



Wisconsin Cities Have Class!

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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 set forth in Wis. Stat. sec. 62.05(1) as follows:

Cities of 150,000 population and over constitute cities of the first class.

Cities of 39,000 and less than 150,000 population constitute cities of the second class.

Cities of 10,000 and less than 39,000 population constitute cities of the third class.

Cities of less than 10,000 population constitute cities of the fourth class.

Milwaukee is Wisconsin's only first class city. According to information from the Department of Administration, Wisconsin has 16 second class cities, 30 third class cities, and 143 fourth class cities.

Altering City Classifications

A city changes its class only when all of the following conditions are met:

- A federal census shows that the city's population has reached the required population;
- Provisions for any necessary changes in government have been duly made; and
- A proclamation by the mayor (manager), declaring the change, has been published under ch. 985.

Sec. 62.05(2), Stats. There are cities whose population would permit their inclusion in a higher or lower classification (e.g., Madison) but that have not taken the two discretionary steps necessary to alter their official classification. Wisconsin Statute sec. 990.001(15) expressly provides that "[i]f a statute refers to a class of city specified under s. 62.05(1), such reference does not include any city with a population which makes the city eligible to be in that class unless the city has taken the actions necessary to pass into the class under s. 62.05(2)." Section 990.001(15), Stats., was enacted in response to *City of Madison v. Town of Fitchburg*, 112 Wis.2d 224, 332 N.W.2d 782 (1982), in which the Wisconsin Supreme Court treated Madison as a first class city even though it had not taken the steps to change its classification.

Classification Differences

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.

Structure & Authority

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 general law. That general law is Chapter 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 Wis. Stat. ch. 119 relating to the "Milwaukee school system;" Wis. Stat. sec. 62.50 governing police and fire departments in first class cities; Wis. Stat. sec. 62.73, relating to discontinuance of streets in first class cities; Wis. Stat. secs. 74.81, 74.83 and 74.87 authorizing first class cities to sell land for nonpayment of taxes; and Wis. Stat. secs. 65.01 to 65.20, relating to municipal budget systems in first class cities.

Budget Systems

Part of the municipal budget system applicable to first class cities may be adopted by cities of the second, third, or fourth class. Specifically, the common council of any second, third, or fourth class city may by ordinance adopted by three-fourths of all its members, accept the provisions of Wis. Stat. secs. 65.02, 65.03, and 65.04, relating to the creation of a board of estimates. Sec. 65.01. All cities besides the City of Milwaukee that have not adopted secs. 65.02, 65.03, and 65.04, are governed by sec. 65.90, when developing or modifying an annual budget.

Extraterritorial Jurisdiction

Fourth class cities have extraterritorial zoning and plat approval jurisdiction for only 1.5 miles beyond their corporate

boundaries as contrasted with three miles for other classes of cities. Wis. Stat. secs. 62.23(7a)(a) and 236.02(s).

Library Boards

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. Sec. 43.54(1)(a), Stats. Library boards in first class cities consist of 12 members as specified in sec. 43.54(1)(am), Stats.

Shared Revenue

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.

Miscellaneous Provisions

There are some miscellaneous regulations scattered throughout the statutes. For example, certain regulations with respect to firefighters differ for different class cities. See Wis. Stat. secs. 62.13(11a) (requiring all but fourth class cities to split firefighters into two or more platoons) and 213.13 (requiring minimum hours of rest for firefighters based on classification of city). Other differences are set forth in Wisconsin Administrative Code provisions (e.g., Wis. Adm. Code SPS 361.60(2)(c)). Any municipality intending to change from one class to another should ensure it understands what different requirements might come into play before making the change.

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Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire's responsibilities include supervising the legal services provided by the League, answering questions of a general nature for officials and employees of member municipalities, writing legal articles for the League's magazine and amicus briefs in appellate cases involving issues of statewide concern to municipalities, organizing an annual institute for municipal attorneys, and educating local officials on a variety of topics pertaining to their duties. In addition, she coordinates legal material for the League's web page. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org



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