



CITY OF MERRILL
COMMITTEE OF THE WHOLE
AGENDA • FRIDAY JULY 24, 2020

Orientation/Training Session City Hall Council Chambers

8:30 AM

- I. Call to Order
- II. Silent Prayer
- III. Pledge of Allegiance
- IV. Opening Remarks & Ground Rules
- V. Public Comment Period
- VI. Agenda Items for Consideration:
 1. Teamwork discussion City of Merrill leadership
 2. Department Head Information Briefings (Police, Fire, Library, Engineer/Streets/Utilities, Transit, Finance/Clerk, Parks & Recreation, Maintenance, Enrichment Center, Building/Zoning, City Attorney/Municipal Court)
 3. Legal briefing municipal government/Legislative vs. Executive
 4. Lincoln County Economic Development
 5. Merrill's Strategic Plan Update
 6. Future of vacant residential and business properties/Tax delinquent properties with Lincoln County
 7. Consider resolution in support of aggressive use of the tax delinquent property sale mechanism and process.
 8. Review and discuss committee/board/commission structure and discussion on future structure.
 9. Future planning related to COVID-19 conditions and environment
- VII. Adjournment

Note: Lunch Break will be from approximately 12:30 P.M. to 1:00 P.M.

Committee of the Whole - Orientation and Training City of Merrill Council

July 24, 2020

8:30 AM Meeting called to order

8:31 AM Opening Remarks and Ground Rules [Mayor Woellner]

8:40 AM Public Comment

9:00 AM Teamwork discussion City of Merrill leadership [Paul Russell]

9:30 AM Department Head Information Briefings { Police, Fire, Library, Engineer/Streets/Utilities, Transit, Finance/Clerk, Parks/Rec, Maintenance, Enrichment Center, Building/Zoning, City Attorney/Municipal Court}

11:15 AM Legal briefing municipal government/Legislative vs Executive [Dean Dietrich/Tom Hayden]

12:30 PM Lunch

1:00 PM Lincoln County Economic Development [Bill Bialecki]

1:30 PM Merrill's Strategic Plan Update [Mike Ravn]

*2:30 PM Future of vacant residential and business properties/
Tax delinquent properties with Lincoln County {Mayor Woellner/Darin Pagel}*

3:00 PM Future garbage and recycle collection [Rod Akey/Dustin Bonack]

3:30 PM Future planning related to Covid-19 conditions and environment [Paul Russell/Mark Weix]

4:00 PM Meeting Adjournment

Note: Times are estimates please be flexible...



CITY OF MERRILL

1004 East First Street • Merrill, Wisconsin • 54452
 Phone (715) 539-3510 • FAX (715) 536-0514

M E M O R A N D U M

DATE: October 21, 2019
TO: All City of Merrill Employees
FROM: Paul Russell, Chairman, Personnel and Finance Committee
RE: Nine Tools of Civility

I am attaching a resolution passed over 10 years ago accepting the "Nine Tools of Civility". This is now a part of the City of Merrill's Personnel Manual.

Over the last several months it has been suggested that all of us should review this document.

When we practice civility, we greatly impact the way our colleagues and others view us. It has been claimed that civil, polite behavior is a primary factor in quality of life. Please take a few moments to review the attached resolution. While it was passed a few years ago, its importance in the quality of our personal and work life remains the same.

As always, I look forward to receiving your idea on how we can make the City of Merrill a better place to work and live. Please contact me if you have any questions or comments.

Paul Russell

Chairman, Personnel & Finance Committee

"Focusing on the Future"
 An equal opportunity/affirmative action employer.

Attachment: Memo on Tools of Civility (5155 : Teamwork discussion City of Merrill leadership (Paul Russell))



0602760

RESOLUTION NO. 1996

A RESOLUTION ACCEPTING THE NINE TOOLS OF CIVILITY

WHEREAS, the residents of Merrill place a high value of respect and civility in their lives and they understand that these characteristics are essential to any healthy community; and,

WHEREAS, the Merrill Common Council supports opportunities for civil discourse and discussion in the community; and,

WHEREAS, the Merrill Common Council addresses sometimes controversial issues about which people often feel passionately – which at times leads to uncivil behavior; and,

WHEREAS, an atmosphere of incivility and disrespect can have a damaging effect on the proceedings, on the quality of debate, and on the practice of democracy itself.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MERRILL, WISCONSIN this 11th day of July, 2006, that the Merrill Common Council recognizes nine tools of civility that will provide increased opportunities for civil discourse in order to find positive resolutions to the issues that face our community and directs that these tools be utilized by City employees, elected officials and representatives. These tools include:

1. **Pay Attention.** Be aware and attend to the work and the people around you.
2. **Listen.** Focus on others in order to better understand their points of view.
3. **Be Inclusive.** Welcome all groups of citizens working for the greater good of the community.
4. **Don't Gossip.** And don't accept when others choose to do so.
5. **Show Respect.** Honor other people and their opinions, especially in the midst of a disagreement.
6. **Be Agreeable.** Look for opportunities to agree; don't contradict just to do so.
7. **Apologize.** Be sincere and repair damaged relationships.

- 8. **Give Constructive Criticism.** When disagreeing, stick to the issues and don't make a personal attack.
- 9. **Take Responsibility.** Don't shift responsibility and blame onto others; share disagreements publicly.

BE IT FURTHER RESOLVED, that the Merrill Common Council shall promote the use and adherence of these tools in conducting the business of the City of Merrill.

Recommended by Personnel and Finance Committee

Moved: Alderwoman Hatz

Passed: July 11, 2006

CITY OF MERRILL, WISCONSIN



Douglas C. Williams
Mayor



William N. Heideman
City Clerk

0607261



RESOLUTION NO. 1997

A RESOLUTION AUTHORIZING AMENDING CHAPTER 1 TO ADD THE NINE TOOLS OF CIVILITY TO THE NONUNION PERSONNEL POLICIES MANUAL AT SECTION 1-3 AND RENUMBERING THEREAFTER

WHEREAS, the City of Merrill Common Council has adopted the Nine Tools of Civility to be utilized by City employees, elected officials and representatives; and,

WHEREAS, it is desirable to amend the Nonunion Personnel Policies Manual to include these Nine Tools of Civility in Chapter 1, Section 2 to read as follows:

1-3 *City of Merrill Employee Nine Tools of Civility*

1. **Pay Attention.** Be aware and attend to the work and the people around you.
2. **Listen.** Focus on others in order to better understand their points of view.
3. **Be Inclusive.** Welcome all groups of citizens working for the greater good of the community.
4. **Don't Gossip.** And don't accept when others choose to do so.
5. **Show Respect.** Honor other people and their opinions, especially in the midst of a disagreement.
6. **Be Agreeable.** Look for opportunities to agree; don't contradict just to do so.
7. **Apologize.** Be sincere and repair damaged relationships.
8. **Give Constructive Criticism.** When disagreeing, stick to the issues and don't make a personal attack.
9. **Take Responsibility.** Don't shift responsibility and blame onto others; share disagreements publicly.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MERRILL, WISCONSIN this 11th day of July, 2005, that the Chapter 1 of the Nonunion Personnel Policies Manual be amended to add the following language in Chapter 1-3 and appropriately renumbering the sections following the inserted language:

1-3 City of Merrill Employee Nine Tools of Civility

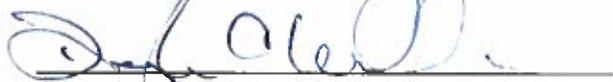
1. **Pay Attention.** Be aware and attend to the work and the people around you.
2. **Listen.** Focus on others in order to better understand their points of view.
3. **Be Inclusive.** Welcome all groups of citizens working for the greater good of the community.
4. **Don't Gossip.** And don't accept when other choose to do so.
5. **Show Respect.** Honor other people and their opinions, especially in the midst of a disagreement.
6. **Be Agreeable.** Look for opportunities to agree; don't contradict just to do so.
7. **Apologize.** Be sincere and repair damaged relationships.
8. **Give Constructive Criticism.** When disagreeing, stick to the issues and don't make a personal attack.
9. **Take Responsibility.** Don't shift responsibility and blame onto others; share disagreements publicly.

Recommended by Personnel and Finance Committee

Moved: Aldерwoman Hatz

Passed: July 11, 2006

CITY OF MERRILL, WISCONSIN



Douglas C. Williams
Mayor



William N. Heideman
City Clerk

Attachment: Tools of Civility Resolutions (5155 : Teamwork discussion City of Merrill leadership (Paul Russell))

COUNCIL AUTHORITY & PROCEDURES OVERVIEW

July 24, 2020

- I. Purpose: This is intended to give the new Common Council of the City of Merrill a brief overview of Council procedures and general City operations. It will examine three areas: Common Council Composition, Power and Authority; Common Council Deliberations and Procedures; and Committee Purpose and Procedures.

- II. Common Council: Composition, Power and Authority: The Common Council is the primary policy-making (legislative) organ of City government. It sets basic City policies and is ultimately responsible, together with the Mayor, for oversight of most all City operations. It is exclusively responsible for the levying of City property taxes.
 - A. Composition: The Common Council is composed of the Mayor and 8 alderpersons.
 1. **Mayor**: presides over meeting and votes only in case of a tie vote.
 2. **Council President**: Elected by alderpersons and presides over Council in absence of Mayor. When so presiding, the Council President is imbued with all of the powers of the Mayor except that he or she may not approve acts disapproved by the Mayor and may vote on all matters, if announced at the start of the meeting.
 3. **Quorum**: Statutorily, 6 of Merrill's 8 alderpersons constitute a quorum and must be present to conduct business. The Council may only adjourn if a quorum is not present.

 - B. Power and Authority: As stated above, the Common Council is generally the main policy making body of the City. It is the only governmental entity within City government that can levy City property taxes.
 1. **Types of Legislation**: There are four types of actions by the Common Council: Charter ordinances; ordinances; resolutions and motions.
 - a. **Charter ordinance**: is used when amending, repealing or otherwise modifying an existing charter ordinance; required by statute (e.g.: affecting a change in City structure); electing not to be governed by a specific State law (Home Rule); or a high degree of formality and permanence is desired. Can only be modified by another Charter Ordinance. May modify ordinances, resolutions and motions.

- (1) 2/3 vote required
 - (2) Effective date minimum of 60 days after passage
 - (3) Subject to petition for referendum
- b. **Ordinary ordinance:** amends repeals or modifies existing ordinance, resolution or motion; or may be required by State law; and/or the act is of general application and intended to be reasonably permanent. Can be modified only by a Charter Ordinance or another ordinary ordinance.
 - c. **Resolution:** amends, repeals or modifies existing resolution or motion; used when required by State law; used when action required is temporary in nature or not of general public concern; action relates to internal City affairs; or act confirms previous action by City officer or is a directive to an officer, agency or person about the Council's wishes or directives.
 - d. **Motion:** modifies or rescinds prior motion; subject relates to conduct of Council meetings; express Council's opinion and authorizes action consistent with that opinion.
2. **Exceptions:** there are five exceptions to the Council's general policy making authorities in the City. The exceptions involve the roles of the Police & Fire Commission, Library Board, Park & Recreation Commission, Airport Commission, and the Transit Commission.
- a. State Statutes require creation of independent Library Board if municipality creates Library. All cities over 4,000 population must have a Police & Fire Commission. The other Commissions are created at the option of the City.
 - b. Common Council establishes the overall budget for each of the independent Library Board or Commissions. However, each of the independent Library Board and Commissions has fairly broad discretion to set policy and expand their budgets in their jurisdictional areas.
 - c. The Police & Fire Commission in Merrill only has jurisdiction over decisions to hire, fire and discipline within the Police & Fire Departments. Merrill has not adopted optional powers for its Police & Fire Commission so the Mayor and Council retain general policy making and budgeting authority for both departments. The Mayor is the statutory head of each department.

- III. Common Council Deliberations & Procedures: In order to ensure the orderly consideration of City business, procedural rules have been established. When followed, they encourage constructive debate over policy while assisting the Council to efficiently complete its agenda. Government & Administration, Chapter 1 outlines the power & authority of the Council as well as the rules of procedure for Council meetings. A summary of that chapter is attached to this outline for your information.
- A. Open Meetings & Agenda: Government & Administration, Chapter 1 provides for the general order of business for Common Council meetings. The City Clerk develops the agenda for the meeting with input from the Mayor, Committee Chairs and Department Heads. However, the Council is ultimately responsible for the development of its agenda.
1. **Agenda:** The agenda establishes which items may be discussed at the meeting. The Wisconsin Open Meetings law and our ordinances require that the agenda be published and posted. If an item is not listed on the agenda, no action may be taken on it during the meeting.
 2. **Order of Business:** Generally, business is considered in the order listed on the agenda. Items may be taken up out of order if consented to by 3/4 of all Alderpersons.
- B. Agenda Content: Substantive items on the Council's agenda are normally composed of committee reports, on which motions are made approving committee recommendations; ordinances, which require 3 separate readings; and resolutions. In addition, information regarding claims, petitions, Mayoral communications and appointments often appear on the agenda.
1. The agenda is prepared the week before the Council meets.
 2. Alderpersons may directly introduce ordinances and resolutions, if submitted to the Clerk by 9:00 a.m. the Wednesday before the Council meeting. All ordinances and resolutions must first be referred to the appropriate committee for recommendation prior to Council action, unless moved for immediate consideration and approved by the Council.
- C. Deliberations: Roberts Rules of Order have been adopted as the general procedural rules for the conduct of Common Council meetings as well as committee meetings.
1. The presiding officer (Mayor, Council President, or committee chair) must first recognize members before speaking.
 2. Members can speak a maximum of three times on any question, unless permission granted by 3/4 of members present.
 3. The City Attorney is the parliamentarian for the Common Council.

- IV. Committee Purpose and Procedures: The committees of the Council are where the bulk of policy making work occurs. Committees are designed to provide a location for the thorough debate and consideration of all matters coming before the Council. As a result, the vast majority of items adopted by the Council are first recommended by the committee (or committees) having jurisdiction over the subject matter.
- A. Standing Committees: The Code of Ordinances provides for five standing committees of the Council.
1. **Board of Public Works:** This board, required by statute, governs all aspects of public infrastructure, as well as City-owned buildings within the City. The Committee shall consist of three alderpersons, appointed by the Mayor, the Mayor and Street Commissioner. The Mayor shall act as Chairman and shall not vote except to break a tie. The City Administrator, City Attorney, City Engineering Representative and Finance Director shall attend all meetings. Staff responsible for the agenda the City Clerk
 2. **Personnel & Finance:** This committee is responsible for all financial aspects of city operations as well as personnel management. Personnel & Finance oversees the development of the annual City budget. The Committee shall consist of three alderpersons. The City Administrator, City Attorney, City Clerk and Finance Director shall attend all meetings, unless excused by the presiding officer. Staff responsible the committee's agenda: City Clerk. The City Attorney and Director of Finance also provide staff support to the committee.
 3. **Health & Safety:** This committee functions as the City's board of health. In addition, it is responsible for the control and management of the Police and Fire Departments, and reviews all applications for municipal licenses (including liquor licenses). The Committee shall consist of three alderpersons. Staff responsible the committee's agenda: City Clerk. The Police Chief, Fire Chief, and Health Officer are ex officio members and provide staff support to the committee.
 4. **Water & Sewage:** This committee is responsible for oversight of the City's Water and Sewage Utility, as well as remedial action on the City's sanitary landfill. The Committee shall consist of three alderpersons. Staff responsible for the agenda as well as committee support is the City Engineer/Water Utility Superintendent.
 5. **Committee of the Whole:** This committee is composed of the Alderpersons and Mayor. It provides a forum for a more informal discussion of issues facing the Council. The City Attorney, City Clerk, and other staff, depending on the issue facing the committee, provide staff support.

- B. Other Commissions, Boards and Committees: In addition to the standing committees listed above, the statutes and ordinances create several addition bodies responsible for aspects of the City's operations. They are divided into three broad categories: Independent Boards or Commissions; Statutory Boards or Commissions; and Citizen Commissions/Committees. In addition, the City has one independent authority.
1. **Independent Boards or Commissions:** These entities can set policy for their respective areas as well as generally hiring employees (with some exceptions noted below). However, the Council has ultimate control over budgets. There are five boards or commissions in this category in Merrill.
 - a. **Library Board:** Governs the operation of the T.B. Scott Library. One alderperson may serve on this board.
 - b. **Airport Commission:** Governs the operation of the Merrill Airport. One alderperson serves on this commission.
 - c. **Park & Recreation Commission:** Governs the operation of the City's parks and recreation programs. The Recreation & Marketing Director is appointed by the Council upon the recommendation of the Commission. One alderperson serves on this commission.
 - d. **Police & Fire Commission:** Governs the hiring, firing and disciplining of members of Merrill's police and fire departments. By state statute, the commission is the only body, which can accomplish these duties. However, operations management and policy making for the departments rest with the respective Chiefs, the Mayor and the Common Council. As indicated above, Merrill has not adopted optional powers for the Commission. As a result, the Mayor is the statutory head of both departments.
 - e. **Transit Commission:** Governs the operation of the Merrill-go-Round. The Council hires the Transit Administrator after recommendation by the Transit Commission.
 2. **Statutory Boards & Commissions:** These entities are created by state law to fulfill specific functions. There are three statutory boards or commissions in the City of Merrill.
 - a. **Board of Appeals:** This board hears appeals relating to zoning and building code issues. It is comprised of 5 members appointed by the Mayor. The Community Development/Zoning Administrator provides staff support and prepares the Board's agenda. It is composed of 5 citizen members and two alternates.
 - b. **City Plan Commission:** This commission is responsible for overall land use planning in the City of Merrill. It is composed of the Mayor, who shall be the presiding officer, 1 alderperson (elected by 2/3 votes at the Council's organizational meeting), the Chair of the Park & Recreation Commission, and 4 citizens. The City Administrator, City Attorney, Engineering Department

Representative, and Community Development Representative shall attend all meetings as ex officio members. The City Engineer prepares the agenda and he and the Community Development/Zoning Administrator provide staff support.

- c. **Board of Review:** This board hears appeals on property tax valuations and meets annually in May. It is composed of the Mayor, City Clerk, the President of the Council and two additional alderpersons. The City Clerk and City Assessor provide staff support to the board.

- 3. **Citizen Commissions/Committees:** In addition to the standing and statutory committees, the ordinances create a number of citizen commissions. They include the following: Safety Committee (composed of City Staff); Community Development Committee (oversees Community Development Office and has one alderperson member); Redevelopment Authority; Parking Commission (subcommittee of Health & Safety, oversees administration of parking revenue and control); Cable Television (CATV) Committee (oversees Cable Television franchise); Committee on Aging (advises Senior Citizens Center); Tourism Commission

- V. Conclusion. The organization of the Council is intended to aid in the creation of appropriate public policies for the City of Merrill. The committees, boards and commissions help break the work into portions easily digested. City staff is always available to the Council to assist in making your job easier. Thank you for your time and attention to this orientation. I hope it makes your tenure on the Common Council a fulfilling experience.

Sec. 2-54. - City government.

- (a) *Mayor-council government.* The city is a body corporate and politic with the powers of a municipality at common law and governed by the provisions of Wis. Stats. chs. 62 and 66, laws amending those chapters, other acts of the legislature and article XI, section 3 of the state Constitution. The city operates under the mayor-council form of government under Wis. Stats. ch. 62.
- (b) *Division of responsibilities.*
- (1) *Legislative branch.* The common council is the legislative branch of city government. Its primary business is the passage of laws in the form of ordinances or resolutions which shall prescribe what the law shall be, not only in relation to the particular facts existing at the time, but as to all future cases arising under it. The common council shall fix the salaries of all officers and employees of the city and be charged with the official management of the city's financial affairs, its budget, its revenues and the raising of funds necessary for the operation of the city.
 - (2) *Executive branch.* The mayor shall be the chief executive officer. He shall take care that all city ordinances and state laws are observed and enforced and that all city officers, boards, committees and commissions discharge their duties. When present, he shall preside at the meetings of the common council. He shall, from time to time, give the council such information and recommend such measures as he may deem advantageous to the city.

(Code 1993, § 2-1-1)

State Law reference— General provisions, Wis. Stats. § 62.09(7); mayor, Wis. Stats. § 62.09(8); common council, Wis. Stats. § 62.11.

Sec. 2-79. - Mayor.

- (a) *Election.* The regular term of the mayor shall be four years, elected in even-numbered years.
- (b) *Duties.*
- (1) The mayor shall be the chief executive officer of the city. He shall take care that city ordinances and state statutes are observed and enforced and that all city officers and employees discharge their duties.
 - (2) The mayor shall, from time to time, provide the council with such information and recommend such measures as he may deem advantageous to the city. When present, he shall preside at the council meetings.
 - (3) The mayor shall review the development of the city budget.
 - (4) The mayor shall provide direction for the city's economic development and other long-range plans.
 - (5) The mayor shall analyze and interpret federal, state and county legislation to determine its impact on the city.
 - (6) The mayor shall have such other duties and responsibilities as are prescribed in state statutes and this Code.
- (c) *Veto power.* The mayor shall have the veto power as to all acts of the council, except where it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to him by the city clerk and shall be enforced upon his approval, evidenced by his signature, or upon his failing to approve or disapprove within five days, which fact shall be certified thereon by the city clerk. If the mayor disapproves, he shall file his objection with the city clerk, who shall present it to the council at its next meeting. A two-thirds vote of all the members of the council shall be necessary to make the act effective, notwithstanding the objection of the mayor.

(Code 1993, § 2-2-3; Ord. No. 93-3, 9-14-1993; Ord. No. 96-04, 2-13-1996; Ord. No. 97-20, 11-11-1997; Ord. No. 01-17, 12-11-2001; Ord. No. 05-22, 11-8-2005)

State Law reference— Compensation, Wis. Stats. § 62.09(5), (6), (8).

Sec. 2-82. - General powers of the common council.

- (a) *Management and control.* The common council shall be vested with all the powers of the city not specifically given some other officer. Except as otherwise provided by law, the common council shall have the management and control of the city property, finances, highways, streets, navigable waters and the public service, and shall have the power to act for the government and good order of the city, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, forfeiture, imprisonment and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.
- (b) *Acquisition and disposal of property.* The common council may:
- (1) Acquire property, real or personal, within or without the city, for parks, libraries, historic places, recreation, beautification, streets, waterworks, sewage or waste disposal, harbors, improvement of watercourses, public grounds, vehicle parking areas and for any other public purpose;
 - (2) Acquire real property within or continuous to the city, by means other than condemnation, for industrial sites;
 - (3) Improve and beautify the same;
 - (4) Construct, own, lease and maintain buildings on such property for instruction, recreation, amusement and other public purposes; and
 - (5) Sell and convey such city-owned property, except dedicated, platted parks.
- (c) *Acquisition of easements and property rights.* Confirming all powers granted to the common council and in furtherance thereof, the council is expressly authorized to acquire by gift, purchase or condemnation under Wis. Stats. ch. 32, any and all property rights in lands or waters, including rights of access and use, negative or positive easements, restrictive covenants, covenants running with land, scenic easements and any rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public or for any public purpose, including the exercise of powers granted under Wis. Stats. §§ 61.35 and 62.23; and may sell and convey such easements or property rights when no longer needed for public use or protection.
- (d) *City finances.* The common council may levy and provide for the collection of taxes and special assessments; may refund any tax or special assessment paid, or any part thereof, when satisfied that the same was unjust or illegal; and generally may manage the city finances.
- (e) *Construction of powers.* Consistent with the purpose of giving to cities the largest measure of self-government in accordance with the spirit of the home rule amendment to the Constitution, the grants of power to the common council in this section and throughout the Code shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of the city and its inhabitants.

(Code 1993, § 2-2-6)

State Law reference— General provisions, Wis. Stats. § 62.09(7); common council, Wis. Stats. § 62.11.

Sec. 2-110. - Appointed officials.

The appointed officials of the city shall consist of:

- (1) *City administrator.*
 - a. *Purpose.* In order to provide the city with a more efficient, effective and responsible government under a system of a parttime mayor and parttime common council at a time when city government is becoming increasingly complex, there is hereby created the office of city administrator, hereinafter referred to as "administrator".
 - b. *Definitions.* The term "administrator" means the person responsible for carrying out the directives and policies of the mayor and common council, subject to statutory limits which may apply. It is the intent of this subsection that the administrator shall have clear authority to coordinate and administer the day-to-day operations of municipal government as specified in this subsection.
 - c. *Term.* The administrator shall hold office for an indefinite term subject to removal for cause only by a majority vote of the common council. In the event termination is without cause, then the termination shall occur pursuant to the employment agreement between the city and the city administrator.
 - d. *Residency.* The administrator shall become a resident of the city within 180 days of assumption of duties.
 - e. *Cooperation.* All officials and employees of the city shall cooperate with and assist the administrator so that the city government shall function effectively and efficiently.
- (2) *Treasurer-comptroller.* The office of treasurer-comptroller shall be filled by appointment by the common council upon the recommendation of the mayor and personnel and finance committee to an indefinite term. The common council shall appoint the treasurer-comptroller on the basis of merit, with due regard to training, experience, administrative ability and general fitness for the office. The treasurer-comptroller shall perform all of the duties outlined in Wis. Stats. § 62.09(9) and (10), as amended from time to time, together with such other duties as the common council may assign from time to time. The treasurer-comptroller shall report to the director of finance/city administrator or in the event of a vacancy in that office, to the mayor; and to the common council.
- (3) *City attorney.* The office of city attorney shall be filled by appointment by the common council for an indefinite term. The city attorney shall be appointed on the basis of merit, training and experience, shall be a graduate of a recognized accredited law school, and shall be admitted to practice law in the state. The city attorney shall be subject to removal for cause by a three-fourths vote of the common council. The city attorney shall perform the legal business for the city

- as directed by the common council and city ordinances, and shall have the powers and duties as prescribed by state statutes.
- (4) *Health officer.* The health officer shall be appointed by the board of health and confirmed by the council for an indefinite term. A deputy health officer, upon confirmation by the council for a similar term, shall assist the health officer in such areas designated by the board of health. Such deputy health officer shall be responsible for his acts to the city.
 - (5) *City assessor.* The city assessor may be an individual or a corporation and shall be appointed by a two-thirds vote of the members of the council for an indefinite term.
 - (6) *City engineering department representative/water superintendent.* The city engineering department representative/water superintendent is appointed by the mayor subject to confirmation by the council for an indefinite term.
 - (7) *City sealer.* The city sealer is appointed pursuant to Wis. Stats. § 98.04.
 - (8) *Chief of police.* The chief of police is appointed by the police and fire commission for an indefinite term.
 - (9) *Fire chief.* The fire chief is appointed by the police and fire commission for an indefinite term.
 - (10) *Parks and recreation director.* The parks and recreation director is appointed by the council upon recommendation of the parks and recreation commission for an indefinite term. All Code references to parks superintendent, recreation and marketing director, and building and grounds supervisor shall mean the parks and recreation director.
 - (11) *Building inspector.* The building inspector is appointed by the common council.
 - (12) *Transit administrator.* The transit commission shall screen candidates, select three names with one recommendation to the personnel and finance committee for its recommendation, subject to confirmation by the council for an indefinite term.
 - (13) *Senior citizen director.* The senior citizen director is appointed by the mayor, subject to confirmation by the council for an indefinite term.
 - (14) *Safety director.* The safety director is appointed by the mayor, subject to confirmation of the council, for an indefinite term.
 - (15) *Airport manager.* The airport commission shall appoint the airport manager for an indefinite term.
 - (16) *School crossing guards.* The city may, after approval by the health and safety committee and the personnel and finance committee, appoint adult school crossing guards for the protection of persons who are crossing a highway or street in the vicinity of a school.

- (17) *Community development director.* The community development director is appointed by the common council upon the recommendation of the community development committee for an indefinite term.
- (18) *Director of finance.*
- a. *Selection.* The office of director of finance shall be filled by appointment by the common council upon the recommendation of the mayor and the personnel and finance committee to an indefinite term. The common council may enter into a written renewable contract with the director of finance not to exceed five years. The common council shall appoint the director of finance on the basis of merit, with due regard to training, experience, administrative ability and general fitness for the office. The director of finance shall perform all of the duties of the office of treasurer-comptroller outlined in Wis. Stats. § 62.09(9) and (10), as amended from time to time, together with such other duties as the common council may assign from time to time. Any vacancy in the office of director of finance shall also constitute a vacancy in the office of treasurer-comptroller. The director of finance shall report to the mayor and to the common council.
 - b. *Probationary period.* Any individual newly hired shall serve a probationary period of one year. During that time, the newly hired director of finance's performance, conduct and general suitability will be critically evaluated to determine whether such person shall continue in the service of the city. The probationary period may be extended by the common council for up to an additional one year. The director of finance may be terminated at any time during the probationary period or extension thereof, and such decision shall not be appealable. A leave of absence without pay while on probation shall act to extend the probationary period by the length of time of the leave.
 - c. *Compensation.* The director of finance shall be placed at grade 11 of the administrative, professional, supervisory and technical personnel scale for the city employees.

(Prior Code, § 2.08.010; Code 1993, § 2-3-3; Ord. No. 05-25, 11-8-2005; Ord. No. 06-01, 1-10-2006; Ord. No. 06-05, 3-14-2006; Ord. No. 06-09, 4-18-2006)

Sec. 2-82. - General powers of the Common Council

(a) *Management and control.* The common council shall be vested with all the powers of the city not specifically given some other officer. Except as otherwise provided by law, the common council shall have the management and control of the city property, finances, highways, streets, navigable waters and the public service, and shall have the power to act for the government and good order of the city, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, forfeiture, imprisonment and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.

(b) *Acquisition and disposal of property.* The common council may:

(1) Acquire property, real or personal, within or without the city, for parks, libraries, historic places, recreation, beautification, streets, waterworks, sewage or waste disposal, harbors, improvement of watercourses, public grounds, vehicle parking areas and for any other public purpose;

(2) Acquire real property within or continuous to the city, by means other than condemnation, for industrial sites;

(3) Improve and beautify the same;

(4) Construct, own, lease and maintain buildings on such property for instruction, recreation, amusement and other public purposes; and

(5) Sell and convey such city-owned property, except dedicated, platted parks.

(c) *Acquisition of easements and property rights.* Confirming all powers granted to the common council and in furtherance thereof, the council is expressly authorized to acquire by gift, purchase or condemnation under Wis. Stats. chapter 32, any and all property rights in lands or waters, including rights of access and use, negative or positive easements, restrictive covenants, covenants running with land, scenic easements and any rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public or for any public purpose, including the exercise of powers granted under Wis. Stats. §§ 61.35 and 62.23; and may sell and convey such easements or property rights when no longer needed for public use or protection.

(d) *City finances.* The common council may levy and provide for the collection of taxes and special assessments; may refund any tax or special assessment paid, or any part thereof, when satisfied that the same was unjust or illegal; and generally may manage the city finances.

(e) *Construction of powers.* Consistent with the purpose of giving to cities the largest measure of self-government in accordance with the spirit of the home rule amendment to the Constitution, the grants of power to the common council in this section and throughout the Code shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of the city and its inhabitants.

Sec. 2-110. - Appointed officials.

The appointed officials of the city shall consist of:

(1) *City administrator.*

a. *Purpose.* In order to provide the city with a more efficient, effective and responsible government under a system of a part-time mayor and part-time common council at a time when city government is becoming increasingly complex, there is hereby created the office of city administrator, hereinafter referred to as "administrator".

b. *Definitions.* The term "administrator" means the person responsible for carrying out the directives and policies of the mayor and common council, subject to statutory limits which may apply. It is the intent of this subsection that the administrator shall have clear authority to coordinate and administer the day-to-day operations of municipal government as specified in this subsection.

c. *Term.* The administrator shall hold office for an indefinite term subject to removal for cause only by a majority vote of the common council. In the event termination is without cause, then the termination shall occur pursuant to the employment agreement between the city and the city administrator.

d. *Residency.* The administrator shall become a resident of the city within 180 days of assumption of duties.

e. *Cooperation.* All officials and employees of the city shall cooperate with and assist the administrator so that the city government shall function effectively and efficiently.

CITY ADMINISTRATOR JOB DESCRIPTION POSITION SUMMARY:

This is a highly responsible position providing professional administrative management services to support the Mayor and Common Council of the City of Merrill. The City Administrator provides overall direction for the City organization in accordance with the policies established by the Common Council. This position serves as Human Resources Director; ensures that City operations are conducted in an economic, efficient and effective manner; and that elected official and citizen concerns are addressed. This position also develops recommendations to the Mayor and City Council for changes in programs, operations and policies to increase the effectiveness and efficiency of City Government. In addition, the City Administrator works with the Finance Director to prepare, review, and monitor the annual operating budget for the City. The City Administrator provides direction, research, analysis, and guidance for economic development within the City, and directs efforts to help increase the tax base and employment opportunities.

Under the policy guidance and supervision of the Mayor and eight-member Common Council, the Administrator serves as the Chief Administrative Officer to direct and coordinate work of professional consultants; directly supervise the departments of Finance, Office of City Attorney, Water and Wastewater Utility, City Engineer, Public Works, Enrichment Center, Information Technology, Maintenance, Building Inspection and Zoning, and Transit; supervise work of Police, Fire/EMS, Parks & Recreation, Airport, and Library departments; and coordinate operations with elected officials consisting of the City Clerk and Municipal Court Judge.

The Administrator provides direction, research, analysis, and guidance in areas of finance, operations, human resources, economic development, redevelopment, land use, and other policy areas as requested by the Mayor and Common Council.

The Administrator facilitates effective relations between elected and appointed officials, citizens, employees, and professional service providers. This position possesses considerable discretion and latitude in fulfilling its duties and responsibilities.

**CITY OF MERRILL
TOPICS
FOR
ELECTED OFFICIALS
ORIENTATION**

- Compliance with Open Meetings Law
- Requirements of Public Records Law
- Prohibited Actions Under Local Officials Code of Ethics
- Employment Law Protections
- Public Sector Collective Bargaining Laws



You're in the Public Sector Now!

Maria Davis, Assistant Legal Counsel, League of Wisconsin Municipalities

One of the first things individuals need to understand when entering the public sector, either as an elected official or municipal staff, is that there are important differences between the public and private sectors. Local governments are subject to certain legal requirements and are also afforded unique governmental authority. Individuals need to be aware of these distinctions to serve their municipalities effectively and to avoid violating the law. Below are some of the most important differences to be aware of.

US and WI constitutions

Local governments are subject to the provisions of the U.S. and Wisconsin Constitutions. On the federal level, the main constitutional amendments to be aware of include the First Amendment (free speech, exercise of religion, establishment clause), the Fourth Amendment (no unreasonable searches or seizures without a warrant), the Fifth Amendment (due process), and the Fourteenth Amendment (equal protection, applies amendments to the states). The Wisconsin Constitution contains similar protections and also a constraint on municipal debt, found in Article XI, sec. 3(2) and 3(3), which provides that no municipality “may become indebted in an amount that exceeds an allowable percentage of the taxable property located therein equalized for state purposes as provided by the legislature. In all cases the allowable percentage shall be 5 percent [except as specified otherwise].”

State ethics code/pecuniary interest prohibitions

The state statutes set forth an ethics code containing minimum standards of ethical conduct for local government officials. Wis. Stat. § 19.59. Note, municipalities may also enact a local ethics code that is more stringent than the state ethics code. Additionally, to protect against any self-dealing by public officials, the statutes generally prohibit public officials from having a private financial interest in a public contract. Wis. Stat. § 946.13. Thus, local officials are generally prohibited from entering into a contract for goods, services, construction, or employment with the municipality.

Open government laws

Municipalities are subject to open government laws; namely, the Open Meetings Law (§§ 19.81 - 19.98) and the Public Records Law (§§ 19.21 - 19.39). The Open Meetings Law requires that all meetings of governmental bodies be preceded by public notice and open to the public at all times unless a statutory exemption authorizes use of closed session. The Public Records Law requires municipalities to maintain public records for prescribed amounts of time and to make them available for inspection when requested. The law establishes a strong presumption in favor of openness and public records requests may not be denied without statutory or judicial authority.

Quasi-judicial hearings

Often, municipal officials act in a legislative or executive role, depending on the office they occupy. However, certain instances require municipal officials to act in a quasi-judicial capacity, namely when a quasi-judicial hearing is required. A quasi-judicial hearing affects the rights of those who are a party to a proceeding before a governmental body (e.g., an alcohol license revocation hearing). Quasi-judicial hearings must be fair and the decision-makers impartial to ensure due process is afforded.

Ch. 32 eminent domain authority

Government entities have the unique authority of eminent domain. The power of eminent domain allows municipalities to acquire property via condemnation for specific purposes in accordance with the provisions of Chapter 32 of the Wisconsin Statutes.

General charter laws and other municipal laws

There are numerous statutory provisions that apply to cities and villages in Wisconsin. Cities and villages each have a general statutory charter setting forth laws regarding their organization and procedures. The village charter is found in Chapter 61 and the city charter is found in Chapter 62 of the statutes. Additionally, Chapter 66 sets forth general municipal laws that apply to both villages and cities.

Public purpose doctrine

The “public purpose doctrine” is a basic and important constraint on the expenditure of public funds and one that every municipal official should understand. The public purpose doctrine requires that public funds be expended only for public purposes. There is no simple rule of thumb that can be used to determine whether an expenditure of public funds serves a public purpose. However, for an expenditure of public funds to constitute a public purpose, the subject matter of the appropriation must be one of public necessity, convenience, or welfare.

Governmental immunity

Wisconsin law provides broad grants of immunity for local governments. Wisconsin Stat. § 893.80 grants local governments and their officers, officials, agents, and employees immunity from liability for acts done in the exercise of legislative, quasi-legislative, judicial, or quasi-judicial functions. Additionally, Wis. Stat. § 895.52 provides property owners, including municipal governments, with immunity from liability for any injury to a person engaging in recreational activity on the owner’s property. While these grants of immunity are broad, they are not absolute

and there are certain specific exceptions that, if met, can defeat a municipality’s statutory immunity.

Miscellaneous 22

About the Author:

Maria Davis is Assistant Legal Counsel for the League. She joined the League staff in 2018. Contact Maria at mdavis@lwm-info.org



IPR
Integrated
PUBLIC RESOURCES

PUBLIC/PRIVATE PARTNERSHIPS (P3)

- Unique project delivery solutions
- Leverage existing assets to deliver new projects
- Municipal administrator services
- Municipal parks and recreation services
- Professional operations management with access to full-scale operations

**Together,
let's achieve the
GOALS of YOUR
COMMUNITY.**

920.751.4200
NEENAH WI MACHESNEY PARK IL VALPARAISO IN

IPR-P3.COM
A MCMAHON AFFILIATE COMPANY



**Open
Meetings
Law**

www.dietrichvanderwaal.com

TABLE OF CONTENTS

OPEN MEETINGS LAW 2

I. POLICY AND CONSTRUCTION OF THE OPEN MEETING LAW 2

II. DEFINITIONS..... 2

III. NOTICE REQUIREMENTS 4

IV. ADJOURNING TO CLOSED SESSION..... 6

V. PENALTIES (Wis. Stat. §§ 19.96 & 19.97)..... 10

VI. OTHER DEVELOPMENTS 10

OPEN MEETINGS LAW

I. POLICY AND CONSTRUCTION OF THE OPEN MEETING LAW

“It is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the government as is compatible with the conduct of governmental business.”

“All meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law. . .” Wis. Stat. § 19.81.

II. DEFINITIONS

A. Governmental body

1. “State or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rules or order; a governmental or quasi-governmental corporation; or a formally constituted subunit of any of the foregoing.” Wis. Stat. § 19.81(1).
2. Formally constituted subunits

No specific requirement that elected board members be part of a subunit of the governmental body. The proper standard for a determination of the applicability of the open meeting law is the question of how the entity was formed, i.e., is it a subunit of a governmental body?

Examples:

- Ad hoc citizen committees on curriculum;
- Ad hoc committees to review challenged textbooks and reading materials;
- Building committees to evaluate sites;

B. Meeting

1. “Meeting” means 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.

If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated or vested in the body.

2. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter. Wis. Stat. § 19.82(2).
 - a. More than one half of village board's members' attendance as a group at plan commission meeting discussing development project was not social or chance gathering and thus notice of meetings was required. State ex rel. Badke v. Village Bd. of Village of Greendale, 173 Wis.2d 553, 494 N.W.2d 408 (1993).
 - b. Members of school board were not “meeting” for purposes of this section when quorum of board members attended informational meeting at another town that was considering a merger; school board administrator answered majority of questions at the meeting, board members did not receive arguments or engage in any discussion concerning merits or merging the school districts, and board members were unaware that petition advocating merger was being circulated during meeting. Paulton v. Volkmann, 141 Wis.2d 370, 415 N.W.2d 528, review denied 143 Wis.2d 907, 420 N.W.2d 57 (1987).
3. Negative quorum

Four of eleven commissioners of metropolitan sewerage commission had power to reject any proposal regarding capital budget, which requires a two-thirds vote for passage, and thus, meeting of four commissioners to discuss budget was subject in all aspects to open meeting law, even if four members included two from each faction who would never join together and therefore would never be in position to determine outcome by voting together to defeat proposal. State ex rel. Newspapers, Inc. v. Showers, 135 Wis.2d 77, 398 N.W.2d 154 (1987).
4. Informal meetings
 - a. Telephone conference call meeting, 69 OAG 143 (1980).
 - b. Video telephone conference call meeting.
 - c. E-Mail meetings. OAG 10/3/00.

- d. Memorandum meetings. OAG 3/11/93.
- e. Media opinion meetings.
- f. Walking quorum.

C. Collective bargaining

Meeting excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. IV or V of Ch. 111. Wis. Stat. § 19.82(1).

- 1. Means “collective bargaining” under subch. IV or V of Ch. 111 of the Wisconsin Statutes.
- 2. Exemption includes hearing a grievance under a collective bargaining agreement. 67 OAG 276 (1978).

D. Ratification of collective bargaining agreement.

Wis. Stat. § 19.85(3):

Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. IV or V or Ch. 111 which has been negotiated by such body or on its behalf.

The Open Meetings Law requires that once a governmental body has reached a tentative agreement with a bargaining unit, the body must conduct its vote, as well as its discussions and deliberations leading up to the vote on final ratification of the agreement in open session. OAG 7-94.

III. NOTICE REQUIREMENTS

- A. Requires all meetings be noticed.

Badke v. Village Board of Village of Greendale, 173 Wis. 2d 553 (1993);
Wis. Stat. § 19.84(1).

B. Other statutes.

Need to check other statutes for additional notice requirements, annual meetings, etc.

C. Contents of the notice.

1. Time.
2. Place.
3. Date.
4. Subject matter - agenda.
5. Matters intended for consideration at a closed session.

D. Timeliness of notice.

1. General rule: 24 hours advance notice.
2. Emergency: 2 hours advance notice.

E. Who is to receive notice?

1. Public.
2. News media who file written requests.
3. Official newspaper.

F. Methods for providing official notice.

1. Posting is an acceptable method of providing notice to the public. OAG 26-77. It is acceptable to post notices of governmental bodies in one or more places likely to be noticed by the public. OAG 86-76.
2. News media may be notified either in writing or by telephone. OAG 86-76; it is highly preferable to use written notification so that any misunderstanding can be avoided.

3. There is no requirement for paid legal notice unless other statutes require.
 - a. A governmental body is not obliged to pay for publication of a notice of meetings required by this section as in the case of an official notice, and the governmental body would be required to publish legal notice in the newspaper only if required to by a statute other than the Open Meeting Law. Op. Atty. Gen., Aug. 3, 1977.
 - b. Communication to the news media is sufficient and it does not require publication as a legal notice in the official newspaper of the governmental unit. Op. Atty. Gen., Oct. 29, 1976.
4. A governmental body may give more extensive notice than is required by this section, which sets forth minimum requirements. OAG June 29, 1977.

IV. ADJOURNING TO CLOSED SESSION

- A. The right to close a meeting.
 1. A public meeting may convene into closed session under the specific exceptions of Wis. Stat. § 19.85(1).
 2. Only the governmental body may exercise the right to convene into executive session; the public does not have the right or power to close a meeting.
 3. Even under Wis. Stat. § 19.85(1)(b), an employee cannot close a meeting.
 - a. If the governmental body invokes this exception to the open meeting law, then, and only then, does an employee have the right to:
 - Specific, individual notice of the Board meeting; and
 - The right to require that the governmental body conduct the meeting as an open session.
 - b. Not all disciplinary meetings of a governmental body require specific notice to the employee, only those meetings at which evidence is presented or a final decision is made.

- B. Elements required.
1. The chief presiding officer must announce to all present the intention of going into a closed session.
 2. The chief presiding officer must state the specific section of the law by number which allows such a closed meeting. OAG 27-77.
 3. Motion; seconded and roll-call vote recorded by the custodian of records.
 4. Majority vote required to convene in closed session.
 5. If notice of reconvening into open session has been given in the announcement for the meeting at which the closed session is held, the chief presiding officer should also announce the estimated hour at which the reconvened open session will commence. OAG 111-79.
- C. Exemptions to the open meeting requirement (Wis. Stat. § 19.85(1)(a)-(h)).

Statutory Provisions.

1. Deliberating after a judicial or quasi-judicial trial or hearing.

Hearing of town board on application for permit, including deliberations thereon, was not “case” within exemption to Open Meetings Law for cases which were subject of any judicial or quasi-judicial trial or hearing before that governmental body; board meeting did not possess characteristics, common to adversarial proceedings and board, as governmental decision-making body, was not party in interest in adversarial sense. State ex rel. Hodge v. Town of Turtle Lake, 180 Wis. 2d 62 (1993).
2. Considering dismissal, demotion or discipline of a public employee.
 - a. Term “evidentiary hearing,” as used in exemption provision of Wisconsin Open Meetings Law, means a formal examination of accusations, by the receiving of testimony or other forms of evidence, that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered under exemption provision. Campana v. City of Greenfield, 38 F.Supp.2d 1043 (E.D. Wis. 1999).
 - b. City council’s and mayor’s discussions regarding discipline of city treasurer during closed session was not a “final action” such as would have obligated council to provide treasurer with actual

notice of closed-door proceeding under Wisconsin Open Meetings Law, where formal vote regarding treasurer's discipline was taken during subsequent open session. Campara v. City of Greenfield, 38 F. Supp. 2d 1043 (E.D. Wis. 1999).

- c. City's former public works director was not entitled to actual notice of closed session held by city personnel committee and common council to discuss and evaluate his job performance and employment status, pursuant to provision of Open Meeting Laws governing dismissal of public employees, where no evidentiary hearing or final action took place during closed session. Epping v. City of Neillsville Common Council, 218 Wis. 2d 516 (1998).

3. Considering the employment, promotion, compensation or performance evaluation of a public employee.

Personnel exemption for Open Meetings Law applies only if personnel policies are discussed with respect to individual employee. Op. Atty. Gen. 5-92, Feb. 25, 1992.

4. Considering specific applications of probation or parole or considering strategy for crime detection or prevention.
5. Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specific public business, whenever competitive or bargaining reasons require a closed session.
6. Considering financial, medical, social, or personal histories, or disciplinary data of specific persons, preliminary consideration of specific personnel problems, or the investigation of charges against specific persons except where paragraph B applies, which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.
7. Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.
8. Consideration of requests for confidential written advice from the ethics board under Section 19.46(2), or from any local government ethics board.

- D. Reconvening into open session.

The law allows for a governmental body to convene in open session, adjourn to closed session, and reconvene as an open session of the board, as long as such intent was noted in the notice of the meeting. Wis. Stat. § 1985(2). If there has been no notice given that the board intended to reconvene into open session, then the board must wait 12 hours after completion of the closed session before it may reconvene in open session.

- E. Minutes of the executive session.
1. The statute provides that minutes of all meetings must be prepared - open and closed sessions. Wis. Stat. § 19.88(3).
 2. In executive sessions, it is common practice to be specific; however, there is no statutory requirement that the minutes be specific.
 3. All actions must be preserved, recorded and open to public inspection.
- F. Taking action in closed session.
1. Under the Open Meeting Law, it is possible for a governmental body to take effective action during an executive or closed session. Wis. Stat. § 19.83:

Meetings of governmental bodies. Every meeting of a governmental body shall be preceded by public notice as provided in Section 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in Section 19.85.
 2. The test to determine the appropriateness of such action was clearly set forth in the opinion of the Attorney General, 66 OAG 93 (1977).
 - a. The board must have convened itself into a proper executive session; and
 - b. The same reason for convening itself into executive session must apply to the need to vote in executive session, i.e., to keep the action in confidence.
 - c. Mere convenience in voting in executive session is impermissible. The better practice is to notice the meeting to convene in open

session, adjourn to executive session under Wis. Stat. § 19.85(1), and then reconvene into open session for action. Wis. Stat. § 19.85(2).

- d. The exception of voting in executive session is an extremely limited exception.

V. PENALTIES (Wis. Stat. §§ 19.96 & 19.97)

Sanctions.

- A. \$25 - \$300 per violation.
- B. Actions may be brought by Attorney General, district attorney or private individual.
- C. Actions taken at illegal meetings are voidable.
- D. Fines may not be paid by insurance company or local government unit; however cost of defense may be paid by insurance.
- E. Defense - 180 Wis. 2d 62 (1993) Did not knowingly violate law. State ex. rel Hodge v. Town of Turtle Lake.

VI. OTHER DEVELOPMENTS

- A. Public discussion.

Statute has been amended to allow a local government unit to incorporate an agenda item in all public meetings allowing for public discussion and public comments on any item of interest to the citizenry, however, governing body may only take action on items listed on agenda.

- B. Closed session.

Recent court decisions have limited the right of a governing body to adjourn into closed session by narrow interpretation of exemptions contained in statute. Local public officials should be cautious about journeying into closed session unless specifically authorized by exemptions provided for in state statute.

©2020 Dietrich VanderWaal, S.C.

Accurate reproduction with acknowledgment granted. All rights reserved.

This document provides information of a general nature regarding legislative or other legal developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues, and additional facts and information or future developments may affect the subjects addressed.



**Public
Records
Law**

www.dietrichvanderwaal.com

TABLE OF CONTENTS

WISCONSIN PUBLIC RECORDS LAW 2

I. PUBLIC POLICY 2

II. PROCEDURAL INFORMATION 2

III. RECORD. 2

IV. RECORDS NOT SUBJECT TO RELEASE. 3

V. REQUESTS. 4

VI. PROCEDURAL ISSUES REGARDING RESPONDING TO THE
REQUEST..... 4

VII. ANALYSIS OF REQUEST AND RESPONSE 5

VIII. ABSOLUTE RIGHT TO ACCESS - NO BALANCING TEST..... 9

IX. SPECIAL PROVISIONS..... 10

X. INSPECTION, COPYING AND FEES. 13

XI. ENFORCEMENT AND PENALTIES – Wis. Stat. § 19.37. 14

Attachment: Public Records Law (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean Dietrcih/Tom Hayden))

PUBLIC RECORDS LAW

I. PUBLIC POLICY

Providing persons with information on the affairs of government is “an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, Sections 9.32 to 19.37, Stats. shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.” Wisconsin Statute § 19.31.

II. PROCEDURAL INFORMATION.

Each authority is required under the law to adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and established times and places at which, the legal custodian from whom, and the methods whereby, the public may obtain information and access to records, make requests for records, or obtain copies of records, and the cost of doing so. Wisconsin Statute § 19.34(1).

III. RECORD.

Anything recorded or preserved that has been created and is being kept by the agency. This includes tapes, films, charts, photographs, computer printouts, etc. Wisconsin Statute § 19.32(2).

A. Personnel files.

Personnel files are subject to public disclosure under the Public Records Law. There is no general exemption for personnel records. However, portions of personnel files may be exempt (e.g. patient health-care records, Sec. 146.82(1), Stats.) See also Sec. 118.25, Stats., and Sec. 103.13, Stats.

B. Minutes of closed sessions.

Minutes of a closed session are public records. See State ex rel. Zinngrabe v. School Dist. of Sevastopol, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988); but, note, there is no obligation to keep minutes of a closed session if no action was taken during the closed session.

If minutes of a closed session have been prepared, they must be disclosed unless the initial reason for confidentiality continues.

C. Labor Relations.

Records relating to labor grievances are not categorically excluded from the Public Records Law.

D. Records of other agencies.

A custodian is not only the custodian of his or her records but also of records gathered from other authorities. Wisconsin Statute § 19.32(2). “Record” includes records created or kept by an authority. Beckon v. Emery, 36 Wis. 2d 510, 153 N.W.2d 501 (1967). Check with other agencies before releasing their records.

IV. RECORDS NOT SUBJECT TO RELEASE.

A. Drafts and preliminary documents. Wisconsin Statute § 19.32(2).

Preliminary versions of documents prepared by public employee for own or another’s signature are not public records. This exception is limited to documents that are circulated within the preparer’s level of authority. The exclusion is narrowly construed. The burden of proof is on the custodian. Fox v. Bock, 149 Wis. 2d 403, 411, 417, 438 N.W.2d 589 (1989); 77 Op. Att’y Gen. 100 (1988); 28 Op. Att’y Gen. 83 (1983).

1. In Fox v. Bock, supra, the Supreme Court ruled that a draft of a study prepared for Racine County was a “record” under Section 19.32(2), Stats. The Court found that the study was neither created for a county employee’s personal use nor was it solely used by the employee in question. A document prepared for some purpose other than the originator’s personal use, even if it is in preliminary form or stamped “draft,” is a record subject to public disclosure.
2. Once a draft prepared for the signature of one’s superior is approved by the superior for circulation, it is no longer a “draft.” This is so whether the material is described as a “draft” or not and whether the circulation is considered “formal” or “official” or not. The key thing is that the person having responsibility for the disposition of the “draft” has decided to use it in a way that is beyond the drafting relationship that exists between the drafter and the superior. OAG 22-88 (5/11/88).

B. Purely personal property. Wisconsin Statute § 19.32(2).

- C. Material with limited access due to copyright, patent or bequest. Wisconsin Statute § 19.32(2).
- D. Published material available for sale or at a library. Wisconsin Statute § 19.32(2).

V. REQUESTS.

- A. Requests do not have to be in writing. Wisconsin Statute § 19.35(1)(h).
- B. The request must be reasonably specific for subject matter and length of time involved. Wisconsin Statute § 19.35(1)(h).
- C. Requestors need not give reason for request to inspect public record. George v. Record Custodian, 169 Wis. 2d 573, 485 N.W.2d 460 (Ct. App. 1992); Wis. Stat. § 19.35(1)(I). The fear that the records might be misused does not, per se, justify withholding.
- D. Generally, any person may inspect a public record. Members of the general public, representatives of the news media, and employees or consultants of a competitor are considered members of the general public. Hathaway v. Jt. School Dist. No. 1, City of Green Bay, 116 Wis. 2d 388, 342 N.W.2d 682 (1984); Op. Att’y Gen. 7/16/69. Requester of public records need not identify himself or herself; however, because person making request is unwilling to be identified does not negate option which legal custodian of records has of requiring requestor to do copying of requested public record. Coalition for a Clean Government v. Larson, 166 Wis. 2d 159, 479 N.W. 2d 576 (Ct. App. 1991).

VI. PROCEDURAL ISSUES REGARDING RESPONDING TO THE REQUEST.

- A. Must designate a legal custodian (and post information on obtaining records). Wisconsin Statute §§ 19.33 and 19.34. If a custodian is not designated, the highest ranking officer and chief administrative officer are the legal custodians. Wisconsin Statute § 19.33(4).
- B. Must respond “as soon as practicable and without delay.” Wisconsin Statute § 19.35(4)(a). DOJ policy is that a reply should be given within 10 business days or the requester informed of the delay. An arbitrary and capricious delay or denial exposes the custodian to punitive damages and a \$1,000 forfeiture. Wisconsin Statute § 19.37. Forfeitures cannot be indemnified by the municipality. 72 Op. Att’y Gen. 99 (1983).

- C. Verify it is a “record” subject to disclosure. Also, the agency is not required to create a new record by extracting and compiling information from existing records in a new format. George v. Record Custodian, supra; Wis. Stat. § 19.35(1).
- D. If record does not exist, inform the requester. State ex rel. Zinngrabe v. School Dist. of Sevastopol, supra.

VII. ANALYSIS OF REQUEST AND RESPONSE.

A. Initial presumption.

- 1. Presumption in favor of access. State ex rel. Youmans, 28 Wis. 2d 672, 683; 137 N.W.2d 470, Wis. Stat. § 19.31.

The public records law reflects a legislative determination that the public interest favors inspection of public records. Hathaway v. Joint School Dist. No. 1, supra. The law was intended to be a means by which citizens could more effectively monitor the activities of government. Thus, there can never be occasion for finding “no public interest” in disclosure of such documents; the interest is legislatively presumed.

- 2. If part of the record is public information, then the public part must be disclosed. Wisconsin Statute § 19.36(6).

B. Exceptions.

- 1. State or federal law according confidentiality. Wisconsin Statute §§ 19.35(1)(a) and 19.36(1).

“Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under Section 19.35(1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6).”

- a. Patient health care records. Wisconsin Statute § 146.82.
- b. Interim student grades of student other than student who had requested grades are “pupil records” under Section 118.125, Stats. and are exempt from disclosure under Public Records Law. State ex rel. Blum v. Board of Educ., School District of Johnson Creek, 209 Wis. 2d 377, 565 N.W.2d 140 (Ct. App. 1997).
- 2. Common law limitation. Wisconsin Statute § 19.35(1)(a).

C. Balancing test. Wisconsin Statute § 19.35(1)(a).

1. Reasons for denying access.

The records custodian must weigh the competing interest involved and determine whether permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the public interest in allowing inspection. Mayfair Chrysler-Plymouth, Inc. v. Baldarotta, 154 Wis. 2d 793, 453 N.W.2d 922 (Ct. App. 1990). Also see Newspapers, Inc. v. Breier, 89 Wis. 2d 417, 279 N.W.2d 179 (1979):

. . . some exposition of the evaluative factors resulting in the decision to deny must, of necessity, be included in the written denial. That conclusion is inescapable, for one of the primary reasons for requiring the custodian to “state specific policy reasons for the refusal” is to provide a basis for review by the court.

2. Applying the balancing test.

a. Statutory privileges.

Strictly interpreted. Davidson v. St. Paul Fire & Marine Ins. Co., 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

- (1) Reports required by statute are only exempt if they are specifically exempt under another statute. Wisconsin Statute § 905.02.
- (2) Lawyer-client. Wisconsin Statute § 905.03. Attorney work product. Wisconsin Statute § 804.01(2)(c). Youmans, supra, 63 Op. Att’y Gen. at 409.

Letter from school district’s attorney to school district was protected from disclosure under Public Records Law. Disclosure of letter would have indirectly revealed substance of school district’s communications to its attorney. Wisconsin Newspress, Inc. v. School District of Sheboygan Falls, 199 Wis. 2d 768, 546 N.W.2d 143 (1996).

- (3) Physician-patient. Wisconsin Statute § 905.04.

- (4) Trade secrets. Wisconsin Statute § 905.08. (Specific exemption in Section 19.36(5)).
 - (5) Law enforcement records. Wisconsin Statute § 905.09. Subordinate to Public Records Law - Judicial Council Note 1974. Breier, 89 Wis. 2d at 438.
 - (6) Evidentiary privileges - adjustment between important but competing interests. E.g., public need for confidentiality v. need for facts to resolve legal disputes. 63 Op. Att’y Gen. at 410.
- b. Common law privileges.
- (1) Superseded. Wisconsin Statute § 905.01.
 - (2) Executive privilege. 63 Op. Att’y Gen. at 410.
- c. Right of privacy. Wisconsin Statute § 895.50.
- (1) Invasion of privacy. Wisconsin Statute § 895.50(2)(a) and (b). “Highly offensive” conduct required. “It is not an invasion of privacy to communicate any information available to the public as a matter of public record.” Wisconsin Statute § 895.50(2)(c).
 - (2) Access to FBI rap sheets held to be an unwarranted invasion of privacy. U.S. Dept. of Justice v. Reports Committee, 109 S. Ct. 1468 (1989). But see letter of March 21, 1991, from Attorney General Doyle to Chief Arreola (rap sheets are available under Wisconsin Law).
- d. Confidentiality pledge. 60 Op. Att’y Gen. 284, 289 (1971).
- (1) Prerequisites to valid pledge.
 - (a) Clear pledge.
 - (b) Specific as to information obtained.
 - (c) Necessary to obtain information.
 - (d) Balancing test.

- (2) Piercing confidentiality veil - mere legal conclusions not adequate. Beckon v. Emery, 36 Wis. 2d at 517.

- e. Relationship with exemptions to the Open Meetings Law. Wisconsin Statute § 19.35(1); 73 Op. Att’y Gen. 20, 22 (1984).

Closed session provisions of Open Meeting Law (Section 19.85, Stats.) may not be used as basis for blanket exception under the Public Records Law. When relied upon, Section 19.35(1)(a) requires a case-by-case determination. OAG 5-84 (1/16/84).

- (1) Section 19.85(1)(b) - consideration of dismissal, demotion, licensing or discipline of public employee.
- (2) Section 19.85(1)(c) - consideration of employment, promotion, compensation or performance evaluation data of public employee.
- (3) Section 19.85(1)(g) - conferring with legal counsel with respect to litigation in which the governmental body is or is likely to become involved.
- (4) Section 19.85(1)(e) - conduct of public business where bargaining reasons require closed session.
- (5) Section 19.85(1)(f) - consideration of financial, medical or personal histories or disciplinary data which, if discussed in public, would likely have a substantial adverse effect upon reputation of any person referred to in the data histories. See Breier, 89 Wis. 2d at 433.

- f. Public policy as reflected in state and federal provisions.

- (1) Section 103.13, Stats. - records open/closed to employee (letters of reference, test documents, etc.)
- (2) Section 230.13, Stats. - closed personnel records of state employees (e.g., exam scores, dismissals, demotions, disciplinary actions, pay survey data, etc.)

- g. Effect upon internal operations.
 - (1) Employee morale.
 - (2) Lack of candor on job evaluations.
 - (3) Endangering life of employee(s).
 - (4) State ex rel. Morke v. Records Custodian, 159 Wis. 2d 722, 465 N.W.2d 235 (Ct. App. 1990): Record custodian of Wisconsin Department of Health and Social Services properly refused inmate’s request for names, home addresses and published home telephone numbers of all persons employed at correctional institution. Denial of access was based on concern that employees and their families would be subjected to a substantial risk of harassment or other jeopardy if inmate were given the requested information. The concern for the safety and well-being of prison staff and their families and for institutional moral outweighed the presumption in favor of public access to state records.

- h. Effect upon external operation.
 - (1) Reduced number of job applicants if application materials released.
 - (2) Endanger life of third party.

VIII. ABSOLUTE RIGHT TO ACCESS - NO BALANCING TEST.

A. Where access is expressly required by statute. Youmans, 28 Wis. 2d at 685a.

1. Section 59.14, Stats, - court clerk required to disclose memorandum decision even though impounded by judge because Section 59.14 requires disclosure of all papers “required to be kept in his office.” State ex rel. Journal Co. v. County Court, 43 Wis. 2d 297, 168 N.W.2d 836 (1969).

Section 59.20(3), Stats., (formally, 59.14, Stats.) also applies to papers required to be kept by the sheriff, register of deeds, county treasurer, register of probate, county clerk and county surveyor.

2. Even absolute right to access can be limited if a statute allows sealing the records or if it infringes on a constitutional right. State ex rel. Bilder v. Delevan, 112 Wis. 2d 539, 555, 334 N.W.2d 252 (1983).
- B. By court decision.
1. Daily arrest log at police department. Breier, 89 Wis. 2d at 439.
 2. Faculty outside income reports. Capital Times v. Block, Dane County Case No. 1 164-312 (April 12, 1983).
 3. Each was a case-by-case determination where a claim was made of an excessive administrative burden.

IX. SPECIAL PROVISIONS.

- A. Release of names of final candidates. Wisconsin Statute § 19.36(7).
1. Every applicant for a public position can request the authority not to reveal the applicant's identity.
 2. Names of "final candidates" for public positions must be released even if the applicant has requested the authority to keep the applicant's identity confidential.
 - a. For purposes of disclosure, a "final candidate" is defined as every applicant for a position who is seriously considered for appointment, or whose name is certified for appointment, and whose name is submitted for final consideration to an authority for appointment to a "local public office."
 - b. A "local public office" are those positions encompassed by the Code of Ethics for Local Public Officials (e.g., elected office, county administrator, city or village manager, or local government position).
 3. Also, whenever there are at least five candidates for an office or a position, "final candidates" include those five candidates who are considered the most qualified for the position by the authority. Whenever there are less than five candidates for a position, all the candidates are considered "final candidates" and, thus, their names must be released. Whenever an appointment is made from a group of more than five candidates, "final candidates" includes each candidate in the group.

4. Definition of “applicant,” “candidate,” and “final candidate.” 81 Op. Att’y Gen 37 (1993).
- B. Personally identifiable information. Wisconsin Statute § 19.35(1)(am).
1. In addition to any other right an individual possesses under the Public Records Law, any requester who is an individual, or is a person authorized by the individual, has a right to inspect any record containing “personally identifiable information” pertaining to the individual. Requestor also has right to make or receive a copy of such information.
 2. If public authority receives request for inspection of record containing personally identifiable information, authority must:
 - a. First determine if the requester has a right to inspect or copy the record under the public’s general right of access under the Public Records Law.
 - b. If the authority determines that the requester has a right to inspect or copy the record under the general public’s general right of access, the authority shall grant the request.
 - c. If the authority determines that the requester does not have a right to inspect or copy the record under the public’s general right of access, the authority must then determine if the requester has a right to inspect or copy the record under the individual’s right of access to “personally identifiable information,” and grant or deny the request.
 3. Individual may challenge the accuracy of a record containing personally identifiable information. Such challenge must be made in writing. § 19.365, Stats.
 - a. Upon receipt of such challenge, authority must concur with the challenge and correct the information, or deny the challenge, notify the individual of the denial, and allow the individual to file a concise statement setting forth the reasons for the individual’s disagreement with the disputed portion of the record.
 - b. Right to challenge record does not apply if a specific state statute or other federal law addresses challenges to the accuracy of the record.

4. The right to inspect or copy a record does not apply to any of the following:
 - a. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.
 - b. Any record containing personally identifiable information that, if disclosed, would do any of the following:
 - (1) Endanger an individual's life or safety.
 - (2) Identify a confidential informant.
 - (3) Endanger the security of any state correctional institution, jail, secured correctional facility, secured child caring institution, mental health institute, center for the developmentally disabled, or the population or staff of any of these institutions, facilities or jails.
 - (4) Compromise the rehabilitation of a person in the custody of a department of corrections or detained in a jail or facility identified in subd. 2c.
 - c. Any record that is part of a records series, as defined in Section 19.62(7), Stats., that is not indexed, arranged or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.
 5. If a court finds that authority acted in willful or intentional manner in violation of an individual's right of access to a record, the court may award the individual actual damages as a consequence of the failure to permit the individual to inspect the records.
- C. Identities of law enforcement informants. Wisconsin Statute § 19.36(8).
1. "Informant" means an individual who requests confidentiality from a law enforcement agency in conjunction with providing information to that agency or, pursuant to an express promise of confidentiality by a law enforcement agency or under circumstances in which a promise of

confidentiality would reasonably be implied, provides information to a law enforcement agency or, is working with a law enforcement agency to obtain information, related in any case to any of the following:

- a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will violate a federal law, a law of any state or an ordinance of any local government.
 - b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law, a law of any state or an ordinance of any local government.
2. If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a record under Section 19.35(1)(a), Stats. that contains specific information including but not limited to a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied without identifying the informant, shall withhold the record unless the legal custodian of the record makes a determination at the time that the request is made that the public interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs the harm done to the public interest by providing such access.

X. INSPECTION, COPYING AND FEES.

- A. The requester is to be given facilities comparable to those used by employees. Wisconsin Statute § 19.35(2).
- B. The requester is entitled to a copy of a record including copies of audio tapes and video tapes. Wisconsin Statute § 19.35(1). There is a right to a copy of a computer tape, and a right to have the information on the tape printed out in a readable format. Wisconsin Statute § 19.35(1)(e).
- C. Copy fees are limited to the “actual, necessary and direct cost of reproduction.” Wisconsin Statute § 19.35(3)(a).
 1. The fee may also include the actual, necessary and direct cost of mailing or shipping. Wisconsin Statute § 19.35(3)(d).
 2. Fees for copying may include labor expenses actually, necessarily and directly incurred with reproduction (i.e. charge for time of clerk to reproduce record on copy machine). OAG 40-83 (9/16/83).

3. Fees for copies should be in range between 5 cents and 15 cents per page. Anything in excess of 25 cents is suspect.
4. Costs associated with locating records may not be charged unless they exceed \$50. Wisconsin Statute § 19.35(3)(c).
5. Costs of separating the confidential parts of records from the public parts must be borne by the agency. 72 Op. Att’y Gen. 99 (1983).
6. The fee may also include the actual, necessary and direct cost of mailing any copy or photograph of a record to the requester. Wisconsin Statute § 19.35(3)(d).
7. May require prepayments of any fee if the total amount exceeds \$5.00. Wisconsin Statute § 19.35(3)(f).

XI. ENFORCEMENT AND PENALTIES – Wis. Stat. § 19.37.

- A. Actions to enforce.
 1. Mandamus.
 2. District attorney or attorney general’s office.
- B. Damages.
 1. Attorneys fees, damages and other actual costs of not less than \$100 (unless incarcerated person). Wisconsin Statute § 19.37(2).
 2. Punitive damages and civil forfeiture available if denial is arbitrary and capricious.
 3. Penalties also available for excessive fees. Wisconsin Statute §§ 19.37(3) and (4).
 4. Actual and punitive damages and forfeiture are liability of either agency or legal custodian. Wisconsin Statute § 895.46 would indemnify for punitive damages, but not forfeitures. 72 Op. Att’y Gen. 99.

- C. Related criminal penalties.
1. Destruction or concealment of public records with intent to injure or defraud. Wisconsin Statute § 946.72.
 2. Alteration of public records. Wisconsin Statute § 943.38.

©2020 Dietrich VanderWaal, S.C.

Accurate reproduction with acknowledgment granted. All rights reserved.

This document provides information of a general nature regarding legislative or other legal developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues, and additional facts and information or future developments may affect the subjects addressed.



**Local Government
Officials
Code of Ethics**

www.dietrichvanderwaal.com

LOCAL GOVERNMENT OFFICIALS CODE OF ETHICS

It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.

Wis. Stat. § 19.41 (1).

I. STATE CODE OF ETHICS FOR LOCAL OFFICIALS AND EMPLOYEES, WIS. STAT. § 19.41, ET AL.

A. Applies to individuals holding a local public office. Wis. Stat. § 19.42 (7w), (7x):

1. An elective office of a local governmental unit.

Examples: Village Trustee, Town Supervisor, County Board Member, County Sheriff, Police and Fire Chief, School Board Members, County Clerk

2. A county administrator or administrative coordinator or a city or village manager.
3. An appointive office or position of a local governmental unit 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.
4. The position of member of the board of directors of a local exposition district under subch.11 or ch. 229 not serving for a specified term.
5. An appointive office or position of a local government which is filled by the governing body of the local government or the executive or administrative head of the local government and in which the incumbent 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.

B. Definitions.

1. “Anything of value” means any money or property, favor, service, payment, advance, forbearance, 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 Wis. Stat. § 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. Wis. Stat. § 19.42(1).
2. “Anything of substantial value” means anything of more than nominal, token, or inconsequential value in light of the totality of the circumstances. 7 Op. Eth. Bd. 2 (1983), 5 Op. Eth. Bd. 99, 100 (1982).
3. “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% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent. Wis. Stat. § 19.42(2).
4. “Organization” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic. Wis. Stat. § 19.42(11).
5. “Gift” means payment or receipt of anything of value without valuable consideration. Wis. Stat. § 19.42(6).
6. “Immediate family” means an individual’s spouse; and 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. Wis. Stat. § 19.42(7).

C. Prohibitions.

1. No public official may use his or her public position or office to obtain financial gain or anything of *substantial value* for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. Wis. Stat. § 19.59(1)(a) (emphasis added).

Does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required under Wis. Stat. ch. 11. Wis. Stat. § 19.59(1)(a).

2. No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment. Wis. Stat. § 19.59(1)(b).
3. No local public official holding an elective office may, directly or by means of an agent give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to the benefit of:
 - a. A candidate;
 - b. A political party;
 - c. Any person who is subject to a registration requirement under s. 11.05; or
 - d. Any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office. Wis. Stat. § 19.59(1)(br).
 - (1) "Clearly identified," when used in reference to a communication containing a reference to a person, means one of the following: (a) the person's name appears, (b) a photograph or drawing of the person appears, (c) the identity of the person is apparent by unambiguous reference. Wis. Stat. § 19.42(4g).
 - (2) "Communication" means a message, other than a communication that is exempt from reporting under s.11.29 [e.g., corporation communications with shareholders], that is transmitted by means of a printed advertisement, billboard, handbill, marked sample ballot, radio or

television advertisement, mass electronic communication, mass telephoning, or mass mailing, or any medium that may be utilized for the purpose of disseminating or broadcasting a message, but not including a poll conducted solely for the purpose of identifying or collecting data concerning attitudes or preferences of electors. Wis. Stat. § 19.42(4r), incorporating § 11.01(4m).

4. No person serving in a national, state or local office may accept any discount on the price of admission or parking charged to members of the general public, including any discount on the use of a sky box or private luxury box, at a stadium that is exempt from general property taxes under Wis. Stat. § 70.11(36). Wis. Stat. § 19.451.
5. No local official may:
 - a. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest. Wis. Stat. § 19.59(1)(c)1.
 - b. Use his or her office in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated. Wis. Stat. § 19.59(1)(c)2.

This does not prohibit a local public official from taking an action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses . . . Wis. Stat. § 19.59(1)(d).

- D. Advisory opinions - When in doubt, ASK!
 1. It is prima facie evidence of intent to comply with Wis. Stat. § 19.59, or any ordinance enacted thereunder, when a person refers a matter to and abides by the advisory opinion, if the material facts are as stated in the opinion request. Wis. Stat. § 19.59(5).

- a. Any individual, either personally or on behalf of an organization or government body, may request an advisory opinion regarding the propriety of any matter to which the person is or may become a party.
 - b. Any appointing officer, with the consent of the prospective appointee, may request an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party.
 - c. The request may be made to the attorney for a local government unit.
 - d. The attorney shall review the request for an advisory opinion and may advise the person making the request.
 - e. Advisory opinions and requests for advisory opinions shall be in writing.
 - f. The attorney for a local government unit shall not make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.
 - (1) Exceptions: (1) the opinion may be made public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested and (2) a summary of an advisory opinion may be made public after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion.
 - (2) A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and any records obtained by or on behalf of the attorney for the local government unit in connection with the request for an advisory opinion.
2. Any attorney for a local governmental unit or statewide association of local governmental units may request the State Ethics Board to issue an opinion concerning an interpretation of Wis. Stat. §19.59. Wis. Stat. § 19.59(6).

E. Penalties.

1. Forfeiture of not more than \$1,000 for each violation, Wis. Stat. § 19.59(7)(a) & (b).
2. Forfeiture of an amount equal to the amount or value of any political contribution, service, or other thing of value that was wrongfully obtained, Wis. Stat. § 19.59(7)(a).
3. If no political contribution, service or other thing of value was obtained, forfeiture of an amount equal to the maximum contribution authorized under Wis. Stat. § 11.26 for the office held or sought by the official, whichever amount is greater, Wis. Stat. § 19.59(7)(b).
4. Other legal and equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances. Wis. Stat. § 19.59(8)(b).
5. Any person who intentionally violates Wis. Stat. § 19.59(1)(br) is guilty of a Class I felony. Wis. Stat. § 19.58(1).
6. Note: Pursuant to Wis. Stat. § 115.31(2), any license granted by the State Superintendent may be revoked for incompetency or immoral conduct. “Immoral conduct” includes conduct that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare or education of any pupil. Wis. Stat. § 115.31(1)(c). See Wis. Stat. § 115.31, et al.

F. Enforcement.

1. Actions to enforce shall be brought by the district attorney of the county where the violation took place, upon the verified complaint of any person, Wis. Stat. § 19.59(8)(a). If the district attorney prevails, the court shall award any forfeiture recovered together with reasonable costs to the county where the violation occurred. Wis. Stat. § 19.59(8)(d).
2. If the district attorney fails to commence an action within 20 days after receiving a verified complaint or if the district attorney refuses to commence such an action, the person making the complaint may petition the attorney general to act upon the complaint. Wis. Stat. § 19.58(8)(c). If the attorney general prevails in such an action, the court shall award any forfeiture recovered together with reasonable costs to the state. Wis. Stat. § 19.59(8)(d).

3. If the district attorney for the county in which a violation of Wis. Stat. § 19.59(1)(br) is alleged to occur receives a verified complaint alleging a violation of Wis. Stat. § 19.59(1)(br), the district attorney shall, within 30 days after receipt of the complaint, either commence an investigation of the allegations contained in the complaint or dismiss the complaint. If the district attorney dismisses the complaint, with or without investigation, the district attorney shall notify the complainant in writing. Upon receiving notification of the dismissal, the complainant may then file the complaint with the attorney general or the district attorney for a county that is adjacent to the county in which the violation is alleged to occur. The attorney general or district attorney may then investigate the allegations contained in the complaint and commence a prosecution. Wis. Stat. § 19.58(8)(cn).
 4. Timing. No complaint under § 19.59(1)(br) may be filed against a candidate who files a declaration of candidacy to have his or her name appear on the ballot:
 - a. During the period beginning 120 days before a general or spring election, or
 - b. During the period commencing on the date of the order of a special election under s. 8.50, and
 - c. Ending on the date of that election.
 5. There is no right of private action regarding an ethics complaint. Actions may only be commenced upon verified complaint to a district attorney or attorney general. See Wis. Stat. § 19.59.
- G. Local Codes of Ethics. Any county, city, village or town may enact an ordinance establishing its own code of ethics for public officials and employees, and candidates for local office. (Note: Excludes school boards).

II. CRIMINAL ACTS: BRIBES AND MISCONDUCT.

- A. Bribery of public officials and employees. Wis. Stat. § 946.10(2).
1. “Any public officer or public employee who directly or indirectly accepts or offers to accept any property or personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer’s or employee’s lawful duty” commits a Class H felony. A Class H felony is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 6 years or both. Wis. Stat. § 939.50(3)(h).
 2. Criminal motive is an element of bribery. Corrupt motive must be shown. State v. Alfonsi, 33 Wis.2d 469, 147 N.W.2d 550 (1967).
- B. Misconduct in public office. Wis. Stat. § 946.12.
1. Any public officer or public employee who does any of the following is guilty of a Class I felony, punishable by a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months:
 - a. intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of his/her office or employment within the time or in the manner required by law;
 - b. in his/her official capacity, does an act that the employee knows is in excess of his/her lawful authority or knows is forbidden by law in the officer’s or employee’s capacity;
 - c. exercises a discretionary power in a manner inconsistent with the duties of one’s office and with the intent to obtain a dishonest advantage for the officer, employee or another;
 - d. intentionally falsifying an account or record book or return, certificate, report or statement;
 - e. under color of the officer’s or employee’s office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

2. “[A]n actor who is guilty under sec. 946.12 must have the requisite criminal intent, i.e. ‘the public officer must know that what he does under the color of his office ... is either prohibited or not authorized by law.’” State v. Stoehr, 134 Wis.2d 66, 78, 396 N.W.2d 177, 181 (1986) quoting Comments in the Judiciary Committee Report on the Criminal Code, 1953 Wisconsin Legislative Council, Vol. 5, p. 176.

III. PUBLIC INTEREST IN PRIVATE CONTRACT. WIS. STAT. 946.13.

- A. It is a Class I felony, punishable by a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both, for a public officer or employee to:
1. In the officer's or employee's private capacity, negotiate, bid or enter into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time, the officer or employee is authorized or required by law to participate in the officer or employee's public capacity in the making of the 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; or
 2. In the officer or employee's public capacity, participate in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part. Does not apply to a public officer or employee who holds not more than 2% of the outstanding capital stock of the corporate body involved in the contract. Wis. Stat. § 946.13(5).
- B. Exceptions:
1. Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements aggregating more than \$15,000 in any year.
 2. Special contracts involving: the deposit of public funds into public depositories; loans made pursuant to s. 67.12; publication of legal notices; issuance of tax titles, tax certificates or tax collection; sale of bonds and securities; designated tax credits. See Wis. Stat. § 946.13(2)(b) to (g).
 3. Does not apply to public officers or employees who receive compensation of less than \$10,000 per year by reason of being a director, officer, employee, agency or attorney for a state or national bank, savings bank or trust company unless such person's compensation is dependent upon securing public business.
 4. Does not apply to industrial development revenue bonding (Wis. Stat. § 66.1103); members of local solid and hazardous

waste facilities; members of local workforce development board or council on workforce investment.

5. See Wis. Stat. § 946.130(11) for limitations on public officer or employee who is a member of a law firm that serves as legal counsel to the public body.
- C. A contract entered into in violation of this section is void and the political subdivision on whose behalf the contract was made incurs no liability. Exception: contracts creating public debt. See Wis. Stat. § 946.13(6).
- D. This a strict liability statute; no proof of criminal intent or corrupt motive is necessary. State v. Stoehr, 134 Wis.2d 66, 396 N.W.2d 177 (1986). Good faith is not a defense.
1. Goal: to enforce a prescribed standard of conduct. “Because a public officer’s judgment may be impaired when the officer transacts government business in which he or she has a personal economic interest, the statute attempts to prevent public officers from succumbing to temptation by making it illegal for them to enter into relationships that are fraught with the danger that they will advance a private interest rather than a public good.” Id., 134 Wis.2d at 79, 396 N.W.2d at 182.
 2. In Stoehr, the defendant was on the board of directors of a public agency. He helped set honorarium rates with other board members, and then assigned the work to himself and collected the honorariums instead of hiring other persons or performing the services without extra pay.
- E. Advice of counsel defense. In State v. Davis, 63 Wis.2d 75, 216 N.W.2d 31 (1974), the Wisconsin Supreme Court considered whether a county board member’s reliance on advice by Corporation Counsel was a defense to a violation of Wis. Stat. § 946.13(1). The Court found that it did, but narrowly limited its opinion to “the good faith reliance upon the legal opinion of a government officer whose statutorily created duties include the rendering of legal opinions as to actions of specific individuals or groups. In addition, the action of any individual or group relying on such opinion would have to be taken in good faith, open and unconcealed.” Id. at 63 Wis.2d at 82, 216 N.W.2d at 34.

IV. COMMON LAW DOCTRINES.

- A. Common law rules of agency. An agent cannot serve two masters and that an agent may not engage in self-dealing. State v. Stoehr, 134 Wis.2d 66, 80, 396 N.W.2d 177 (1986). (Wis. Stat. § 946.13 is based in part on this doctrine.)
- B. Doctrine of incompatibility. Prohibits a person from holding two public offices, or a public office and a position of public employment, where the nature, obligations, or duties of the offices make it impossible for the person to perform both with the undivided loyalty required by public policy. Otradovec v. City of Green Bay, 118 Wis.2d 393, 347 N.W.2d 614 (Ct. App. 1984); Martin v. Smith, 239 Wis. 314, 1 N.W.2d 163 (1941).
1. If a person holding a public office accepts another public office or other public employment incompatible with the position he or she holds, the person vacates the first office. OAG 57-88.
 2. If one office is superior in some respect to another, so that the duties exercised under each might conflict to the public detriment, the offices are incompatible. Otradovec, 118 Wis.2d at 396, citing State v. Jones, 130 Wis. 572, 575-76 (1907).
 3. It does not matter if the individual could abstain from voting in areas affecting the subordinate position or “whether the conflicts exists in all or a greater part of the function of the office.” Otradovec, 118 Wis.2d at 397. A finding of incompatibility is justified where substantial conflict might arise and where that potential conflict would be detrimental to the public. Id.
- C. Conflict of interest doctrine. Prohibits a public officer from having an interest in any contract with the body he serves. Heffernen v. Green Bay, 266 Wis. 534, 64 N.W.2d 216 (1954).
1. It is the public policy of this state that “a public officer in discharge of his duties as such shall be absolutely free from any influence other than that which grows out of the obligations that he owes to the public at large.” Heffernen, 266 Wis. at 541, 64 N.W.2d at 220.

2. “The principle upon which public officers are denied the right to make contracts in their official capacity with themselves or to be or become interested in contracts thus made is evolved from the self-evident truth, as trite and impregnable as the law of gravitation, that no person can, at one and the same time, faithfully serve two masters representing diverse or inconsistent interests with to the service to be performed.” *Id.*, 266 Wis. at 542, 64 N.W.2d at 220 (quoting Stockton Plumbing & Supply Co. v. Wheeler, 68 Cal.App. 592, 229 P. 1020).
- D. Appearance of impropriety. “The appearance of malfeasance which a situation presents is, in itself, reason for determining that it is not sound public policy for a school district to employ one of its board members in any other capacity.” Op. Atty. Gen., unpublished, (May 9, 1986).

©2020 Dietrich VanderWaal, S.C.

Accurate reproduction with acknowledgment granted. All rights reserved.

This document provides information of a general nature regarding legislative or other legal developments. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations, or issues, and additional facts and information or future developments may affect the subjects addressed.

City of Merrill
Elected Officials Orientation

Governance Fun and Games

Dean R. Dietrich, Esq.
Dietrich@dvlawgroup.com



DIETRICH
VANDERWAAL
LAW GROUP

www.dietrichvanderwaal.com

US and Wisconsin Constitutions

www.dietrichvanderwaal.com

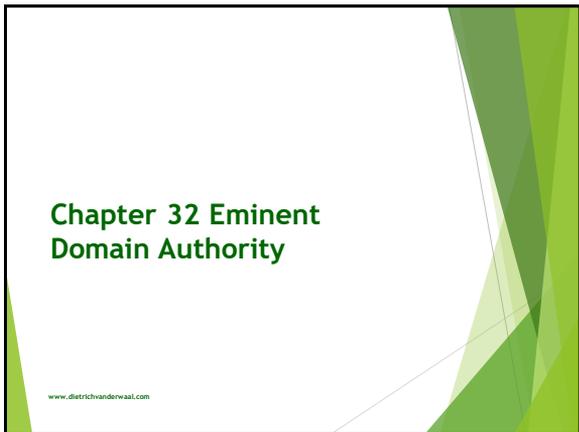
State Ethics Code/Pecuniary Interest Prohibitions

www.dietrichvanderwaal.com

Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean







Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

General Charter Laws and Other Municipal Laws

www.dietrichvanderwaal.com

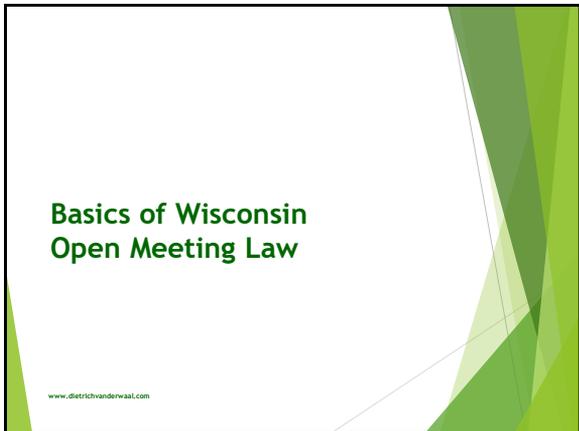
Public Purpose Doctrine

www.dietrichvanderwaal.com

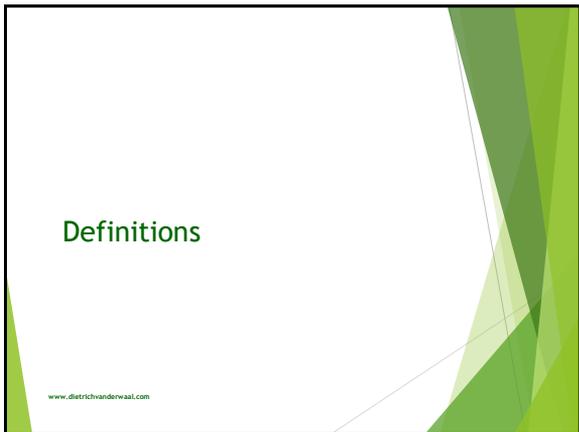
Governmental Immunity

www.dietrichvanderwaal.com

Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean







Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

Notice Requirements

www.dietrichvanderwaal.com

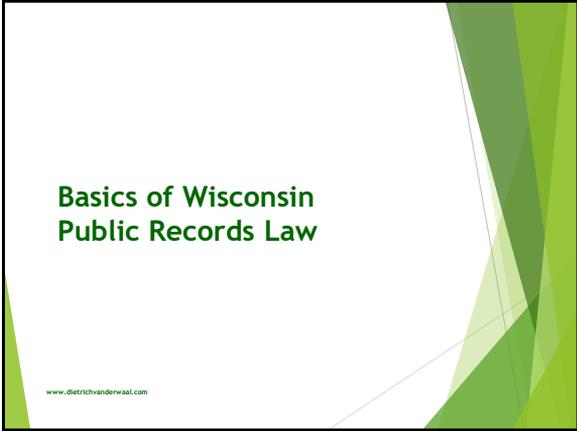
Adjourning to Closed Session

www.dietrichvanderwaal.com

Enforcement Procedures

www.dietrichvanderwaal.com

Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean







Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

Records Not Subject to Release

www.dietrichvanderwaal.com

- Information including home address, home electronic email address, home telephone number or social security number unless authorized by employee;

www.dietrichvanderwaal.com

- Information relating to a current investigation of a possible criminal offense or possible misconduct connected with employment prior to disposition of the investigation;

www.dietrichvanderwaal.com

Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

- Information pertaining to the employee’s employment examination except an examination score if score is allowed to be released; and

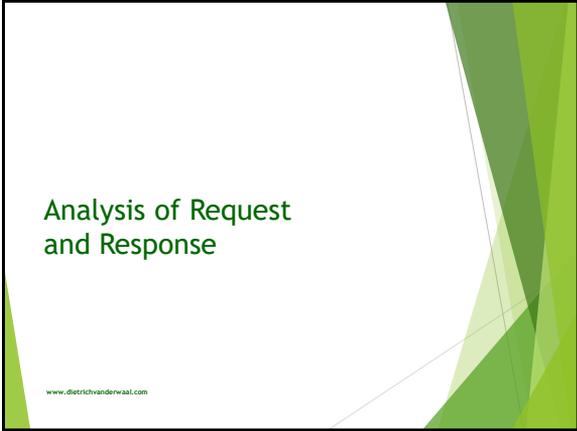
www.dietrichvanderwaal.com

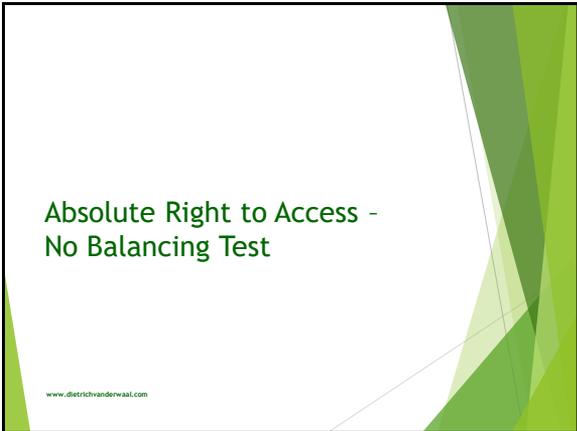
- Information relating to one or more specific employees that is used by the municipality for staff management planning, including performance evaluations, judgment, or recommendations regarding future salary adjustments or other wage treatments, bonus plans, promotions, job assignments, letters of reference, and other comments or ratings of employee.

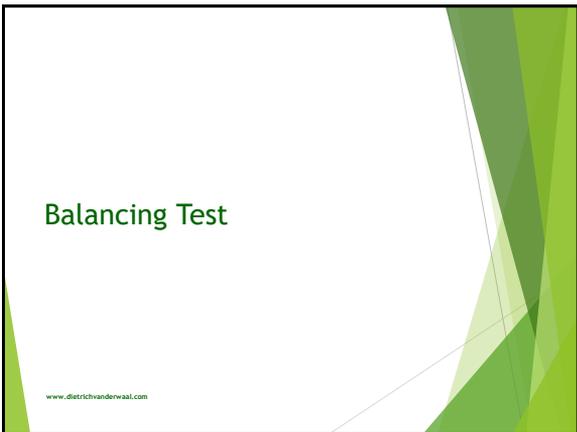
www.dietrichvanderwaal.com

Procedural Issues Regarding Responding to the Request

www.dietrichvanderwaal.com

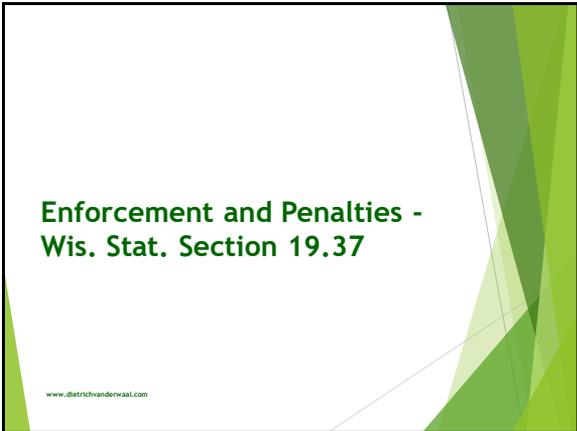


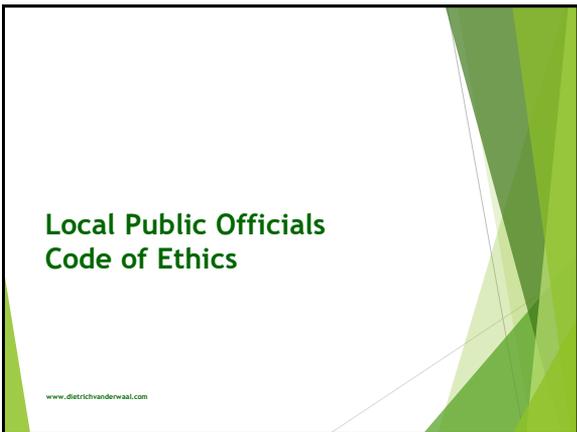




Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean







Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government; that the legislature believes that a code of ethics for the guidance of state public officials and state employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.

www.dietrichvanderwaal.com

**State Code of Ethics for Local Officials and Employees,
Wis. Stat Section 19.41, et al.**

www.dietrichvanderwaal.com

**Criminal Acts:
Bribes and Misconduct**

www.dietrichvanderwaal.com

Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

Public Interest in Private Contract Wis. Stat. 946.13

www.dietrichvanderwaal.com

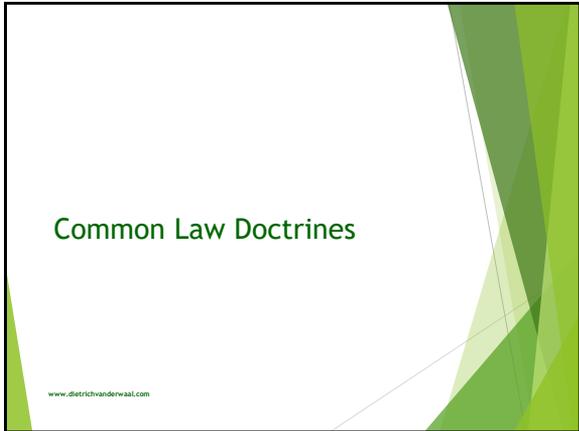
Acting in Private Capacity

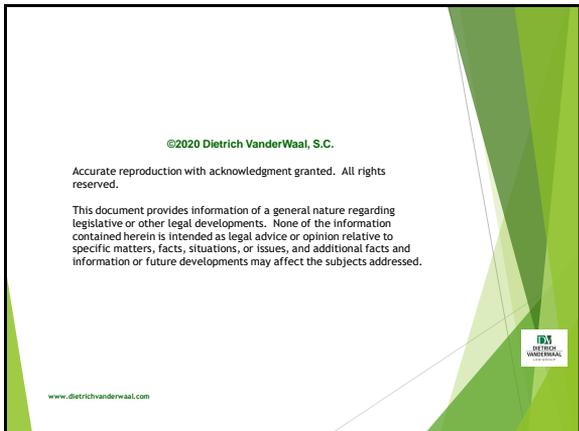
www.dietrichvanderwaal.com

Acting in Public Capacity

www.dietrichvanderwaal.com

Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean





Attachment: Governance Fun and Games (5157 : Legal briefing municipal government/Legislative vs. Executive (Dean

RESOLUTION NO. _____

A RESOLUTION IN SUPPORT OF THE AGGRESSIVE USE OF THE TAX DELINQUENT PROPERTY SALE MECHANISM AND PROCESS

WHEREAS, Lincoln County Tax records indicate that there are numerous parcels of Real Estate located in the City of Merrill that are delinquent in Real Estate Taxes for a period of 3 years or more; and,

WHEREAS, the non-payment of the taxes owed on those parcels and the resulting property value deterioration places a greater burden on the taxpaying land owners of Lincoln County; and,

WHEREAS, Lincoln County has demanded payment on these delinquent taxes through the statutory tax collection process with collection demands going unheeded; and,

WHEREAS, it becomes necessary for the City of Merrill to issue raze orders and demolish sub-standard and non-compliant structures on these properties; and,

WHEREAS, the City of Merrill wishes to purchase many of these properties, and improve them, resulting in an increased tax base, a more attractive community, and a more vibrant city;

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MERRILL, WISCONSIN this 12th day of August, 2020, that it encourages and promotes transfer of these tax delinquent properties by Lincoln County to the City of Merrill at the earliest date allowed by Wisconsin Statutes to the effectuate the goals described above.

Recommended by:

CITY OF MERRILL, WISCONSIN

Moved: _____

Derek Woellner
Mayor

Passed: _____

William N. Heideman
City Clerk

Attachment: Resolution on Tax Delinquent Properties (5145 : Resolution on tax delinquent properties)

OFFICIAL DIRECTORY

CITY OF MERRILL

WISCONSIN

CITY OF PARKS

OFFICIALS COUNCIL COMMITTEES BOARDS COMMISSIONS

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

TELEPHONE DIRECTORY

Airport Manager, Rich McCullough N2241 Airport Road	536-2024
Assessor, Bowmar Appraisal	536-5594
Building/Zoning Administrator	715-577-1875 536-4880
City Administrator/Personnel Director	536-5594
City Attorney	539-3510
City Clerk	536-5594
Public Works Director/ City Engineer	536-5594
City Garage	536-4222
City Treasurer/Finance Director	536-5594
Community Development/Zoning/Building Inspection	536-4880
Fire Department	
To Report a Fire	911
Ambulance Service	911
Non-Emergency	536-2233
Housing Authority	536-7386
Library	536-7191
Mayor	536-5595
Municipal Judge	539-3714
Merrill Go Round	536-7112
Parks and Recreation	536-7313
Police Department	536-8311
Merrill Area Enrichment Center	536-4226
Sewage Disposal Plant	536-5263
Smith Multi-Purpose Center	536-6187
Water Utility	536-6561

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

CITY OFFICIALS AND DEPARTMENT HEADS

Elected Officials

Mayor	Derek Woellner	derek.woellner@ci.merrill.wi.us
President of the Council	Paul Russell	paul.russell@ci.merrill.wi.us
City Clerk	Bill Heideman	bill.heideman@ci.merrill.wi.us
Municipal Court Judge	Ned Seubert	ned.seubert@ci.merrill.wi.us
Street & Weed Commissioner	Ron Liberty	ron.liberty@ci.merrill.wi.us

Department Heads and Appointed Officials

Building/Zoning Administrator	Darin Pagel	darin.pagel@ci.merrill.wi.us
Chief of Police	Corey Bennett	corey.bennett@ci.merrill.wi.us
City Administrator	Dave Johnson	david.johnson@ci.merrill.wi.us
City Attorney	Thomas Hayden	tom.hayden@ci.merrill.wi.us
City Engineer/Public Works Director	Rod Akey	rod.akey@ci.merrill.wi.us
Street Superintendent	Dustin Bonack	dustin.bonack@ci.merrill.wi.us
City Treasurer/Finance Director	Kathy Unertl	kathy.unertl@ci.merrill.wi.us
Executive Director Housing Authority	Paul Russell	prussell@merrillha.com
Fire Chief	Josh Klug	josh.klug@ci.merrill.wi.us
Health Officer	Dr. Greg Gill	
Deputy Health Officer	Norbert Ashbeck	
Library Director	Stacy Stevens	director@tbscottlibrary.org
Parks & Recreation Director	Dan Wendorf	dan.wendorf@ci.merrill.wi.us
Merrill Enrichment Center Director	Tammie Mrachek	tammie.mrachek@ci.merrill.wi.us
Transit Administrator	Brad Brummond	brad.brummond@ci.merrill.wi.us
Utility Operations Manager	Gabe Steinagel	gabriel.steinagel@ci.merrill.wi.us
Facilities Maintenance Manager	Nick Wszalek	nick.wszalek@ci.merrill.wi.us

ALDERPERSONS

FIRST DISTRICT
Paul Russell
2404 Cotter Court
715-409-6845
paul.russell@ci.merrill.wi.us

SECOND DISTRICT
Steve Hass
702 E 6th Street
715-218-3364
steve.hass@ci.merrill.wi.us

THIRD DISTRICT
Rick Blake
711 E 1st St, #205
715-218-6332
rick.blake@ci.merrill.wi.us

FOURTH DISTRICT
Steve Osness
1005 St Paul Drive
715-432-9977
steve.osness@ci.merrill.wi.us

FIFTH DISTRICT
John Van Lieshout
905 Royal Street
715-218-3135
john.vanlieshout@ci.merrill.wi.us

SIXTH DISTRICT
Mike Rick Jr
1608 W Main Street
715-218-5314
mike.rick@ci.merrill.wi.us

SEVENTH DISTRICT
Mark Weix Jr.
1007 Pine Bluff Avenue
715-536-8349
mark.weix@ci.merrill.wi.us

EIGHTH DISTRICT
Steve Sabatke
2801 Thielman Street #79
715-722-5301
steve.sabatke@ci.merrill.wi.us

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

COMMON COUNCIL

The Common Council meets the SECOND TUESDAY of the month, unless that day is a Holiday or Election Day, then on the following Wednesday at 7:00 p.m.

OUTSTANDING BOARDS, COMMITTEES AND COMMISSIONS

BOARD OF PUBLIC WORKS

- Derek Woellner, Mayor, Chairperson
- Dave Johnson, City Administrator, Ex-Officio(non-voting)
- Rod Akey, Public Works Director/City Engineer, Ex-Officio (non-voting)
- Ron Liberty, Street & Weed Commissioner, Ex-Officio (non-voting)
- Thomas Hayden, City Attorney, Ex-Officio (non-voting)
- Kathy Unertl, Finance Director, Ex-Officio (non-voting)
- Mike Rick Jr., Alderman 1608 West Main Street
- John Van Lieshout, Alderman 905 Royal Street
- Steve Sabatke, Alderman 2801 Thielman Street #79

LAST WEDNESDAY of the month at 4:00 p.m.

HEALTH AND SAFETY COMMITTEE

- Rick Blake, Alderman 711 E 1st Street, #205
- Paul Russell, Alderman, Chairperson 2404 Cotter Court
- Mark Weix Jr., Alderman 1007 Pine Bluff Avenue
- Corey Bennett, Police Chief, Ex-Officio (non-voting)
- Josh Klug, Fire Chief, Ex-Officio (non-voting)
- Norbert Ashbeck, Deputy Health Officer,
Ex-Officio (non-voting) 1808 Jackson Street
- Dr. Greg Gill, Health Officer, Ex-Officio (non-voting) 1205 O'Day Street

THIRD or FOURTH MONDAY of the month at 5:00 p.m.

WATER AND SEWAGE COMMITTEE

- Steve Osness, Alderman, Chairperson 1005 St Paul Drive
- Mark Weix Jr., Alderman 1007 Pine Bluff Avenue
- Mike Rick Jr, Alderman 1608 West Main Street

FOURTH WEDNESDAY of the month at 5:00 p.m.

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

PERSONNEL AND FINANCE COMMITTEE

Rick Blake, Alderman	711 E 1 st Street #205
Steve Osness, Alderman	1005 St Paul Drive
Steve Hass, Alderman, Chairperson	702 East 6 th Street

FOURTH TUESDAY of the month at 5:00 p.m.

CITY PLAN COMMISSION

3 year terms

Derek Woellner, Mayor, Chairperson		
Darin Pagel, Building Inspector, Ex-Officio (non-voting)		
Dave Johnson, City Administrator, Ex-Officio (non-voting)		
Steve Hass, Alderman	702 East 6 th Street	
Rod Akey, Public Works Director/City Engineer, Ex-Officio (non-voting)		
Thomas Hayden, City Attorney, Ex-Officio (non-voting)		
Kyle Gulke	1504 Jackson Street	5-1-22
Ralph Sturm	502 West St Paul Street	5-1-21
Melissa Schroeder	510 North Genesee Street	5-1-23
Ryan Schwartzman	401 East 3 rd St	5-1-23
Robert Reimann	1103 Michler Crest	5-1-21

FIRST TUESDAY at 5:00 p.m. If a Hearing is required, at 6:00 p.m.

PARKS AND RECREATION COMMISSION

5 year terms

Jean Ravn	W4397 Eagle Ridge Lane	5-1-24
Brian Artac, Vice Chairperson	1600 East 9 th Street	5-1-23
Dr. Dan Novitch, Chairperson	2600 E 10 th Street	5-1-24
Kyle Gulke	1504 Jackson Street	5-1-23
Joan Tabor	200 N Park Street	5-1-22
Amanda Groth	814 Cottage Street	5-1-22
John Van Lieshout, Alderman	905 Royal Street	

FIRST WEDNESDAY of the month at 4:15 p.m.

AIRPORT COMMISSION

6 year terms

Lyle Banser	N4640 Wyant Avenue	10-1-23
Joseph Malsack	606 East 6 th Street	10-1-21
Gary Schulz	1807 East 9th Street	10-1-20
Gary Schwartz, Chairperson	N2751 Thiel Drive	10-1-22
Mark Weix Jr, Alderman	1007 Pine Bluff Avenue	

THIRD WEDNESDAY of the month at 6:00 p.m. at the Airport

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

POLICE AND FIRE COMMISSION

5 year terms

Norm Hanson	401 Wisconsin Street	5-1-25
Nicole Johnson	1010 Adams Street	5-1-21
Don Heyel	1005 North Memorial Drive	5-1-22
Paul Russell, Alderman	2404 Cotter Court	5-1-23
Lisa Gervais	1204 E 7 th Street	5-1-24

Meet at the call of Mayor or President

HOUSING AUTHORITY

5 year terms

Kent Johnson	700 Wildwood Lane	11-10-20
Linda Murray	N5086 Heart Lake Road	11-10-24
Jill Laufenberg, Chairperson	902 Rock Ridge Court #1	11-10-22
Nancy Kwiesielewicz	401 East Riverside Avenue	11-10-23
Kevin Cohrs	1310 North Center Avenue	11-10-21
Rick Blake, Alderman	711 E 1 st Street, #205	

SECOND WEDNESDAY of the month at 4:00 p.m. at Jenny Towers

BOARD OF REVIEW

Derek Woellner, Mayor, Chairperson	
Paul Russell, Alderman, Council President	2404 Cotter Court
Bill Heideman, City Clerk	
Steve Osness, Alderman	1005 St Paul Drive
Steve Hass, Alderman	702 East 6 th Street
John Van Lieshout, Alderman	905 Royal Street

SECOND MONDAY in May at 4:00 P.M. Additional meetings as necessary.

LIBRARY BOARD

3 year terms

Paul Gilk, County Board Rep.	N3920 County Road E	6-30-21
Tim Meehean	107 N Van Rensselaer	6-30-22
Mike Geisler, President	204 Cottage Street	6-30-22
Darcy Dalsky	1005 Monroe Street	6-30-20
James Wedemeyer	204 N. Van Rensselaer St.	6-30-20
Katie Breitenmoser, County Appointee	W6982 Joe Snow Road	6-30-21
Audrey Huftel	702 Charles Street	6-30-21
Richard Mamer, Financial Secretary	604 East Main Street	6-30-21
Gene Bebel, MAPS Representative, Vice Pres.	607 Cedar Street	

THIRD WEDNESDAY of the month at 4:00 p.m. at Library

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

ENRICHMENT CENTER COMMITTEE

1 year terms

Rose Akey	914 East 7 th Street	5-1-21
Pastor Lucas Williams	903 East 2 nd Street	5-1-21
Paul Russell, Alderman	2404 Cotter Court	
Sharon Harvey	900 East 3 rd Street	5-1-21
Gene Bebel	607 Cedar Street	5-1-21
Laura Bertagnoli	2727 Glen Drive	5-1-21
Erin Zastrow, Ex-Officio (non-voting)	ADRC, 607 North Sales Street	

FOURTH WEDNESDAY of the month at 9:00 a.m.

BOARD OF APPEALS

3 year terms

Mike Rick Jr, Alderman	1608 West Main Street	5-1-22
Jeremy Thompson	715 Rio Grande Drive	5-1-22
James Koebe	706 West Riverside Ave.	5-1-23
Steve Hass	702 East 6th Street	5-1-21
Ron Burrow, Alternate	1105 Harrison Street	5-1-21
Dean Haas	1603 East 12 th Street	5-1-23
Adam Rekau, Alternate	705 Rio Grande Drive	5-1-21

FIRST TUESDAY of the month at 6:00 p.m.

TRANSIT COMMISSION

3 year terms

Sue Kunkel	905 Hollywood Drive	5-1-22
Gordon Geiger	508 East 2 nd Street	5-1-22
Steve Willis	1400 East 10 th Street	5-1-23
Katie Swope	1301 O'Day Street	5-1-21
Rick Blake, Chairperson	711 East 1 st Street, #205	5-1-21

THIRD MONDAY of the month at 4:00 p.m.

COMMUNITY DEVELOPMENT COMMITTEE

3 year terms

Ronald Peterson, Chairperson	119 South Prospect Street	5-1-22
Landis Holdorf	1908 West Main Street	5-1-23
Pete Koblitz	904 Hollywood Drive	5-1-21
Nancy Kwiesielewicz	401 E. Riverside Avenue	5-1-23
Betsy Wiesneski	801 E 2 nd Street, #C	5-1-23
Daniel Schneider	211 Merrill Street	5-1-22
Paul Russell, Alderman	2404 Cotter Court	

Meet at the call of the Chairperson

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

HISTORIC PRESERVATION COMMITTEE

3 year terms

Elizabeth McCrank	204 East 5 th Street	5-1-22
Bea Lebal	115 South Prospect Street	5-1-23
Steve Sabatke, Alderman	2801 Thielman Sreet #79	
Jeremy Thompson	715 Rio Grande Drive	5-1-21
Paul Russell, Alderman	2404 Cotter Court	

Meet at call of the Chairperson

SEWER SERVICE AREA ADVISORY COMMITTEE

- , Alderman
- , Town of Pine River Chairperson
- Michael Woller, Town of Scott Chairperson
- Bill Burgener, Town of Merrill Chairperson
- Derek Woellner, Mayor
- Gabe Steinagel, Utilities Superintendent
- Thomas Hayden, City Attorney
- Dave Johnson, City Administrator
- Rod Akey, Public Works Director/City Engineer

TOURISM COMMISSION

1 year terms

John Van Lieshout, Alderman	905 Royal Street	
Rebecca Roberts	2401 Jackson Street #80	5-1-21
Dan Wendorf, Parks & Rec. Director, Chairperson		
Ryan Schwartzman	401 East 3 rd Street	5-1-21
Ernie Stender	1201 N Memorial Drive #2	5-1-21

(at large) DNR Representation

Meets at the Call of the Chairperson

REDEVELOPMENT AUTHORITY

5 year terms

Derek Woellner, Mayor		
Steve Sabatke, Alderman	2801 Thielman Street #79	
Tony Kusserow	601 West 2 nd Street	9/2020
Val Mindak	1000 Rock Ridge Court #7	9/2021
Sheila Polak	1001 Heritage Court	9/2022
Lori Anderson-Malm	606 Spruce Street	9/2023
Clyde Nelson, Chairperson	709 Cottage Street	9/2024

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)

FESTIVAL GROUNDS COMMITTEE

2 year terms

- Mike Rick Jr., Alderman
- Steve Sabatke, Alderman
- John Van Lieshout, Alderman, Chairperson
- Derek Woellner, Mayor
- Bryan Bloch, Rodeo Association Rep
- Brad Becker, Fair Association Rep
- Mike Caylor Jr.
Food Vendor Representative
- David Johnson, City Administrator (ex-officio)

7706 County Rd S, Athens, WI 54411
 W1742 Heineman Rd, Merrill, WI 54452
 409 North Scott Street, Merrill, WI 54452

FIRST THURSDAY of the month at 5:30 p.m.

NOTE: Meeting times and dates of all committees, commissions, and boards are subject to change at the call of the chairperson.

Attachment: CITY DIRECTORY (5163 : Review and discuss committee structure)