

A  
LEAGUE  
MANUAL

# THE POWERS AND DUTIES OF WISCONSIN MAYORS





**A  
LEAGUE  
MANUAL**

**THE POWERS AND  
DUTIES OF  
WISCONSIN MAYORS**

*League of Wisconsin Municipalities  
202 State Street, Suite 300  
Madison, Wisconsin 53703  
1996, reprinted 2002 (with minor changes)*



## PREFACE

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

Its aim is to give a general summary of the mayor's powers and duties as provided by state statute and judicial interpretations. No attempt has been made to indicate which of the statutory provisions are subject to change by home rule charter ordinance in accordance with sec. 66.0101, Stats. The special provisions in force in Wisconsin's sole city of the first class, Milwaukee, and in cities operating under the council-manager or commission plans of government (ch. 64, Stats.) have not been included. Also, since this is a survey, full details of the powers and duties of the mayor are not included on each point.

All numerical statutory citations are references to the 1999-2000 Wisconsin statutes. This handbook is current for legislative acts published through March 31, 2002. Other references are to the published opinions of the attorney general of Wisconsin, e.g., 66 Op. Att'y Gen. 24 (1977); the published decisions of the Wisconsin Supreme Court and Court of Appeals, e.g., *Geyso v. Cudahy*, 34 Wis.2d 476, 149 N.W.2d 611 (1967); written opinions of the League's legal staff, e.g., Salaries 399; and a municipal law treatise, e.g., McQuillin, MUNICIPAL CORPORATIONS, sec. 16.32 (3rd ed.).

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

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

Printed 1996  
Reprinted 2002 (with minor changes)  
League of Wisconsin Municipalities

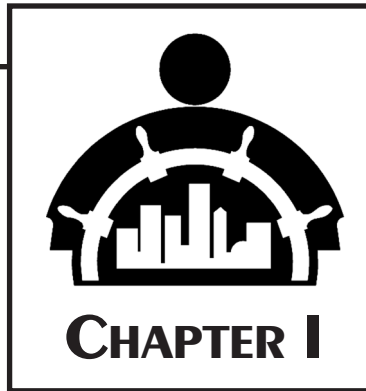


# Table of Contents

<b>I</b>	<b>The Office of Mayor</b> .....	<b>1</b>
	Election and Qualifications .....	1
	Oath, Term .....	1
	Salary .....	2
	Incompatible Public Offices and Positions .....	2
	Personal Liability .....	3
	Liability Limits .....	4
	Indemnification/Reimbursement .....	4
	Prohibited Conduct .....	5
	Private Financial Interest in a Public Contract .....	5
	State Code of Ethics for Local Officials .....	7
	Misconduct in Office and Other Prohibitions .....	8
	Miscellaneous Restrictions .....	8
	Removal from Office .....	9
	Recall .....	9
	Resignation .....	10
	Vacancy in Office of Mayor .....	10
<b>II</b>	<b>The Mayor-Council Relationship</b> .....	<b>11</b>
	Mayor as Presiding Officer .....	11
	Mayor as Member of Council .....	11
	Veto Power .....	12
	Council Committees .....	13
	Special Council Meetings .....	13
	Open Meetings .....	14
<b>III</b>	<b>Executive Functions of Mayor</b> .....	<b>15</b>
	General Powers and Duties .....	15
	Mayor as Head of the Police and Fire Departments .....	15
	Appointments by Mayor .....	16
	Removal and Suspension of Officials by the Mayor .....	18
	Resignations by Municipal Officials .....	19
	Filling Vacancies in Municipal Offices .....	20
	Licenses and Permits .....	20
	Financial Duties and Powers .....	20
	Public Records .....	21
	Mayor as Member of Municipal Boards and Commissions .....	21
	Emergency Powers .....	22
	Miscellaneous Duties and Powers .....	22
	Performance of Duties in Mayor's Absence .....	22
	Additional Information .....	23
	<b>Appendix</b> .....	<b>25</b>
	Mayor's Calendar .....	25







## THE OFFICE OF MAYOR

### ELECTION AND QUALIFICATIONS

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

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

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

### OATH, TERM

To qualify for office, the mayor must take and file the official oath with the city clerk within 10 days after receiving notice of election or appointment from the city clerk. Secs. 62.09(4)(a), 19.01(1), and (4)(f), Stats. The certificate of election issued by the city clerk under sec. 7.53(4), Stats., is not essential to qualification. *State ex. rel. Burdick v. Tyrrell*, 158 Wis. 425, 433, 149 N.W. 280 (1914). However, the filing of the oath is essential. *Burton v. State Appeal Board*, 38 Wis.2d 294, 156 N.W.2d 386(1968). A vacancy is created when a person elected or reelected to the office of mayor neglects to take and file the official oath within the time prescribed by law. Sec. 17.03(7), Stats. The term of the mayor commences on the third Tuesday in April in

the year of election and runs for two years unless a shorter or longer term has been fixed by charter ordinance. Sec. 62.09(5)(a)& (b), Stats. According to information compiled by the Wisconsin Taxpayers Alliance in 1991, approximately eighteen Wisconsin cities with populations above 15,000 provide for a four-year term for the mayor.

## **SALARY**

The initial determination to pay the mayor a salary requires a 3/4 vote of all the council members. Sec. 62.09(6)(a), Stats. Once established, the salary may be changed no later than the first regular meeting in February in the year of election by ordinance enacted by a simple majority of the members voting, unless a local ordinance requires a greater vote. Sec. 62.09(6)(b), Stats., Salaries 404 and 417R. Although the action to increase or diminish the mayor's salary may not take effect during the mayor's current term of office, the salary may be changed to take effect in the subsequent term. Sec. 66.0505, Stats. Cost of living adjustments for the mayor and other members of the common council are prohibited. Sec. 66.0507, Stats.; Salaries 391, 413 and 417R.

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

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

## **INCOMPATIBLE PUBLIC OFFICES AND POSITIONS**

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

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

typically appoint the board or commission and exercise budgetary control over the department. *Compatibility of Offices* 583.

If a mayor accepts an incompatible public office or position, a vacancy in the mayor's office is created. Likewise, by accepting the mayor's office, a person vacates any incompatible public office or position which he or she may have held. *Otradovec*, supra.

As a member of the council, the mayor is not eligible for any office or position which during the elected term was created by, or the selection to which is vested in, the council. Sec. 66.0501(2), Stats. The mayor may take an appointive city office or position only if he or she resigned prior to the selection and the office or position was created prior to the beginning of his or her present term of office. However, the mayor and other members of the common council may serve on city commissions and boards where no additional compensation, except a per diem, is paid. Sec. 66.0501(2), Stats.

If an elective office is created during the mayor's term, the mayor may run for that office, although he or she would vacate the office of mayor by taking an incompatible office. Sec. 66.0501(2), Stats.

A limited statutory exemption to the compatibility doctrine allows an elected city official, such as the mayor, to serve as a volunteer firefighter or emergency medical technician in the city, as long as the compensation for such position does not exceed \$15,000 per year, including fringe benefits. Sec. 66.0501(4), Stats.

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

1. Chair of County Board, 15 Op. Att'y Gen. 172 (1926), and *Compatibility of Offices* 604.
2. Clerk of Circuit Court, 18 Op. Att'y Gen. 48 (1929).
3. County Supervisor, *Compatibility of Offices* 229, 494 and 604; 28 Op. Att'y Gen. 138 (1939).
4. State Legislator, *Compatibility of Offices* 474.

## PERSONAL LIABILITY

As a general rule, mayors need fear no personal loss or liability for the honest performance of their official duties and the exercise of powers granted by law. Local officials are often shielded from liability for injuries arising out of acts performed within the scope of their public employment by various statutes and judicially imposed immunities. For example, municipalities and their officers are immune from liability for acts done in the exercise of legislative, quasi-legislative, judicial and quasi-judicial functions. Sec. 893.80(4), Stats. For purposes of sec. 893.80(4), Stats., the terms "legislative," "quasi-legislative" and "quasi-judicial" mean the same thing as "discretionary." *Envirologix Corp. v. City of Waukesha*, 192 Wis.2d 277, 531 N.W.2d 357, 363 (Ct. App. 1995).

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

1. engages in conduct which is malicious, willful or intentional;
2. negligently performs a ministerial duty ("A duty is ministerial when it is absolute, certain and imperative, involving only the performance of a specific task when the law

imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment and discretion.” *Barillari*); or

3. is aware of a danger that is of “such quality that the public officers’ duty to act becomes absolute, certain and imperative.” *Barillari*, 533 N.W.2d at 763.

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

As under state law, certain immunities are available to public officers in defending against a civil rights suit. Absolute immunity is available for legislators acting within the traditional legislative capacity. See *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979) (reasoning in this case would apply to local legislators). Qualified immunity is available where conduct did not violate clearly established constitutional or statutory rights of which a reasonable person would have known. *Harlowe v. Fitzgerald*, 457 U.S. 800 (1982).

## **Liability Limits**

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

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

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

## **INDEMNIFICATION/REIMBURSEMENT**

The statutes require a city to pay any judgment for damages and costs entered against a mayor for acts performed by the mayor within the scope of his or her public employment. Secs. 895.46(1)(a) and 62.25, Stats. The scope of employment requirement has been interpreted broadly to require indemnification even when the public official has engaged in intentional wrongdoing. See *Hibma v. Odegaard*, 769 F.2d 1147 (7th Cir. 1985).

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

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

If an action against the mayor is dismissed, discontinued or otherwise decided in the mayor’s favor or the mayor is reinstated, the city may, but is not required to, reimburse the mayor for any expenses incurred in defending the charges. Even if the mayor loses the action, the common council may authorize reimbursement of legal fees and expenses if the action involved the constitutionality of a statute not previously tested. Sec. 895.35, Stats.

Under the voluntary indemnification provisions of sec. 895.35, Stats, the mayor may, at the discretion of the council, receive reimbursement of expenses in criminal as well as civil actions. *Bablitch and Bablitch v. Lincoln County*, 82 Wis.2d 574, 263 N.W.2d 218 (1978). It is not clear whether an officer in a criminal suit must be reimbursed if acting within the scope of employment. The court in *Bablitch* held that mandatory reimbursement under sec. 895.46(1), Stats., was inapplicable to criminal actions, but the court later questioned this holding. *Schroeder v. Schoessow*, 108 Wis.2d 49, 321 N.W.2d 131, 139 (1982).

## **Prohibited Conduct**

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

### **Private Financial Interest in a Public Contract – Sec. 946.13, Stats.**

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

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

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

- a. Contracts with the city that do not involve receipts and disbursements aggregating more than \$15,000 in any year. Sec. 946.13(2)(a), Stats.
- b. Contracts involving the deposit of public funds in public depositories. Sec. 946.13(2)(b), Stats.
- c. Contracts involving loans made pursuant to sec. 67.12, Stats., (temporary borrowing and borrowing on promissory notes). Sec. 946.13(2)(c), Stats.
- d. Contracts for the publication of legal notices if the notices are published at a rate not higher than that prescribed by law. Sec. 946.13(2)(d), Stats.
- e. Contracts for the issuance to the mayor of tax titles, tax sale certificates, or other similar instruments, provided they are issued in payment of salary or other obligations due the mayor. Sec. 946.13(2)(e), Stats.
- f. Contracts for the sale of bonds or securities issued by the city, provided they are sold at a bona fide public sale to the highest bidder and the mayor has no duty to vote upon the issuance of the bonds or securities. Sec. 946.13(2)(f), Stats.
- g. Contracts, tax credits or payments received by the mayor for wildlife damage claims or abatement, farmland preservation, soil and water resource management, soil erosion control, animal waste management and nonpoint source water pollution abatement. Sec. 946.13(2)(g), Stats.
- h. Contracts where the mayor, in his or her capacity as the mayor, participates in the making of a contract in which the mayor has a private pecuniary interest, or performs some function with regard to the contract which requires the exercise of discretion, and the mayor holds not more than 2% of the outstanding capital stock of a corporation that is involved in such a contract, subject, though, to the prohibition in sub. (1)(a) on private personal negotiation on the contract. Sec. 946.13(5), Stats.
- i. The prohibitions in sec. 946.13(1), Stats., do not apply where the mayor is paid less than \$10,000 per year for serving as mayor and is a director, officer, employee, agent or attorney for a state or national bank, savings bank or trust company, which does business with the city, and the mayor's compensation as a banker is not directly dependent on procuring public business. Sec. 946.13(7), Stats.
- j. Contracts or transactions made or consummated or bonds issued under sec. 66.1103 (industrial development revenue bonding). Sec. 946.13(8), Stats.

- k. Where the mayor is a member of a local solid waste or hazardous waste committee negotiating, arbitrating or ratifying agreements under sec. 289.33(7)(a). Sec. 946.13(9), Stats.
- l. The prohibitions in sec. 946.13(1), Stats., do not apply where the mayor receives less than \$10,000 annually for serving as mayor and the mayor is a partner, shareholder or employee of a law firm that serves as legal counsel to the city unless one of the following applies:
  - (1) the mayor has an interest in the law firm greater than 2% of its net profit or loss;
  - (2) the mayor participates in making a contract between the city and the law firm or exercises any official discretion with respect to a contract between them; or
  - (3) the mayor's compensation from the law firm directly depends on the mayor's procurement of business with public bodies. Sec. 946.13(11), Stats.

### **State Code of Ethics for Local Officials – Sec. 19.59, Stats.**

Section 19.59, Stats., the state ethics code applicable to local officials, prohibits the mayor from using his or her office to obtain financial gain or anything of substantial value for the private benefit of the mayor, the mayor's immediate family or for an organization with which the mayor is associated. Sec. 19.59(1)(a), Stats. In addition, a mayor may not take any official action substantially affecting a matter in which the mayor, a member of the mayor's immediate family, or an organization with which the mayor is associated has a substantial financial interest. Sec. 19.59(1)(c)1, Stats. Finally, a mayor may not use his or her office to produce a substantial benefit, direct or indirect, for the mayor, a member of the mayor's immediate family, or an organization with which the mayor is associated. Sec. 19.59(1)(c)2, Stats. These last two provisions do not prohibit a mayor from taking lawful actions concerning payments for employee salaries, benefits or reimbursements. Nor do they prohibit the mayor from taking action to modify a city ordinance. Sec. 19.59(1)(d), Stats. "Immediate family" means the mayor's spouse or a family member who receives, directly or indirectly, more than one-half of his or her support from the mayor or contributes, directly or indirectly, that amount for the mayor's support. Sec. 19.42(7), Stats. A mayor is "associated" with an organization when the mayor or a member of his or her immediate family: (a) is a director, officer, trustee, authorized representative or agent of the organization; (b) owns or controls at least 10% of the outstanding equity of the organization; or (c) is an authorized representative or agent of the organization. Sec. 19.42(2), Stats.

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

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

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

The question often arises as to whether an official must abstain when he or she has a personal interest in a matter of general policy. The State Ethics Board suggests that a local official may take action on matters affecting the official as long as (1) the action affects a whole class of similarly-situated interests; (2) the interest of the official, an immediate family mem-

ber or an organization with which the official is associated is not significant when compared to other members of the class; and (3) the effect of the action on the interests of the official, an immediate family member or organization with which the official is associated is not significantly different from the effect on other members of the class. See Pecuniary Interest 373.

In addition to the requirements in the state ethics code, a city may enact an ethics ordinance establishing a local code of ethics for city officers and employees. Sec. 19.59(1m), Stats. For more information on the ethics code, see Pecuniary Interest 373.

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

- a. **Bribery.** The mayor may not accept, or offer to accept, anything to act in a certain manner, or do or omit to do a certain act, in relation to any matter pending or which might come before the mayor in his or her official capacity. Sec. 946.10, Stats. A violation of sec. 946.10, Stats., is a Class D felony, punishable by a fine not to exceed \$10,000, imprisonment for up to 5 years, or both. Sec. 939.50(3)(d), Stats.
- b. **Special Privileges from Public Utilities.** The mayor may not accept personal passes or special privileges for traveling, transportation or message communication from public utilities. Sec. 946.11, Stats.; art. XIII, sec. 11, Wis. Const.
- c. **Failure to Perform Duty.** The mayor may not intentionally fail or refuse to perform a known, mandatory, nondiscretionary, ministerial duty within the time or in the manner required by law. Sec. 946.12(1), Stats.
- d. **Acting Outside Authority.** The mayor may not do an act which he or she knows is in excess of the mayor's power or which the mayor is forbidden by law to do in his or her capacity as mayor. Sec. 946.12(2), Stats.
- e. **Dishonest Advantage.** The mayor may not, by commission or omission and with intent to obtain a dishonest advantage, exercise a discretionary power in a manner inconsistent with the duties of the office of mayor or the rights of others. Sec. 946.12(3), Stats.
- f. **Records Falsification.** The mayor may not falsify records. Sec. 946.12(4), Stats.
- g. **Payments in Excess of Salary.** The mayor may not accept money or anything of value greater or less than is fixed by law for performing services or duties pertaining to the office. Sec. 946.12(5), Stats.; *Ryan v. State*, 79 Wis.2d 83, 255 N.W.2d 910 (1977).

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

### **MISCELLANEOUS RESTRICTIONS**

- a. **Election Bribery.** The mayor may not resort to bribery by promising appointments or anything of value or using political pressure as a means of securing votes in an election. Sec. 12.11, Stats.
- b. **Property Values.** The mayor may not, as a member of the board of review, fraudulently fix values or omit taxable property from assessment. The mayor would be subject to



civil liability for damages sustained in such an event. Secs. 70.502 and 70.503, Stats. The mayor is subject to removal by the circuit judge for improper discharge of duty as a member of the board of review. Sec. 17.14(2) and (3), Stats.

- c. **Liquor Wholesaler.** The mayor may not sell directly or indirectly to any liquor licensee in the city anything used in the carrying on of the licensee's business. Sec. 125.51(1)(b), Stats.
- d. **Sales to City Employees.** The mayor cannot sell or procure for sale any municipal article, material, product or merchandise to any city employee except meals, public services and articles needed for the health or safety of the employee. Sec. 175.10(1), Stats.
- e. **Legal Representation.** Wisconsin statutes provide no explicit prohibition regarding possible conflicts in representation of private clients by an attorney who is a municipal public official. Local ordinances should be consulted to determine whether local ethics codes enacted pursuant to sec. 19.59(1m), Stats., apply. In general, a lawyer holding public office should not engage in activities where the lawyer's professional interest may be in conflict with his or her official duties. It therefore follows that an attorney who is mayor must not defend persons charged with a violation of city ordinances. Wisconsin Bar Opinion E-75-25; SCR 20:1.11 (Supreme Court Rule); 11 Op. Att'y Gen. 473 (1922).

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

## REMOVAL FROM OFFICE

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

## RECALL

City electors may petition for the recall of the mayor after the first year of the mayor's term. Secs. 9.10(1) and (2)(s), Stats. The recall petition must contain a statement of a reason for the recall which is related to the official responsibilities of the mayor and be signed by a number of city electors equal to 25% of the votes cast in the city for the office of president at the last presidential election. The petition is to be filed with the city clerk.

Within 10 days after a petition for the recall of the mayor is filed, the mayor may file a written challenge with the clerk specifying any alleged insufficiency. Within 31 days after the petition is offered for filing, the clerk shall determine whether the petition is sufficient and shall so state in a certificate attached to the petition. If the clerk finds the petition sufficient as to signers and circulators, the clerk certifies the petition as sufficient and transmits it to

the common council. The council, upon receiving the certified petition, must schedule a special election at which the incumbent is automatically a candidate unless the candidate resigns within 10 days after the date of the certificate. Sec. 9.10(4), Stats.

## **RESIGNATION**

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

There is no need for the common council to formally accept the mayor's resignation. The resignation takes effect at the time indicated in the resignation or immediately upon delivery regardless of whether it has been officially accepted by the body or officer to whom it is addressed. 11 Op. Att'y Gen. 706 (1922); Appointments and Vacancies 245.

## **VACANCY IN THE OFFICE OF MAYOR**

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

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

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

The appointee holds office until a successor is elected and qualifies for office. If the vacancy occurs before December 1, then a special election to fill the unexpired term must be held on the following first Tuesday in April (the spring election). If the vacancy happens after December 1, but before the first Tuesday in April, then the special election is held on the second year following the December 1 cutoff. However, no election to fill a vacancy in the office of mayor may be held at the same time as the regular election for such office. Instead, the regular election determines who will succeed to the office. Sec. 17.23(1)(a), Stats.