criminal laws. These include the following:

Private Financial Interest in a Public Contract — Sec. 946.13, Stats.

The mayor may not participate in the making of a city contract or perform any function with regard to the contract requiring the exercise of discretion on the mayor's part if the mayor has a direct or indirect private financial interest in the contract. Sec. 946.13(1)(b), Stats. Since this is a prohibition on official action, abstaining from voting on the contract will prevent violation. However, sec. 946.13(1)(a), Stats., prohibits the mayor, *in his or her private capacity*, from negotiating, bidding for or entering into a contract in which he or she has a private financial interest if the mayor is authorized or required by law to participate in an official capacity in the making of the contract or to exercise discretion in regard to the contract. This latter provision is a prohibition on private action and a mayor cannot avoid violating it by abstaining from voting because all that is necessary for a violation to occur is that the mayor be authorized to vote on or exercise discretion with regard to a contract in which he or she has a private interest.

Section 946.13, Stats is a criminal statute. Violation of either of the above prohibitions is a Class E felony and subjects the person to a fine of not more than \$10,000, imprisonment for not more than 2 years, or both. Sec. 939.50(3)(e), Stats. Also, a contract in violation of sec. 946.13, Stats., may be voided by the court. Sec. 946.13(3), Stats.

Section 946.13, Stats., contains various exceptions to the pecuniary interest restriction. These include the following:

- a. Contracts with the city that do not involve receipts and disbursements aggregating more than \$7,500 in any year. Sec. 946.13(2)(a), Stats.
- b. Contracts involving the deposit of public funds in public depositories. Sec. 946.13(2)(b), Stats.
- c. Contracts involving loans made pursuant to sec. 67.12, Stats., (temporary borrowing and borrowing on promissory notes). Sec. 946.13(2)(c), Stats.
- d. Contracts for the publication of legal notices if the notices are published at a rate not higher than that prescribed by law. Sec. 946.13(2)(d), Stats.
- e. Contracts for the issuance to the mayor of tax titles, tax sale certificates, or other similar instruments, provided they are issued in payment of salary or other obligations due the mayor. Sec. 946.13(2)(e), Stats.
- f. Contracts for the sale of bonds or securities issued by the city, provided they are sold at a bona fide public sale to the highest bidder and the mayor has no duty to vote upon the issuance of the bonds or securities. Sec. 946.13(2)(f), Stats.
- g. Contracts, tax credits or payments received by the mayor for wildlife damage claims or abatement, farmland preservation, soil and water resource management, soil erosion control, animal waste management and nonpoint source water pollution abatement. Sec. 946.13(2)(g), Stats.
- h. Contracts where the mayor, in his or her capacity as the mayor, participates in the making of a contract in which the mayor has a private pecuniary interest, or performs some function with regard to the contract which requires the exercise of discretion, and the mayor holds not more than 2% of the outstanding capital stock of a corporation that is involved in such a contract, subject, though, to the prohibition in sub.

(1)(a) on private personal negotiation on the contract. Sec. 946.13(5), Stats.

- i. The prohibitions in sec. 946.13(1), Stats., do not apply where the mayor is paid less than \$10,000 per year for serving as mayor and is a director, officer, employe, agent or attorney for a state or national bank, savings bank or trust company, which does business with the city, and the mayor's compensation as a banker is not directly dependent on procuring public business. Sec. 946.13(7), Stats.
- j. Contracts or transactions made or consummated or bonds issued under sec. 66.521 (industrial development revenue bonding). Sec. 946.13(8), Stats.
- k. Where the mayor is a member of a local solid waste or hazardous waste committee negotiating, arbitrating or ratifying agreements under sec. 144.455. Sec. 946.13(9), Stats.
- l. The prohibitions in sec. 946.13(1), Stats., do not apply where the mayor receives less than \$10,000 annually for serving as mayor and the mayor is a partner, shareholder or employe of a law firm that serves as legal counsel to the city unless one of the following applies:
 - (1) the mayor has an interest in the law firm greater than 2% of its net profit or loss;
 - (2) the mayor participates in making a contract between the city and the law firm or exercises any official discretion with respect to a contract between them; or
 - (3) the mayor's compensation from the law firm directly depends on the mayor's procurement of business with public bodies. Sec. 946.13(11), Stats.

State Code of Ethics for Local Officials — Sec. 19.59, Stats.

Section 19.59, Stats., the state ethics code applicable to local officials, prohibits the mayor from using his or her office to obtain financial gain or anything of substantial value for the private benefit of the mayor, the mayor's immediate family or for an organization with which the mayor is associated. Sec. 19.59(1)(a), Stats. In addition, a mayor may not take any official action substantially affecting a matter in which the mayor, a member of the mayor's immediate family, or an organization with which the mayor is associated has a substantial financial interest. Sec. 19.59(1)(c)1, Stats. Finally, a mayor may not

use his or her office to produce a substantial benefit, direct or indirect, for the mayor, a member of the mayor's immediate family, or an organization with which the mayor is associated. Sec. 19.59(1)(c)2, Stats. These last two provisions do not prohibit a mayor from taking lawful actions concerning payments for employe salaries, benefits or reimbursements. Nor do they prohibit the mayor from taking action to modify a city ordinance. Sec. 19.59(1)(d), Stats. "Immediate family" means the mayor's spouse or a family member who receives, directly or indirectly, more than one-half of his or her support from the mayor or contributes, directly or indirectly, that amount for the mayor's support. Sec. 19.42(7), Stats. A mayor is "associated" with an organization when the mayor or a member of his or her immediate family: (a) is a director, officer, trustee, authorized representative or agent of the organization; (b) owns or controls at least 10% of the outstanding equity of the organization; or (c) is an authorized representative or agent of the organization. Sec. 19.42(2), Stats.

The state ethics code also prohibits anyone from offering or giving, and the mayor from soliciting or accepting, directly or indirectly, anything of value if it could reasonably be expected to influence the mayor's vote, actions or judgment, or could reasonably be considered a reward for official action or inaction. Sec. 19.59(1)(b), Stats.

A mayor who violates the state code of ethics for local officials may be required to pay a forfeiture, not exceeding \$1,000 for each violation. Sec. 19.59(7), Stats.

The State Ethics Board has issued guidelines to assist local officials in interpreting the state ethics code for local officials. One recommendation is that when a matter in which a mayor should not participate comes before a body which the mayor is a member, the mayor should leave that portion of the body's meeting involving discussion, deliberation, and vote.

The question often arises as to whether an official must abstain when he or she has a personal interest in a matter of general policy. The State Ethics Board suggests that a local official may take action on matters affecting the

official as long as (1) the action affects a whole class of similarly-situated interests; (2) the interest of the official, an immediate family member or an organization with which the official is associated is not significant when compared to other members of the class; and (3) the effect of the action on the interests of the official, an immediate family member or organization with which the official is associated is not significantly different from the effect on other members of the class. See Pecuniary Interest #373.

In addition to the requirements in the state ethics code, a city may enact an ethics ordinance establishing a local code of ethics for city officers and employees. Sec. 19.59(1m), Stats.

For more information on the ethics code, see Pecuniary Interest #373.

***Misconduct in Office and other Criminal Prohibitions —
Secs. 946.10 - 946.12***

a. Bribery. The mayor may not accept, or offer to accept, anything to act in a certain manner, or do or omit to do a certain act, in relation to any matter pending or which might come before the mayor in his or her official capacity. Sec. 946.10, Stats. A violation of sec. 946.10, Stats., is a Class D felony, punishable by a fine not to exceed \$10,000, imprisonment for up to 5 years, or both. Sec.939.50(3)(d), Stats.

b. Special Privileges from Public Utilities. The mayor may not accept personal passes or special privileges for traveling, transportation or message communication from public utilities. Sec. 946.11, Stats.; art. 13, sec.11, Wis. Const.

c. Failure to Perform Duty. The mayor may not intentionally fail or refuse to perform a known, mandatory, nondiscretionary, ministerial duty within the time or in the manner required by law. Sec. 946.12(1), Stats.

d. Acting Outside Authority. The mayor may not do an act which he or she knows is in excess of the mayor's power or which the mayor is forbidden by law to do in his or her capacity as mayor. Sec. 946.12(2), Stats.

e. Dishonest Advantage. The mayor may not, by commission or omission and with intent to obtain a dishonest advantage, exercise a discretionary power in a manner inconsistent with the duties of the office of mayor or the rights of others. Sec. 946.12(3), Stats.

f. Records Falsification. The mayor may not falsify records. Sec. 946.12(4), Stats.

g. Payments in Excess of Salary. The mayor may not accept money or anything of value greater or less than is fixed by law for performing services or duties pertaining to the office. Sec. 946.12(5), Stats.; *Ryan v. State*, 79 Wis.2d 83, 255 N.W.2d 910 (1977).

A violation of secs. 946.11 or 946.12, Stats., is a Class E felony which is punishable by a fine not exceeding \$10,000, imprisonment for up to two years, or both. Sec. 939.50(3)(e), Stats.

Miscellaneous Restrictions

a. Election Bribery. The mayor may not resort to bribery by promising appointments or anything of value or using political pressure as a means of securing votes in an election. Sec. 12.11, Stats.

b. Property Values. The mayor may not, as a member of the board of review, fraudulently fix values or omit taxable property from assessment. The mayor would be subject to civil liability for damages sustained in such an event. Secs. 70.502 and 70.503, Stats. The mayor is subject to removal by the circuit judge for improper discharge of duty as a member of the board of review. Sec. 17.14(2) and (3), Stats.

c. Liquor Wholesaler. The mayor may not sell directly or indirectly to any liquor licensee in the city anything used in the carrying on of the licensee's business. Sec. 125.51(1)(b), Stats.

d. Sales to City Employees. The mayor cannot sell or procure for sale any municipal article, material, product or merchandise to any city employe except meals, public services and articles needed for the health or safety of the employe. Sec. 175.10(1), Stats.

e. Legal Representation. Wisconsin statutes provide no explicit prohibition regarding possible conflicts in representation of private clients by an attorney who is a municipal public official. Local ordinances should be consulted to determine whether local ethics codes enacted pursuant to sec.19.59(1m), Stats., apply. In general, a lawyer holding public office should not engage in activities where the lawyer's professional interest may be in conflict with his or her official duties. It therefore follows that an attorney who is mayor must not defend persons charged with a violation of city ordinances. Wisconsin Bar Opinion E-75-25; SCR 20:1.11 (Supreme Court Rule); 11 Op. Att'y Gen. 473 (1922).

The mayor cannot be expected to be aware of all the legal pitfalls the city and the mayor personally are exposed to in conducting the mayor's affairs. Many legal problems may be avoided by consulting with the city attorney prior to adopting ordinances, embarking on public construction projects, levying special assessments, annexing territory, revoking licenses, etc.

Removal from Office

The mayor may be removed from office for cause by an affirmative vote of 3/4 of all the members of the common council. Sec. 17.12(1)(a) & (d), Stats. The procedure is contained in sec. 17.16, Stats., and requires the filing of written charges by a resident taxpayer and a hearing before the common council. "Cause" is defined in sec. 17.16(2), Stats., to mean: "inefficiency, neglect of duty, official misconduct or malfeasance in office." A person lawfully removed from office for cause is ineligible to fill the vacancy caused by the removal. Sec. 17.16(10), Stats.

Recall

City electors may petition for the recall of the mayor after the first year of the mayor's term. Sec. 9.10(1) & (2)(s), Stats. The recall petition must contain a statement of a reason for the recall which is related to the official responsibilities of the mayor and be signed by a number of city electors equal to 25% of the

votes cast in the city for the office of president at the last presidential election. The petition is to be filed with the city clerk.

Within 10 days after a petition for the recall of the mayor is filed, the mayor may file a written challenge with the clerk specifying any alleged insufficiency. Within 31 days after the petition is offered for filing, the clerk shall determine whether the petition is sufficient and shall so state in a certificate attached to the petition. If the clerk finds the petition sufficient as to signers and circulators, the clerk certifies the petition as sufficient and transmits it to the common council. The council, upon receiving the certified petition, must schedule a special election at which the incumbent is automatically a candidate unless the candidate resigns within 10 days after the date of the certificate. Sec. 9.10(4), Stats.

Resignation

A mayor may resign from office by addressing and delivering a letter of resignation to the common council and filing it with the clerk. Secs. 17.01(8) and (13)(b), Stats. A resignation takes effect when delivered or at the time indicated in the letter of resignation. A mayor may indicate that a resignation will be effective only when certain specified conditions are met and may remain in office until those conditions are met. *Ortin v. Schuett*, 157 Wis.2d 415, 459 N.W.2d 596 (Ct. App. 1990). Unlike the resignation of a person elected to the office of mayor, the resignation of a person appointed to fill a vacancy in the office of mayor does not take effect until the successor takes office. Sec. 17.01(13), Stats.

There is no need for the common council to formally accept the mayor's 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. 11 Op. Att'y Gen. 706 (1922); Appointments and Vacancies #245.

Vacancy in the Office of Mayor

The office of mayor becomes vacant under the following conditions listed in sec. 17.03, Stats:

1. Death.
2. Resignation.
3. Removal.
4. Ceasing to be a resident of the city.
5. Conviction of and sentence for treason, felony or any crime punishable by imprisonment for one year or more, or conviction of any offense involving a violation of the mayor's official oath.
6. Voiding of election by competent tribunal.
7. Determination of mental incompetency.
8. Failure to file oath and bond, if any, within time prescribed by law.
9. Declining to take office.
10. Expiration of incumbent mayor's term.
11. On the happening of any other event declared by law to create a vacancy (e.g., acceptance of an incompatible office or position).

A vacancy in the office of mayor is filled by appointment by the common council. Sec. 17.23(1)(a), Stats. Since no method of appointment is prescribed in the statutes, the council may determine its own procedure for nominating candidates and selecting a person to fill the vacancy. Appointments & Vacancies #245. The council may select the president of the council, another council member or a private citizen.

The appointee holds office until a successor is elected and qualifies for office. If the vacancy occurs before December 1, then a special election to fill the unexpired term must be held on the following first Tuesday in April (the spring election). If the vacancy happens after December 1, but before the first Tuesday in April, then the special election is held on the second year following the December 1 cutoff. However, no election to fill a vacancy in the office of mayor

may be held at the same time as the regular election for such office. Instead, the regular election determines who will succeed to the office. Sec. 17.23(1)(a), Stats.

2. THE MAYOR-COUNCIL RELATIONSHIP

Mayor as Presiding Officer

The mayor is the presiding officer at meetings of the common council. Sec. 62.09(8)(b), Stats. As presiding officer, the mayor has authority to decide points of order, subject to appeal to the majority of the council, and to maintain order at council meetings. The mayor's rulings must conform with statutory requirements and locally adopted procedures. The presiding officer is often delegated the responsibility of announcing the results of the council's action. Nevertheless, the failure of the mayor as presiding officer to declare the council's action correctly does not change the result. *State ex rel. Burdick v. Tyrrell, supra*. Though rules of procedure for individual governing bodies vary, most councils have adopted *Robert's Rules of Order, Newly Revised*, or similar parliamentary rules. For more information on the mayor's role as presiding officer see the *The Conduct of Common Council Meetings* handbook.

Mayor as Member of Council

By law, the mayor is considered a member of the council. However, the mayor is not counted in determining whether a quorum is present at a meeting. Sec. 62.11(1), Stats. Except in case of a tie, the mayor has no council vote. Sec. 62.11(1) and (3)(b), Stats. The mayor's authority to cast a tie-breaking vote extends to situations in which the council is either appointing an officer or confirming a mayoral appointment. Sec. 62.11(3)(b), Stats. It is not considered to be a tie vote in such situations, however, when half the votes are for one candidate and the other half are divided among several candidates. *State ex rel. Nelson v. Mott*, 111 Wis. 19, 86 N.W. 569 (1901).

When the mayor does vote in case of a tie, the mayor's vote is counted in determining whether a sufficient number of the council has voted favorably or unfavorably on any measure. Sec. 62.11(1), Stats.

Unless council rules prohibit, the mayor probably has the power to make a motion from the floor after turning the chair over to the president of the council. Governing Bodies #177.

Veto Power

State law provides that the mayor may veto "all acts of the council" except where the veto power has been expressly or by necessary implication otherwise withdrawn. Sec. 62.09(8)(c), Stats. This exception to the mayoral veto power must be more than a mere inference; it must be the only logical inference. *Sturzl Construction Co., Inc. v. City of Green Bay*, 88 Wis.2d 403, 276 N.W.2d 771 (1979). In *Sturzl*, the Wisconsin Supreme Court held that the mayor did not have authority to veto council approval of a public construction contract because specific council approval was not essential to awarding such a contract in the first place.

Questions sometimes arise concerning whether a particular act may be vetoed. A general rule which courts in other states have followed is that the veto power applies to purely legislative acts but does not extend to administrative or judicial acts. McQuillin, *Municipal Corporations*, sec.16.42 (3rd Ed.). While the legislative/administrative distinction is useful, bear in mind that it is not mentioned in the statutes and a relatively recent Wisconsin case may suggest that the veto power is not limited solely to legislative matters.

In *State ex rel. Wilson v. Schocker*, 142 Wis.2d 179, 418 N.W.2d 8 (Ct.App. 1987), the city council passed a resolution prohibiting department heads from filling vacancies without prior approval of the mayor and common council. The police chief appointed and the police and fire commission (PFC) approved two promotions to fill vacancies. The common council voted to approve the promotions but the mayor vetoed the approval of the council. The police officers argued that the mayor had no authority to veto the promotions.

The court said that the mayor vetoed the council action, not the chief's and PFC's promotions and characterized the statute as giving "the mayor veto power over all acts of the council unless otherwise provided." 418 N.W.2d at 10.

The court did not distinguish between the legislative resolution initially establishing the freeze and the implementation of that resolution in a specific case. This may imply that the veto authority applies to administrative as well as legislative acts of the council. On the other hand, perhaps the mayor's action in this case should not be viewed as a veto, but rather as merely a refusal to give administrative approval to the promotions under the resolution establishing the freeze.

In addition to the above, the mayor's veto power has been held to apply to the following acts of the council:

- (1) A resolution for the purchase of land, *Winninger v. Waupun*, 183 Wis. 32, 197 N.W. 249 (1924); 40 Op. Att'y Gen. 134 (1951).
- (2) A resolution directing submission of a question to a referendum, and probably the action of the council in levying assessments for public improvements, *Hall v. Racine*, 81 Wis. 72, 50 N.W. 1094 (1892).
- (3) The vacation of a street, *Reilly v. Racine*, 51 Wis. 526, 8 N.W. 417 (1881).
- (4) The establishment of a salary schedule, Governing Bodies #261.
- (5) A resolution to temporarily employ a labor negotiator, Governing Bodies #258.

The veto is not applicable to initiated enactments under sec. 9.20, Stats., or to initiated charter ordinances under sec. 66.01, Stats., which have been approved in a referendum. Secs. 9.20(8) and 66.01(8), Stats. It is also inapplicable to appointments made or confirmed by the council. *State ex rel. Schneider v. Darby*, 179 Wis. 147, 190 N.W. 994 (1922).

The mayor does not have the power of partial veto, unless authorized by charter ordinance. Thus, the mayor cannot veto parts of a budget but must veto the entire budget and explain the objectionable parts. Ordinances and

Resolutions #353. At least one Wisconsin municipality, however, has adopted a charter ordinance authorizing the mayor to veto budget items separately.

The mayor cannot veto negative "actions" of the council. Thus, for example, the mayor's veto power does not apply to the council's failure to act or the council's rejection of a particular measure. The veto power only applies to positive actions of the council.

The mayor's approval of council actions is officially given by signing legislation within five days of the time it is submitted to the mayor by the city clerk. Disapproval is expressed by a mayoral veto made within this five-day period. A veto must be accompanied by the mayor's reasons for rejecting the proposal and be filed with the city clerk. Failure of the mayor to act on any measure within five days of the time presented by the clerk is treated by law as an approval of the council's action. In computing the five-day veto period the first day should be excluded and the last included. If the last day for acting falls on a Sunday or holiday, the mayor may exercise a veto on the next succeeding secular day. Sec. 990.001(4), Stats.

The council may override the mayor's veto by a two-thirds vote of all its members. 62.09(8)(c), Stats. The statutes do not specify a time when a vote to override a mayor's veto must be taken. However, we have recommended that the council address the vetoed matter in some fashion at the meeting at which the mayor's objections are submitted, such as, at a minimum, voting to table or defer action on the veto until the council's next meeting. Governing Bodies #286.

Council Committees

While the statutes make no provision for the appointment of committees by the common council, most cities have developed a committee structure and delegate various types of preliminary work to standing committees. The number, functions and operation of committees vary with each municipality as does the role of the mayor with regard to those committees. The common council may adopt rules governing the appointment and operation of committees. Sec.

62.11(3)(e), Stats. In some cities, council rules dictate that the mayor appoints committees and/or is responsible for the referral of matters to committees.

There is nothing prohibiting the mayor from serving on committees. Since the council may determine its own rules of procedure, it may provide for the mayor to act as a voting member or chair of council committees.

For more information on committees, see the *Handbook for Wisconsin Municipal Officials*, ch. 6, and the *Conduct of Common Council Meetings* handbook.

Special Council Meetings

The mayor may call a special meeting of the council by issuing a written notice to each member, "delivered personally to each member or left at the member's usual abode at least six hours before the meeting." Sec. 62.11(2), Stats. Although the open meetings law requires 24 hours public notice (unless there is good cause for shorter notice in which case two hours notice is sufficient), this specific provision requires the members of the council be provided at least six hours notice before a special meeting. The mayor or the mayor's designee, under the "emergency" notice provision of the open meetings law, must give public notice of a special meeting no less than two hours in advance of the meeting. News media that have filed written requests for notice of meetings and the official newspaper of the municipality must also be notified no less than two hours in advance of the special meeting. Secs. 19.83, 19.84(1) and (3), Stats.

Open Meetings

The Wisconsin open meetings law requires that all meetings of governmental bodies be preceded by public notice, held in a place reasonably accessible to the public, and be open to all citizens. However, in certain situations specified in sec. 19.85(1), Stats., governmental bodies may meet in closed session. The mayor, as presiding officer, has important responsibilities under the open meetings law. The mayor, or his or her designee, is responsible

for giving notice of the time, date, place and subject matter of each meeting of the council to: (1) the public; (2) any members of the news media who have filed a written request for notice; and (3) the official newspaper designated under state law or, if none exists, to a news medium likely to give notice in that area. Sec. 19.84(1)(b), Stats.

In addition to notice requirements, the mayor must follow the correct procedure under the open meetings law when going into closed session. When a motion to convene in closed session is made the mayor must announce the nature of the business to be considered and which exemption authorizes the closed session. In addition, the mayor must make sure that discussion in closed session is limited to the legitimate topics for which the meeting was closed. Sec. 19.85(1), Stats.

With regard to citizen participation in meetings of the common council, the mayor should be aware that the right of the public to attend a governmental meeting does not necessarily imply a right to participate in the conduct of the meeting. Governing Bodies #306. Absent a public hearing, the public has no right to speak at a common council meeting. If citizen participation is allowed, it should be limited to the agenda item set aside for public comments. Also, if it is known that a citizen or group of citizens wishes to speak on a topic, the topic should be included in the notice and agenda. If a citizen comments on a subject not mentioned in the meeting notice, the council should limit itself to answering basic questions concerning the topic that do not require its discussion or deliberation (questions, for example, regarding when the body will consider the matter raised, how long a particular policy has been in place, when committees meet, etc.) and to placing the matter on a future agenda or referring it to an official or a committee.

For a thorough discussion of Wisconsin's open meetings law, consult the League's *Handbook for Wisconsin Municipal Officials*, ch. 10, "Public Access" and *The Conduct of Common Council Meetings*, Ch. 2. See also Governing Bodies #315.

3. EXECUTIVE FUNCTIONS OF MAYOR

General Powers and Duties

The mayor is the chief executive officer of the city and is responsible for supervising and directing the day-to-day operation of city government. Sec. 62.09(8)(a), Stats. Also, the corporate authority of the city is vested in both the mayor and common council. Sec. 62.09(7)(a), Stats. As chief executive officer of the city, the mayor has a statutory duty to "take care that city ordinances and state laws are observed and enforced and that all city officers and employes discharge their duties." Sec. 62.09(8)(a), Stats. The mayor's duty to carry out official functions and to enforce state laws or local ordinances is not merely ministerial but necessarily includes the right to exercise discretion and judgment. *State ex rel. Davern v. Rose*, 140 Wis.360, 122 N.W. 751 (1909).

The mayor's authority as chief executive officer, however, is not unlimited. For example, the League has concluded in an opinion that a mayor cannot unilaterally decide what uses are to be made of city property. Public Buildings & Property #203. Also, a mayor may not unilaterally enter into a contract on behalf of the city or hire special counsel without council approval. Contracts #361 & #327. In addition, it has been held that a mayor in a city with a police and fire commission does not have authority to order the chief of police to reinstate a discharged probationary police officer. 81 Op. Att'y Gen. 1 (1993). However, a mayor who has reason to believe that an act or order of the common council is invalid has a responsibility to question the act and should refuse to carry it out even if passed over a veto. *State ex rel. Sullivan v. Boos*, 23 Wis.2d 98, 126 N.W.2d 579 (1964); *State ex rel. Reelvink v. Zeidler*, 268 Wis. 34, 66 N.W.2d 652 (1954).

Mayor as Head of the Police and Fire Departments

The mayor is the head of the police and fire departments, except in cities where the police and fire commission has been granted optional powers by the electorate. In cities without a police and fire commission, the mayor appoints all

police officers. In any city, the mayor may appoint security personnel to serve without pay. Sec. 62.09(8)(d), Stats.

The chief of police has command of the police force under the direction of the mayor, and must obey lawful written orders of the mayor and common council. Sec. 62.09(13)(a), Stats.

When any heinous offense or crime has been committed against a person or property in the city, the mayor may, with the consent of a majority of the alderpersons, offer a reward for the apprehension of the perpetrator of the crime. Sec. 62.26(4), Stats.

Appointments by Mayor

Offices which are filled by mayoral appointees will vary from city to city. Mayors and alderpersons must be elected by the voters, but other city officers (except police and fire chiefs under sec. 62.13, Stats.) are to be selected in the manner prevailing in the particular city on April 15, 1939, or as provided by a subsequently enacted charter ordinance or civil service ordinance. Sec. 62.09(3)(a), (b) and (c), Stats.

The council may create offices, boards and commissions pursuant to sec. 62.09(1)(a), Stats., and can authorize the mayor to appoint persons to these newly-created offices or boards. Additionally, the council may authorize the mayor to appoint regular or special committees. The mayor may appoint council members to boards or commissions where no additional remuneration is paid such representatives. Sec. 66.11(2), Stats.

Unless specifically exempted by law, appointments made by the mayor are subject to confirmation by a majority vote of all members of the council. Secs. 62.09(3)(e) and 62.11(3)(b), Stats. If the council rejects the mayor's appointee, that individual is ineligible for appointment to the same office for one year. Sec. 62.09(2)(d), Stats. As mentioned earlier, the mayor has a tie-breaking vote on council confirmation of appointments. Sec. 62.11(3)(b), Stats.

When selection is made by the council, the mayor has the right to make advisory recommendations and to cast the deciding vote in case of a tie.

Some statutes specifically provide for the mayor to appoint persons to certain offices or positions. A list of those provisions which grant the power of appointment to the mayor follows. Unless otherwise indicated, all appointments are subject to council confirmation. Not all the officers or boards listed exist in every Wisconsin city, and where they do exist the method of appointment may be varied by charter and sometimes ordinary ordinance.

Airport Commission. (Optional) Three or five commissioners appointed by mayor for staggered six-year terms. Sec. 114.14(2), Stats.

Board of Election Officials. Seven inspectors, nominated by mayor for two-year terms to the council no later than the last regular council meeting in December of each even-numbered year. Sec. 7.30(4), Stats. In cities where voting machines are used, the council may reduce the number of inspectors down to five. The nominations are made from lists submitted by the two political parties predominant in each ward in the previous presidential or gubernatorial election. If no lists are submitted by November 30, the mayor makes the appropriate nominations. Sec. 7.30 (4)(b) & (c), Stats. The number of election officials may be reduced by ordinance or resolution. Sec. 7.32, Stats.

Board of Harbor Commissioners. (Optional) Three, five, seven or nine members appointed by mayor for staggered three-year terms commencing as provided by local ordinance. Secs. 30.37(2) & (3), Stats. Commissioners must be qualified electors and have resided in the city for at least three years. Sec. 30.37(3), Stats. No more than one member of the governing body may serve on the board at a time.

Board of Police and Fire Commissioners. Five commissioners, one commissioner appointed by the mayor between last Monday of April and first Monday of May each year for a five-year term (required in cities of 4,000 or more population). No more than three members

may be of the same political party; appointment must be in writing and filed with the board secretary. Sec. 62.13(1) and (2), Stats.

Board of Public Land Commissioners. (Optional) Consisting of commissioner of public works, city engineer and three resident citizens appointed by mayor, one appointed each December for a three-year term. Sec. 27.11(1), (2)(a) and (b), Stats.

Board of Public Works. (Optional) In 2nd class cities the board is to be made up of three commissioners, one commissioner appointed by mayor in April of each year for a three-year term. In all other cities the board consists of the city attorney, city comptroller and city engineer. Sec. 62.14(1), Stats.

Board of Zoning Appeals. (Required if city has enacted a zoning ordinance) Five members appointed by mayor for three-year staggered terms; two alternate members may be appointed by mayor for three-year terms with the mayor designating first alternate annually. The mayor must designate one of the members as chairperson. Sec. 62.23(7)(e)2, Stats.

Civil Service Board or Commission. If established by local ordinance, civil service system must provide for appointment of civil service board or commission by mayor and removal of commissioners by mayor for cause, with approval of council. Sec. 66.19(4), Stats.

Housing Authority Board of Commissioners. If city has created a housing authority, five commissioners appointed by mayor for staggered five-year terms. Sec. 66.40(5), Stats. No commissioner may be connected in an official capacity with any political party, and only two commissioners may be city officers. Vacancies are filled by the mayor. Removals by mayor after hearing for cause do not require council confirmation. Sec. 66.40(8), Stats.

Library Board. Nine members in 2nd or 3rd class cities; seven members in 4th class cities; appointed for three-year staggered terms starting July 1 in year of appointment. All members must be municipal

residents except two may be residents of adjacent towns. One member must be a school district administrator or his representative. Not more than one member of the common council (including the mayor) may serve at one time. (2nd and 3rd class cities may reduce board to seven members.) Sec. 43.54(1), Stats.

Local Board of Health. (Required in cities located in counties with population of 500,000 or more.) No more than 9 members. The governing body must specify the lengths of the terms of members and provide for staggered terms. The mayor may designate certain members to be nonvoting members of the board. Secs. 251.03(2) & (4), Stats.

Local Exposition Districts. (Optional) Six directors, all of whom must reside in the area of the district's jurisdiction. Three of the directors must be elected or appointed municipal officials; one must own, operate or manage an enterprise within the district and that has a significant involvement with the hotel, motel and lodging industry; one must own, operate or manage an enterprise that is located within the district and that has a significant involvement with the food and beverage industry; and one must be an at-large appointment who is an employe or officer of a private sector entity. Secs. 229.42(6) & (7), Stats.

Museum Board. (Optional) Ten trustees; seven of whom are appointed by the mayor on the 3rd Tuesday in April. Three of the 7 members are to be selected from among the alderpersons and shall serve as board trustees during their aldermanic terms; and the other 4 are to be selected from the residents of the city for four year terms. The Public Museum Board of Trustees shall also consist of the president of the school board, the superintendent of schools and a county board member appointed by the county executive and confirmed by the county board. Secs. 229.12(1) & 229.19, Stats.

Plan Commission. (Required if the city has a zoning or subdivision ordinance; council may alter membership by ordinance) Seven members, with mayor appointing three citizen members of recognized experience and qualifications for three-year terms. One appointment is made during April of each year for a term beginning May 1. Sec. 62.23(1)(a), (c), Stats.

Police Chief. (Cities under 4,000) Mayor appoints the chief of police if the city does not adopt provisions of sec. 62.13(1) through (6). Sec. 62.09(8)(d), Stats.

Police Officers. (Cities under 4,000) Mayor appoints without council confirmation unless changed by charter ordinance or unless city has adopted provisions of sec. 62.13(1) through (6). Sec. 62.09(8)(d), Stats.

Redevelopment Authority Board of Commissioners. (Optional) Seven residents appointed by mayor for staggered five-year terms. Sec. 66.431(3), Stats. Requires confirmation by 4/5 vote of council. One commissioner must be a member of the council, and only one other commissioner may be a city officer. Vacancies are filled in same manner as original appointments. Removals by mayor for cause after hearing governed by sec. 66.40(8), Stats.

Weed Commissioners. One or more appointed by mayor on or before May 15 of each year for a one year term. If more than one weed commissioner is appointed, mayor is required to divide city into districts and assign one appointee to each district. One weed commissioner may serve more than one district (does not apply to cities of first class). Sec. 66.97, Stats.

Removal and Suspension of Officials by the Mayor

In general, the mayor's power to remove an officer at pleasure is confined to those cases where both confirmation by the council and a fixed term of office are absent, or where removal is controlled by a city ordinance. Sec.

17.12(1)(c) and (4), Stats.; *Pieritz v. Hartwig*, 201 Wis. 450, 230 N.W. 42(1930); 62 Op. Att'y Gen. 97 (1973).

Where removal at pleasure is permitted, the mayor files a copy of the order of removal with the city clerk. Sec. 17.16(1) and (8)(b), Stats.

Removal requirements vary with the manner of selection of the officer to be removed. The applicable statutory provisions are:

1. Officers appointed by the council may be removed by that body at pleasure by a 3/4 vote. Sec. 17.12(1)(c) and (d), Stats.

2. Officers appointed by the mayor without council confirmation may be removed by a 3/4 vote or by the mayor at pleasure. Sec. 17.12(1)(c) and (d), Stats.

3. Officers appointed by the mayor, subject to council confirmation, may be removed only by the council for cause by a 3/4 vote. Sec. 17.12(1)(c) and (d), Stats; Appointments and Vacancies #226.

The mayor may participate in removal hearings for cause before the council but cannot vote upon the question of removal unless a tie vote ensues. *State ex rel. Cleveland v. Common Council*, 177 Wis. 537, 188 N.W. 601 (1922).

City employees are subject to the mayor's supervision and the mayor may discharge them for cause unless the power of removal is vested in another body or officer as in the case of police officers and firefighters under sec.62.13, Stats., or controlled by a labor agreement. Sec. 62.09(8)(a), Stats. While the mayor may file charges against a fire or police chief, only the police and fire commission may suspend or remove a chief in cities subject to the police and fire commission law. Sec. 62.13(5)(j), Stats. In cities under 4,000 without a police and fire commission, the police chief and police officers are disciplined by a person or committee appointed under sec. 62.13(6m), Stats., unless an employment contract or collective bargaining agreement provides for an alternative fair review. The mayor may summarily suspend a city official against whom charges have been brought and whose removal is sought and appoint a temporary successor. Sec. 17.12(3), Stats.

Resignations by Municipal Officials

Resignations of most elected city officials other than alderpersons or the mayor are to be made in writing to the mayor. The resignation of the mayor or an alderperson is to be addressed and delivered to the council by leaving a copy with the clerk. Resignations of city officers appointed by the mayor are also made in writing to the mayor. Sec. 17.01(8) and (13), Stats.

Resignations become effective at the time they are delivered or at the time stated in the resignation letter unless by law the term of the resigning officer ends when a successor is chosen and qualifies. In the latter case, the resignation becomes effective when the successor qualifies. Sec.17.01(13), Stats.

Resignations may be made on a conditional basis. In other words, an officer may indicate that a resignation will become effective when certain specified conditions are met. The officer remains in office until those conditions are met. *Ortin v. Schuett*, 157 Wis.2d 415, 459 N.W.2d 596 (Ct.App. 1990). Once a resignation takes effect, the officer cannot withdraw it. However, any officer may withdraw a prospective resignation before it takes effect. See *Appointments & Vacancies #245*.

Acceptance of a resignation by the mayor has no legal effect on its validity or effective date. 11 Op. Att'y Gen. 706 (1922).

Filling Vacancies in Municipal Offices

Vacancies in elective city offices, except the offices of mayor or alderperson, are filled by the mayor, subject to confirmation by the council. Sec. 17.23(1)(c), Stats. Appointees to vacant elective offices serve until their successors are elected and qualify. Vacancies in appointive city offices are filled for the residue of the unexpired term in the manner in which original or regular appointments were made. Sec. 17.23(1)(d), Stats.

Licenses and Permits

The mayor has a direct responsibility regarding the issuance of certain city licenses and permits. For example, the mayor issues fireworks permits and may require the permittee to file an indemnity bond with the city as a condition of granting the license. Sec. 167.10(3)(a) and (e), Stats.

Also, permits for the storing of junked automobiles or parts outside of any building must be authorized by the city council and signed by the mayor. Sec. 175.25(1) and (3), Stats.

Financial Duties and Powers

City funds may be disbursed only on the authority of the council. Secs. 62.12(6)(a) and 66.044(1)(a), Stats. All city checks must be signed by the clerk and treasurer and, unless otherwise directed by ordinance, counter signed by the mayor. Sec. 66.042(3), Stats. Such signature by the mayor is wholly ministerial. Performance of this duty, upon refusal, may be enforced by mandamus. *Sharp v. City of Mauston*, 92 Wis. 629, 66 N.W. 803 (1896).

All municipal obligations, including bonds, promissory notes and revenue securities, must be executed by the mayor. Secs. 67.08(1), 67.12(1)(c) and 66.066(2)(a)1, Stats.

The council by ordinance may authorize the use of a facsimile signature of the mayor on checks, but this does not relieve the mayor from any liability to which the mayor is otherwise subject. Secs. 66.042(3) and 990.01(38), Stats.

The council by ordinance may also authorize use of the mayor's facsimile signature on municipal bonds or notes, but at least one signature on the bond or note must be "manual" unless the municipality has contracted with a fiscal agent to authenticate the municipal obligation. Secs. 67.08(1) and 67.12(1)(c), Stats.

After the taxpayers of a municipality have submitted to taxation for a claim and the money has actually been accumulated by the city treasurer, and neither the taxpayers nor the electors have in any manner changed their position, the mayor cannot raise the question of the legality of the demand so as to delay or

defeat the execution of such purpose. *State ex rel. Wunderlich v. Kalkofen*, 134 Wis. 74, 113 N.W. 1091 (1907).

All contracts, conveyances, commissions, licenses and other written instruments must be signed, on behalf of the city, by the mayor and city clerk under that authority conferred by the common council unless otherwise provided by ordinance. Secs. 62.09(7)(a), 62.15(12), Stats. Contractors' bonds for public works or improvements involving more than \$500 must be approved by the mayor. Sec. 779.14(1m)(b)3, Stats.

The mayor should not sign a contract which has not been approved as to form by the city attorney and approved as to funds and endorsed by the city comptroller. Sec. 62.15(12), Stats. A contract for which no funds have been provided is a nullity and cannot be validated by the mayor's signature. *Ellerbe and Co. v. Hudson*, 1 Wis.2d 148, 83 N.W.2d 700 (1957). Also, a contract signed by a mayor without proper authorization by the council is invalid. Contracts #362. No contract is valid until countersigned by the comptroller and the comptroller can only countersign if the necessary funds have been provided to pay the liability that may be incurred thereunder. Sec. 62.09(10)(f), Stats.

The mayor must execute the indebtedness certificate required at the time of a loan from the state commissioners of public lands. Sec. 24.67(1)(d), Stats.

If a city exercises the option of adopting the special budget system provided in secs. 65.02, 65.03 and 65.04, Stats., the mayor is a member and president of the board of estimates which prepares a city budget to submit to the council. Secs. 65.02(3) and (4) and 65.04, Stats.

Even if a board of estimates has not been established, the mayor, as chief executive officer, should take an active role in budget procedures. Sec. 62.09(8)(b), Stats. While the statutes leave substantial discretion to municipalities in determining their budget preparation procedures, in an executive budget system, which is most common in cities with a full-time mayor, the mayor reviews budget requests submitted by city departments and prepares a proposed budget for recommendation to the common council. Financial

Procedure #227. See *Handbook for Wisconsin Municipal Officials*, ch. 4, for further discussion of the budget process.

All official fidelity bonds of city officers must be approved by the mayor. Sec. 62.09(4)(b), Stats. When a city is entitled to recover any damages, money, penalty or forfeiture on any official bonds, it is the mayor's duty to prosecute or cause to be prosecuted all necessary actions in the city's name. Sec. 19.015, Stats.

Public Records

The declared public policy in this state strongly favors access to public records. Sec. 19.31, Stats. A record is anything upon which written, spoken, visual, or electromagnetic information is recorded or preserved that has been created or is being kept by a municipal department, office or officer. Sec. 19.32(2), Stats. The mayor is the legal custodian of his or her own records, but may designate an employe on the mayor's staff to act as the legal custodian. Sec. 19.33(1), Stats. Typically, the city clerk is designated as the legal custodian for the council and committees, commissions and boards created by the council. For more information on the public records law see the *Handbook for Wisconsin Municipal Officials*, ch. 10, and Public Records #75.

Mayor as Member of Municipal Boards and Commissions

Although the mayor may not accept an incompatible public office, the mayor may serve on boards and commissions where no additional remuneration is paid. Sec. 66.11(2), Stats. Therefore, the council could, for example, designate the mayor a member of the city utility commission, if the city creates such a commission pursuant to sec. 66.068, Stats. The mayor may vote on committees, commissions and boards on which he or she serves, unless otherwise provided by law. Commissions #130 and #160.

Except when the county board has established a county assessor system under sec. 70.99, Stats., the mayor (except the mayor of a first class city) is a member of the "official" board of review. Sec. 70.46, Stats. If a city opts to

establish a "citizen" board of review, the mayor may also be a member of that body if so designated. If a quorum is present, the board of review can act during the absence of the mayor.

Unless otherwise provided by local ordinance, the mayor is a member of the city plan commission, if one is created, and is its presiding officer. Sec. 62.23(1)(a), Stats.

If the council abolishes the offices of street commissioner, engineer, comptroller, constable or public works director and provides that those duties are to be performed by another officer pursuant to sec. 62.09(1)(b), Stats., the council could entrust such duties to the mayor if no additional compensation is granted mid-term.

Emergency Powers

In case of war, riot, natural disaster and the like and in the event the common council is unable to meet, the mayor by proclamation may exercise such emergency powers as are necessary and expedient for the health, safety, welfare and good order of the city. Such proclamation is subject to ratification, alteration, modification or repeal by the common council as soon as it can meet. Sec. 66.325, Stats.

In case of riot or other emergency, the mayor may appoint as many special police officers as may be necessary. Sec. 62.09(8)(d), Stats.

Miscellaneous Duties and Powers

The mayor may make the necessary rules for the conduct of his or her duties and incidental proceedings. Sec. 62.09(7)(c), Stats. In addition to the enumerated powers, mayors generally have the powers and duties prescribed for town board chairpersons and village presidents, except as otherwise provided. Sec. 62.09(7)(b), Stats. [See sec. 60.13(2) and (3), Stats., relating to the powers of a town board chairpersons and sec. 61.24, Stats., relating to the powers of the village president.]

The mayor must issue an annual class 2 weed notice on or before May 15. Sec. 66.96(4), Stats.

When a cemetery, agricultural or industrial association owning land in the city petitions for a street opening to such land, the mayor appears to have certain responsibilities in having a jury pass on the necessity of the taking. Secs. 80.48(3) and (4) and 62.09(7)(b), Stats.

Performance of Duties in Mayor's Absence

In case of the mayor's absence or inability to perform the duties of office, the president of the council chosen at the first council meeting after the April election is authorized by law to act in the mayor's stead. While so acting, the president is referred to as "Acting Mayor." Sec. 62.09(8)(e), Stats. The acting mayor presides at council meetings and has the powers and duties of the absent mayor. While presiding over the council as acting mayor, the president has sole discretion to decide whether to vote as a council member on each voting issue or as mayor, only in case of a tie. However, the council president may not cast two votes. Moreover, if the council president votes on a matter as an alderperson, he or she may not exercise the veto power on the matter as acting mayor. To avoid any potential confusion, a city might want to consider adopting an ordinance or charter ordinance clarifying the role and powers of an acting mayor and expressly stating whether the acting mayor retains the right to vote as a council member or is limited to voting to break a tie. Governing Bodies #257.

An act of the council already disapproved of by the mayor cannot be approved by the acting mayor. In other words, the acting mayor cannot vacate a veto already made by the mayor. Sec. 62.09(8)(e), Stats. The mayor may not perform any official duty while absent from the city. *State ex rel. Emberson v. Byrne*, 98 Wis. 16, 73 N.W. 320 (1897). An ordinance becomes effective if signed by the president of the council in the absence of the mayor. *O'Mally v. McGinn*, 53 Wis. 353, 10 N.W. 515 (1881). On the other hand, the president of the council may not perform any duty of the mayor not requiring immediate

action simply because of the temporary absence of the mayor. Thus, the president of the council may not make an appointment or veto an ordinance if the mayor were absent only one day and a longer time was allowed to perform this duty. *State ex rel. Olson v. Lahiff*, 146 Wis. 490, 131 N.W. 824 (1911); 68 Op. Att'y Gen. 109, 112 (1979). The president of the council is not entitled to the mayor's salary when serving as acting mayor in the absence or disability of the mayor.

Additional Information

League staff and resources are available to assist Wisconsin mayors on problems which they may confront in the course of their official duties. The League has on file model and sample ordinances, sample policies on all phases of city government, and numerous legal opinions and articles dealing with specific city activities. Information on pending and recently enacted legislation is also available from the League. The League's legal staff is available for consultation over the telephone and can be reached by dialing 1-800-991-5502.

Requests for formal legal opinions should be made in writing and submitted to the League by the city attorney or by the common council, pursuant to the League's legal policy.

MAYOR'S CALENDAR

This calendar has been prepared for insertion in this manual in the hope that a general reminder of important dates on which executive or legislative action must be taken by mayors or common councils might be helpful to persons holding the office of mayor in Wisconsin cities. The calendar is not intended to be exhaustive or applicable to every city. Dates are approximate and events are noted on the last date for taking particular actions.

JANUARY

1st Week **January 1**, manufactured homes are assessed and prevailing rate updated in order to establish monthly parking fees. Sec. 66.058(3)(c).

Nomination papers for elective offices must be filed with city clerk no later than first Tuesday in January (unless it's a holiday). Sec. 8.10(2).*

Not later than 3 days after first Tuesday, or next day if Tuesday is a holiday, council may order spring primary election. Sec. 8.11(1)(a).

2nd Week **January 10**, of odd-numbered years, report of unclaimed funds or securities must be filed with county treasurer. Sec. 59.90(1).

During Month **30 days prior to spring primary**, the council must establish polling places for spring primary. Sec. 5.25(3).

30 days prior to spring primary, the council may by resolution combine 2 or more wards for voting purposes to facilitate using a common polling place. Sec. 5.15(6)(b).

*See the pamphlet, "Calendar of Wisconsin Election and Campaign Events," distributed annually by the State Elections Board for a detailed listing of these items.

FEBRUARY

1st Council Meeting **Not later than first regular meeting in February,** salaries of officials who will be elected or appointed for a definite term during that year may be fixed or changed by ordinance. Sec. 62.09(6)(b).

3rd Week **Third Tuesday,** spring primary, if any, held. Sec. 5.02(22).

MARCH

During Month **30 days prior to spring election,** the council must establish polling places for spring election. Sec. 5.25(3).

30 days prior to spring election, the council may by resolution combine 2 or more wards for voting purposes to facilitate using a common polling place. Sec. 5.15(6)(b).

1st Week **March 1,** report of board of public works to council due. Sec. 62.14(5).

APRIL

1st Week **April 1,** public utilities must send reports and balance sheets to Public Service Commission by this date. Sec. 196.07(1). Assessment of all real and personal property must be completed before first Monday in

April, except in first class cities and second class cities that have a board of assessors under sec. 70.075. Sec. 70.10.

1st Tuesday, spring election of city officers, sec. 5.02(21); mayor approves official bonds, sec. 62.09(4)(b); city board of canvassers must begin to canvas votes within 24 hours after close of polls if city has two or more wards. Sec. 7.53(2)(d). In other cities, inspectors canvass votes and declare election results immediately after polls close. Secs. 7.51 and 7.53(1).

2nd Week

10 days after notice of election, newly-elected officers must file oaths and bonds with city clerk. Sec. 62.09(4)(a) and (b).

2nd Tuesday, results of annual spring election shall be declared by board of canvassers in cities with two or more wards. Sec. 7.53(2)(d).

2nd Tuesday, last date to advertise for bids for official newspaper in 2nd and 3rd class cities. Sec. 985.06(1).

3rd Week

3rd Tuesday, term of mayor and alderpersons begins. Sec. 62.09(5)(a).

3rd Tuesday, organization meeting of new council; agenda should include:

1. Mayor's appointments to council committees.
2. Mayor's appointments of members of board of public

works (one) in 2nd class cities, sec. 62.14(1); plan commission (one or more), sec. 62.23(1)(c); board of zoning appeals (one or two; mayor designates chair), sec. 62.23(7)(e)2.

3. Selection of official newspaper and fixing of price for publication of city legal notices in 4th class cities, sec. 985.06(2).

4. Selection of council president, sec. 62.09(8)(e).

Third Tuesday, mayor of 1st class city appoints library board members. Sec. 43.54(1)(am).

April 15, applications for new and renewal liquor licenses due. Sec. 125.51(1)(c).

4th Week

Between last Monday of April and 1st Monday of May, mayor appoints one member of police and fire commission in cities of 4,000 or more. Sec. 62.13(1).

MAY

1st Week

May 1, most city officers, except mayor and alderperson, take office. Sec. 62.09(5)(a).

1st Monday, city assessor delivers completed assessment roll to city clerk. Sec. 70.50.

1st Tuesday, 12:00 noon, mayor supervises opening of bids for official newspaper in 3rd and 4th class cities. Sec. 985.06(1).

1st Tuesday, first meeting of board of public works and selection of president of board. Sec. 62.14(2).

2nd Week

At any time during the 30-day period beginning on the 2nd Monday, board of review holds first meeting; if roll not complete, board must post notice of adjourned meeting on outer door of meeting place. Sec. 70.47(1) and (3).

3rd Week

May 15, last day for mayor to appoint weed commissioner and publish class 2 notice to destroy noxious weeds. Secs. 66.96(4), 66.97.

Not later than May 15, council begins review of applications for new and renewal liquor and beer licenses. Sec. 125.51(1)(c).

JUNE

During Month

Mayor appoints two or more members of library board in 2nd, 3rd and 4th class cities. See sec. 43.54(2) and (3).

Second Monday in June, last day for clerk to file statement of taxes levied during the year with state Department of Revenue. Sec. 70.53.

3rd Week

June 15, deadline for granting new and renewal liquor licenses applied for on or before April 15 which take effect July 1. Secs. 125.04(11) and 125.51(1)(c).

4th Week **June 30**, liquor, beer and operators' licenses expire in all municipalities except Milwaukee. Secs. 125.04(11)(b)2 and 125.17(3).

JULY

2nd Week **2nd Tuesday of July**, last date for filing nomination papers for September primary and general election. Secs. 8.15(1) and 8.20(8)(a).

During Month **60 days prior to September primary**, the council must establish polling places for the September primary. Sec. 5.25(3).

60 days prior to September primary, the council may by resolution combine 2 or more wards for voting purposes to facilitate using a common polling place. Sec. 5.15(6)(b).

AUGUST

1st Week **August 1**, last date for department heads to file financial estimates with the secretary of the board of estimates for ensuing fiscal year in cities which have adopted special budget law. Sec. 65.03(1).

SEPTEMBER

2nd Week **2nd Tuesday of September**, September primary held. Sec. 5.02(18).

September 10, board of estimates meets in cities under special budget law. Sec. 65.04(1).

4th Week

Before October 1, comptroller or similar officer must file with city clerk statements of all city funds for preceding year and estimates for current year. Sec. 62.09(10)(a).

OCTOBER

During Month

30 days prior to general election, the council must establish polling places for the general election. Sec. 5.25(3).

30 days prior to general election, the council may by resolution combine 2 or more words for voting purposes to facilitate using a common polling place. Sec. 5.15(6)(b).

1st Week

October 1, financial statements of department heads, boards and commissions due in city clerk's office. Secs. 30.38(14) and 62.12(2).

3rd Week

October 15, water utility must report delinquent accounts to city treasurer or mail notice to delinquent owners directly. Sec. 66.069(1)(b).

4th Week

October 25, last date for board of estimates in cities under special budget law to submit proposed budget to

council; budget summary must be published "forthwith."
Sec. 65.04(2).

NOVEMBER

Tuesday after the first Monday in even-numbered years, the general election is held. Sec. 5.02(5).

2nd Week **November 10**, last day for holding budget hearing in cities under special budget law. Sec. 65.04(7).

3rd Week **November 14**, last date to adopt budget in cities under special budget law. Within five days of adoption, clerk submits budget to mayor for approval or item veto. Sec. 65.05(4), (5) and (6).

DECEMBER

During Month
(or sooner) Council must hold hearings and adopt budget for ensuing year. Sec. 65.90.

Appoint one member of board of public land commissioners, if any, to take office January 1. Sec. 27.11(2)(b).

3rd Week **3rd Monday**, last day for city clerk to file statement of taxes levied during year with state Department of Revenue. Sec. 69.61.

End of Year Annual audit required in cities adopting alternate claim procedure. Sec. 66.044(3).

Each public utility must close accounts and promptly begin preparation of a balance sheet. Sec. 196.07(1).

Last Meeting of Year (or by Dec. 31) Even-numbered years, mayor nominates election ward officials in cities without a board of election commissions to council for confirmation. Sec. 7.30(4)(a).