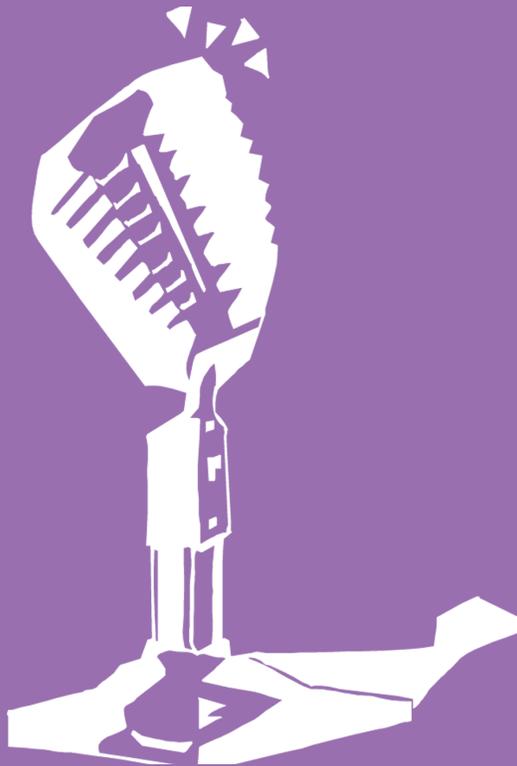


A
**LEAGUE
MANUAL**

THE REPORTERS' GUIDE TO WISCONSIN CITY & VILLAGE GOVERNMENT



**A
LEAGUE
MANUAL**

**THE REPORTERS' GUIDE TO
WISCONSIN CITY &
VILLAGE GOVERNMENT**

*League of Wisconsin Municipalities
202 State Street, Suite 300
Madison, Wisconsin 53703
2003*

*The League of Wisconsin Municipalities
Mutual Insurance Trust
provided financial support for this publication.*

PREFACE

Welcome to the municipal building in Wisconsin's 589 cities and villages. While the municipal building can be a confusing place thanks to a multitude of issues and departments, the League of Wisconsin Municipalities wants to help you make sense of every facet of municipal government.

We have put together this *Reporters' Guide* to help you navigate the maze of city and village government. While the guide is not all-inclusive, the League and its members hope it offers some insights that will aid you in your coverage of the city council or the village board, the plan commission, the parks department, the clerk's office and municipal utilities to name just five of the many components of municipal government.

We also hope the information we have included allows you to move beyond the coverage of just the meetings and onto in-depth coverage of your local government as its leaders work to build a strong community.

And, if you do not find the answers to your questions about the part of city or village government you are covering, or the issues facing cities and villages today, we are ready to assist you in any way we can. Just give us a call at (608) 267-2380, email us at <league@lwm-info.org> or visit our website at <www.lwm-info.org>.

Again, welcome. We are looking forward to working with you.

Dan Thompson
Executive Director
League of Wisconsin Municipalities

Table of Contents

I. Municipal Governments In Wisconsin	1
Distinctions Between Municipalities and Towns	1
Distinctions Between Cities and Villages	2
Classes of Cities	3
Distinctions Among Classes of Cities	4
Annexation and Detachment	4
The Powers of City and Village Governing Bodies	5
Emergency Powers	7
II. Who Governs Cities and Villages?	9
The Common Council	9
The Village Board	9
Statutory Officers	10
Mayor	10
Village President	10
Alderspersons	10
Trustees	11
Clerk	11
Deputy Clerk	11
Treasurer	11
Deputy Treasurer	11
Comptroller	11
Manager	12
Assessor	12
City Attorney	13
Police Chief	13
Fire Chief	13
Marshal	14
Constable	14
Administrator	14
Municipal Boards and Commissions	15
Police and Fire Commission	16
Board of Review	17
Board of Public Works	17
Plan Commissions	17
Zoning Boards of Appeal	18
Utility Commission	18
Library Board	19
Municipal Courts	20
Powers	21
III. Money, Money, Money!	23
Budgeting	23
The State Budgeting Law	23
Budget Summary and Budget Hearing	24
Deadline For Adopting a Municipal Budget	25
Budget Changes	25
Non-Lapsing Reserve Funds	26
Board of Estimates Budget System	26

Sources of Local Revenue	26
The General Property Tax	26
Local Tax Options	27
Shared Revenue and State Aids	28
2001 Wisconsin Act 109 Modifications	30
Schedule of Shared Revenue Payments	30
Shared Revenue Funding Level	31
Expenditure Restraint & Small Municipalities Shared Revenue Program	31
Expenditure Restraint Program	31
Small Municipalities Shared Revenue	32
Payments for Municipal Services Program	33
Transportation Aids	33
Recycling Grants	34
Payments in Lieu of Taxes (PILOTS)	35
Special Assessments	35
Special Charges for Current Services	36
Fees in Lieu of Land Dedication as a Condition of Plat Approval	36
Impact Fees	36
Costs That Can Be Funded With Impact Fees	36
Procedure For Adoption of Impact Fee Ordinances	37
User Fees	37
License and Permit Fees	37
Mobile Home Monthly Parking Permit Fee	37
Parking Systems	37
Cable Television Franchise Fee	38
Establishing the Property Tax Levy	38
State Property Tax Credits	38
Preparation of Tax Roll and Tax Bills	38
Settlement Process	39

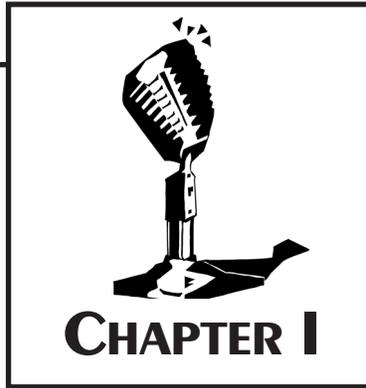
IV. Contracts 41

Express Contract Authority	41
Implied Contract Authority	41
Who is Authorized to Enter Into Contracts?	41
Prohibited Contracts	42
Public Construction Contracts	42
The Expenditure Threshold	43
Competitive Bidding Exemptions	43
The Bidding Process	44
Advertising for Bids	45
Accepting or Rejecting the Bid	45
The Final Step	46
Intergovernmental Cooperation Agreements	46
Municipal Revenue Sharing Agreements	47
Cooperative Boundary Agreements	47

V. City and Village Legislative Procedures 49

Regular Meetings	49
Special Meetings	49
Common Council or Village Board Meeting Procedures	50
Presiding Officers	50
Quorum	50
Recording of Votes	51
Attendance at Meetings	51
Method of Voting	51

Number of Votes Required	52
Refusal to Vote	52
Tie Votes	52
Mayor and Village President's Right to Vote	52
The Public's Role	52
Rules of Parliamentary Procedure	53
Reconsideration	53
Mayoral Approval and Veto of Legislation	53
Agendas and Minutes	54
Minutes	54
Public Hearings	55
Committees	55
Enactment of Legislation	56
Charter Ordinances	56
Ordinances	57
Ordinance Book	58
Resolutions	58
Motions	58
Bylaws, Regulations, Rules, Contracts	58
Direct Legislation Initiated by Citizens	58
VI. Open Government Laws	61
Introduction	61
The Open Meetings Law	61
The Public Records Law	62
Publication Requirements	64
Appendix: Additional Information and Resources	67
The League of Wisconsin Municipalities	67
Additional State Associations and Organizations	67
National Associations	68
Selected State Agency Contacts	69
Selected Federal Agencies	69



Municipal Governments In Wisconsin

Cities and villages are local general-purpose units of government. They provide a broad range of services to persons and properties within a defined geographical area, including street maintenance, sewer and water, police and fire protection, garbage collection, libraries, parks and recreation and public transportation.

Cities and villages in Wisconsin are incorporated municipalities. They are created at the request of their inhabitants to perform local services.

Distinctions Between Municipalities and Towns

There are 190 cities and 399 villages in Wisconsin. Together, they encompass about 70% of the state's population. There are 1,265 towns in Wisconsin. Town governments govern those areas of Wisconsin that are not included within the corporate boundaries of cities and villages.

Cities and villages in Wisconsin are different from other general-purpose units of local government such as towns and counties because they possess more power to govern themselves in local matters without state interference. That is, cities and villages are granted broad authority under the Wisconsin constitution and statutes to govern themselves locally. The term used to describe this grant of authority to cities and villages is "home rule."

Significant differences between incorporated municipalities and towns include:

1. cities and villages can create tax incremental finance districts while towns lack such authority;
2. citizens in cities and villages can initiate ordinances and resolutions through the direct legislation process while citizens in towns lack such powers, and;
3. Cities and villages, unlike towns, can expand their boundaries through the annexation of unincorporated territory.
4. Cities and villages have extraterritorial subdivision approval powers; towns do not.

A town, like a city or village, is a local general-purpose unit of government. It is also, like a city or village, a body corporate and politic. However, unlike cities and villages, towns lack constitutional home rule powers. Towns are occasionally referred to as quasi-municipal corporations to distinguish them from cities and villages. In addition, towns are sometimes referred to as “unincorporated” in contrast to “incorporated” local general-purpose units of government (cities and villages). Unlike cities and villages, a town has only those powers that are conferred by statute, or may be necessarily implied from the statute.

DISTINCTIONS BETWEEN CITIES AND VILLAGES

While the powers of cities and villages are similar, there are differences in the way they are organized. Generally speaking, city government consists of a mayor or city manager and a common council. The mayor or manager is the chief executive officer and the council is the legislative arm of the city. The members of the council are elected from aldermanic districts and the mayor is elected at large. Typically, village government consists of a village board made up of trustees and a village president. The village board serves as the executive officer and legislative body of the village. The village president and the trustees are elected at large.

Since 1933, villages have had the same broad statutory home rule powers to change the structure of their local government or exercise corporate powers as cities.

The following is a summary of some of the differences between Wisconsin cities and villages:

- In cities, when district boundaries are coterminous, the office of alderperson may be consolidated with the office of county supervisor. In villages, only the office of village president may be so combined. A village changing to a city would not, however, thereby acquire greater representation on the county board, since supervisory districts are based on population.
- Mayors have more power than village presidents. A mayor has the veto power, is the city’s chief executive officer and is the head of the police and fire departments, except in cities that have adopted optional powers for police and fire commissions under sec. 62.13(6), Stats. Sec. 62.09(8), Stats. A mayor presides at common council meetings and votes on matters before the council only in cases of a tie. While the mayor is a member of the council, the mayor is not counted in determining whether a quorum is present at a meeting. Village presidents preside at village board meetings but are not considered the chief executive officer of the village. Village presidents do not have the veto power and, like any other trustee, may vote on all measures that come before the board. Village presidents are members of the village board and are counted in determining whether a quorum is present at the meeting.
- Nominations are generally made by caucus in villages and are always made by nomination papers in cities.
- All cities are required to have an official newspaper and to publish all legal notices, council proceedings and ordinances in it. In villages, no official newspaper is required, although publication in newspapers is required in some instances. Also, in villages only ordinances that impose a forfeiture must be published or posted.

- The list of statutory officers for cities is somewhat longer than for villages. For example, fire chiefs and police chiefs are listed as city officers in ch. 62, Stats., but they are not listed as village officers in ch. 61, Stats. However, both cities and villages are authorized to create additional offices not listed in the statutes and eliminate offices listed in the statutes. Other statutory city officers that are not mentioned as village officers in ch. 61, Stats., include comptroller, attorney, engineer, local health officer or local board of health, street commissioner and board of public works.
- Village presidents and trustees are officers of the peace, and may suppress riotous or disorderly conduct in public places and may command the assistance of private citizens. Formerly, city council members were given such powers. That statute, however, was repealed by the legislature in 1983.
- The extraterritorial zoning and plat approval jurisdiction of first, second and third class cities extends to the unincorporated area within three miles of their corporate limits. Fourth-class cities and villages have extraterritorial zoning and plat approval jurisdiction for only one and one-half miles beyond their corporate boundaries.
- In villages, a majority of the members-elect constitutes a quorum of the village board. In cities, two-thirds of the members of the common council constitutes a quorum, except that in cities having not more than five alderpersons a majority constitutes a quorum.

CLASSES OF CITIES

Wisconsin law divides cities into four classes for purposes relating to governmental administration and the exercise of corporate power. The division is based on population as determined by the last federal decennial census or a special interim census. The four classes of cities are as follows:

- Cities of one hundred and fifty thousand population and over constitute cities of the first class.
- Cities of thirty-nine thousand and less than one hundred and fifty thousand population constitute cities of the second class.
- Cities of ten thousand and less than thirty-nine thousand population constitute cities of the third class.
- Cities of less than ten thousand population constitute cities of the fourth class.

A city changes from one class of city to another only when all of the following conditions are met: (1) a federal census shows that the city's population has reached the required population; (2) provisions for any necessary changes in government have been duly made; and (3) a proclamation by the mayor (manager), declaring the change, has been published under ch. 985, Stats.

Presently, the City of Milwaukee is the only first class city in Wisconsin. There are twelve cities of the second class, twenty-five cities of the third class and 152 cities of the fourth class.

There are cities, such as Madison, whose populations would permit their inclusion in a higher or lower classification but which have not taken the two discretionary steps necessary to alter their official classification.

DISTINCTIONS AMONG CLASSES OF CITIES

For the most part, few differences exist between the structures of government in the first three classes of cities. Moreover, since all Wisconsin cities have home rule powers, both constitutional and statutory, the basic governmental powers of all classes of cities are essentially the same.

The greatest discrepancies in structure and authority exist between first class cities and the other classes of cities. In 1921, the legislature repealed all special city charters except the City of Milwaukee's and provided that cities would subsequently operate under ch. 62 of the Wisconsin statutes. The City of Milwaukee, at its discretion, was authorized to adopt the provisions of ch. 62, Stats., by simple ordinance. However, the legislature did not refer to the City of Milwaukee by name but rather as a "city of the first class."

Over the years, special grants of authority and other provisions relating to cities of the first class have been adopted with only the City of Milwaukee in mind. These laws include ch. 119, Stats., relating to the "Milwaukee school system;" sec. 62.50, Stats., governing police and fire departments in first class cities; sec. 62.73, Stats., relating to discontinuance of streets in first class cities; secs. 74.81, 74.83 and 74.87, Stats., authorizing first class cities to sell land for nonpayment of taxes; and secs. 65.01 to 65.20, Stats., relating to municipal budget systems in first class cities.

Fourth class cities have extraterritorial zoning and plat approval jurisdiction for only one and one-half miles beyond their corporate boundaries as contrasted with three miles for other classes of cities. Certain regulations with respect to firefighters also differ for fourth class cities

Library boards in fourth-class cities consist of seven members while library boards in cities of the second or third class consist of nine members. Library boards in first class cities consist of twelve members.

With respect to shared revenue and other financial provisions of the Wisconsin statutes, distinctions are based on population rather than class of city. In recent years little use has been made of class distinctions among cities except with respect to Milwaukee, the state's only first class city. Therefore, the act of changing from one class of city to another, except for the change from a second to a first class city, will have a relatively minor effect on the structure or powers of city government.

ANNEXATION AND DETACHMENT

Annexation is the process by which parcels of land in unincorporated areas come under the jurisdiction of adjacent cities or villages. Annexation in Wisconsin is a landowner-driven process. Landowners are motivated to annex their land into a city or village for different reasons, but generally it is the desire to obtain higher levels of service, such as sewer or water, that the town is unable or unwilling to provide. Cities and villages cannot unilaterally annex town territory unless the parcels are town islands in existence on December 2, 1973 or are owned by the municipality.

The following is a brief summary of the powers of annexation and detachment. The statutes provide several methods of annexation. These are:

- Direct Annexation (including Annexation by Unanimous Approval).
- Annexation by Referendum.
- Annexation of Town Islands in Existence on December 2, 1973.
- Annexation by Court Ordered Referendum under sec. 66.0219, Stats.
- Annexation of municipally owned territory under sec. 66.0223, Stats.

The most common method of annexation is direct annexation initiated by electors and property owners. Under this method, town territory contiguous to a city or village may be annexed when a petition signed by electors and property owners is filed with the city or village requesting that the described territory in which they reside or own property be annexed. The annexation becomes effective only after a city or village's governing body enacts an annexation ordinance by a two-thirds vote of all the members of the body. If a sufficient number of electors residing within the territory to be annexed petition for a referendum on the annexation within the statutory time limits, a referendum will be held in the area proposed for annexation. A majority vote against annexation nullifies the annexation or halts the annexation process from proceeding. A majority vote in favor of annexation validates the annexation or allows the annexation process to proceed.

Territory may be detached from any city or village and be attached to any city, village or town, to which it is contiguous, by following the procedures set forth in sec. 66.0227, Stats.

THE POWERS OF CITY AND VILLAGE GOVERNING BODIES

Because municipalities were created by the state, they have been referred to as “creatures of the state.” As creatures of the state, municipalities have no inherent powers and have only the powers given them. Wisconsin cities and villages have been granted extensive home rule powers. Home rule is the ability of cities and villages to govern themselves in local matters without state interference. Although Wisconsin municipalities enjoy broad home rule authority the legislature and Wisconsin courts have eroded that authority in recent years.

Wisconsin municipalities have two sources of home rule authority: constitutional and statutory or legislative.

The Constitutional home rule amendment, adopted in 1924, allows municipalities to determine their local affairs and government, subject only to the constitution and to legislative enactments of statewide concern that uniformly affect every city or every village. Wis. Const., Art. XI, § 3. However, the courts have recognized that because almost every municipal activity has some statewide effect, matters that are local affairs may also be matters of statewide concern.

The constitutional home rule amendment requires a municipality to exercise constitutional home rule through a charter ordinance. The courts have interpreted the constitutional home rule amendment as doing two things: First, it directly grants legislative power to municipalities by expressly giving cities and villages the power to determine their local affairs and government; second, it limits the legislature in its enactments in the field of local affairs of cities and villages.

To determine whether a municipality has validly exercised its constitutional home rule authority or whether the state legislature has unconstitutionally interfered with a municipality's local affairs, the legislative enactment, whether state or local, must first be classified as one of three kinds:

1. exclusively of statewide concern;
2. exclusively a matter of a municipality's local affairs and government; or
3. a "mixed bag." The "mixed bag" includes matters that are not exclusively of local or statewide concern.

The courts have recognized that many matters while of state-wide concern, affecting the people and state at large somewhat remotely and indirectly, at the same time affect individual municipalities directly and intimately, and therefore are properly considered local affairs.

If the matter is exclusively of statewide concern, the constitutional home rule amendment grants no power to a municipality to deal with it. The legislature may either delegate to municipalities a limited authority or responsibility to further public interests or may preempt the field by expressly banning local legislative action. Furthermore, when the legislature deals with matters that are primarily of statewide concern, it may deal with them free of any restriction contained in the home-rule amendment. Thus, the legislature can enact a law touching on a matter of statewide concern, which applies in one city and not in another, provided that the classification is proper.

If, however, the subject can be classified as an area primarily and paramountly a matter of the local affairs and government of the municipality, then the municipality is authorized by the home rule amendment to enact a charter ordinance regulating that subject matter. Furthermore, any state legislative delegation of authority to legislate on such a subject is unnecessary and any attempt by the legislature to preempt or ban local legislative action in such an area would be unconstitutional. Finally, if the legislature elects to deal with the local affairs and government of a city or village, its act is subordinate to a charter ordinance unless the legislature's act uniformly affects every city or village across the state.

If a matter falls into the "mixed bag" category, it is necessary to apply what is referred to as the "paramountcy" test — whether the legislative enactment in question is "primarily or paramountly a matter of local affairs and government under the home rule amendment or of 'state-wide concern. Although legislative pronouncements classifying a subject as a "local affair" or a "matter of state-wide concern," are entitled to great weight, they are not controlling and courts have the final say in deciding whether a matter is properly classified as primarily or paramountly a matter of "local affairs and government" under the home rule amendment or of "state-wide concern." Once the legislative enactment has been classified as being paramountly a matter of local affairs and government or a matter of statewide concern, it is analyzed accordingly.

The courts have classified the vast majority of legislative enactments falling into the mixed category as matters, which are paramountly of statewide concern.

The legislative or statutory grants of home rule power are found in secs 62.11(5) (cities) and 61.34(1) (villages), Stats. Statutory home rule power is separate and distinct from the constitutional home rule power. These grants of power are very broad and give the governing body of the municipality, except as otherwise provided by law, management and control of the municipality's property, finances, highways, navigable waters, and the public service. The statutes empower the governing body to act for the government and good order of the municipality, for its commercial benefit, and for the health, safety, and welfare of the public, and authorize the governing body to carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary means.

Unlike constitutional home rule, legislative or statutory home rule is not limited to local affairs and government. Municipalities may act even in matters of statewide concern when exercising statutory home rule powers although there are limits to what they can do.

Municipalities may enact ordinances in the same field and on the same subject covered by state legislation where such ordinances do not conflict with, but rather complement, the state legislation. However, a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required or authorize what legislation has forbidden. If the state has expressed through legislation public policy concerning a subject, a municipality cannot ordain an effect contrary to or in qualification of the established public policy unless there is a specific, positive, lawful grant of power by the state to the municipality to so ordain.

Where a municipality acts within the legislative grant of power but not within the constitutional initiative, the state has the authority to withdraw the power of the municipality to act. The Wisconsin Supreme Court has devised a four-part test for determining whether such a legislatively intended withdrawal of power, which would necessarily nullify the local ordinance, has occurred. If any one of the following questions is answered with a “yes,” the ordinance will fail.

1. Whether the legislature has expressly withdrawn municipalities’ power to act?
2. Whether the ordinance logically conflicts with the state legislation?
3. Whether the ordinance defeats the purpose of the state legislation?
4. Whether the ordinance goes against the spirit of the state legislation?

While it appears municipal home rule is alive and well in Wisconsin, a closer look shows a disturbing trend. The courts have been willing to allow implied preemption and the legislature has, with increasing frequency, preempted local regulation or allowed local regulation only when it strictly conforms to state legislation.

EMERGENCY POWERS

In the event of an emergency, Wisconsin municipalities are empowered, despite any other provision of law to the contrary, to declare, by ordinance or resolution, an emergency existing within the city, village or town. “This power exists whenever conditions arise by reason of war, conflagration, flood, heavy snow storm, blizzard, catastrophe, disaster, riot or civil commotion, acts of God, and including conditions, without limitation because of enumeration, which impair transportation, food or fuel supplies, medical care, fire, health or police protection or other vital [municipal] facilities....”

The ordinance or resolution must limit the emergency period to the time during which the emergency conditions exist or are likely to exist. The governing body’s emergency power includes the authority to order, by ordinance or resolution, whatever is “necessary and expedient for the health, safety, welfare and good order of the [municipality] in the emergency and includes without limitation because of enumeration the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the local highways.”

If the municipal governing body cannot meet promptly because of the emergency, the chief executive officer or acting chief executive officer is empowered to exercise by proclamation all of the powers conferred upon the governing body which the officer believes necessary and expedient. Any such proclamation is subject to ratification, alteration, modification or repeal by the governing body as soon as it can meet, but the subsequent action taken by the governing body does not affect the prior validity of the proclamation.

State law requires that municipalities adopt an effective program of emergency management consistent with the state plan of emergency management and appoint a head of emergency management services. The head of emergency management services is responsible for developing and promulgating emergency plans consistent with state plans, directing the emergency management program, directing local emergency management training programs and exercises, advising the county head of emergency services and performing other duties relating to emergency management required by the governing body.