



Elections Q & A

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May the same person run for more than one municipal office at the same election? For example, may a person run for the offices of village president and village trustee in the same election?

Yes. The same person may run for more than one local nonpartisan office at the same election. Wisconsin Stat. § 8.03(2m) provides that “a candidate may appear on the ballot for more than one local nonpartisan office at the same election.” However, if a person is elected to both offices, the incompatibility of offices doctrine would prohibit holding both offices. In *In re Appeal of Board of Canvassers of City of Bayfield*,¹ the Wisconsin Court of Appeals upheld the validity of ballots on which the same person received votes for mayor and alderperson. However, the court noted that the law allows a person to hold only one of two incompatible offices and that when a second incompatible office is taken, the first is vacated. Thus, for example, although the same person may run for village trustee and president, that person may hold only one of those offices. If the person winning both seats chooses to be sworn in as village president, the trustee office will be vacant and the village board can then fill the village trustee vacancy pursuant to Wis. Stat. § 17.24.

Which city and village offices are filled by election?

Wisconsin law requires that governing body members (mayors, alderpersons, village presidents, and trustees) and municipal judges be elected by the voters, although a vacancy on the governing body may be filled by appointment.²

Other municipal officers, with the exception of police and fire chiefs in municipalities required to have police and fire commissions,³ may be selected by one of the following methods:

1. Election;
2. Appointment by the mayor or village president;
3. Appointment by the mayor, or village president, subject to governing body confirmation;
4. Appointment by the governing body; or
5. Selection under any of the above methods pursuant to a civil service system.⁴

In villages, in addition to election of governing body members, the statutory default provides for an elected clerk, treasurer, assessor,⁵ and constable.⁶

Municipalities may change the method of selection by charter ordinance pursuant to Wis. Stat. §66.0101.⁷

What are the standard terms of office for elected municipal officers? Can a municipality change the terms of office for elected officials?

Unless otherwise provided, the term of office for all city and village elective officers is two years.⁸ The regular term of office for village presidents, trustees, mayors, and alderpersons begins on the third Tuesday of April in the year of their election. The regular term of office for other village and city officers begins on May 1 following their election unless otherwise provided by ordinance or statute. A village or city may change the term of office by charter ordinance.⁹ Also, a common council may, by regular ordinance adopted by a recorded 2/3 vote of all members, divide the city council into two sets of alderpersons and have one set elected for two years and the other for four years and thereafter have the term of alderpersons be four years.¹⁰

Municipal judges have four-year terms unless a different term, not exceeding four years or less than two years, is established by charter ordinance. The municipal judge’s term begins on May 1 in the year of their election.¹¹

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1. *In re Appeal of Board of Canvassers of City of Bayfield*, 147 Wis. 2d 467, 433 N.W.2d 266 (Ct. App. 1988).
 2. Wis. Stat. §§ 61.197, 62.09(3), 64.04 and 64.05(2); Wis. Stat. §§ 17.23, 17.24.
 3. Regardless of the method of selection used for police and fire chiefs, their tenures may not be for a defined term because they hold their offices during good behavior and are only subject to suspension or removal for cause.
 4. Wis. Stat. §§ 61.197, 62.09(3) and 66.0509.
 5. However, no assessor may be elected (or appointed) if the village has come within the jurisdiction of a county assessor under Wis. Stat. § 70.99.
 6. Wis. Stat. § 61.19.
 7. Wis. Stat. §§ 61.195, 61.197, and 62.09(3).
 8. Wis. Stat. §§ 61.20(1), (2) and 61.23(1); Wis. Stat. § 62.09(5)(b).
 9. Wis. Stat. §§ 61.195, 66.0101; Wis. Stat. § 62.09(5)(b).
 10. Wis. Stat. § 62.09(5)(c).
 11. Wis. Stat. § 755.02.

When is a referendum advisory and when is it binding? When must a municipality hold a binding referendum? When can a municipality hold an advisory referendum?

Generally, a referendum is advisory unless there is a statutory or local requirement that makes it binding. Examples of statutory requirements to hold a binding referendum include the following: petitions for annexation by referendum (Wis. Stat. §§ 66.0203(2) and 66.0211), referendum to exceed levy limit (Wis. Stat. § 66.0602(4)), and issuing bonds for purposes other than those listed in Wis. Stat. § 67.05(5).

Although no specific statutory provision authorizes municipalities to conduct advisory referenda,¹² the broad grant of statutory home rule power to villages (Wis. Stat. § 61.34) and cities (Wis. Stat. § 62.11(5)) alleviates the need for a specific grant. In past opinions the League has consistently concluded that municipal governing bodies may submit advisory referenda to the electors and the results of such referenda are, by their very nature, not binding on the governing body.¹³

Although no statutes specifically govern advisory referenda, state law contemplates advisory referenda. Wisconsin Stat. § 8.06 provides that municipalities may call special elections for any purpose authorized by law and § 5.02(16s) defines “referendum” as “an election at which an advisory, validating or ratifying question is submitted to the electorate.” Additionally, the Wisconsin Supreme Court has by implication recognized the existence of advisory referenda in the various cases in which it has invalidated attempts at direct

legislation under § 9.20 and declared that they have the force only of advisory referenda.¹⁴

Although various other sections refer to referenda, such as §§ 5.64(2) (referendum ballot) and 7.15(2)(d) (clerk’s duties when a municipality conducts a referendum), municipal advisory referenda are not explicitly covered by the statutes. In the past, the League has opined that, since there are no specific provisions concerning municipal advisory referenda, a municipality may hold such a referendum whenever it pleases and may follow whatever notice and ballot form it chooses. However, the Wisconsin Elections Commission (WEC) stated the following in a July 4, 2018 communication to clerks summarizing guidance that the WEC and its predecessor agencies, the Government Accountability Board and the State Elections Board, have provided to local election officials regarding advisory referendum petitions and elections:¹⁵

An advisory referendum election is a public election subject to all of the procedural requirements as other elections, including the posting and publication of election notices; responsibilities of clerks, special voting deputies and election inspectors; absentee ballot procedures; use of electronic voting equipment; and canvassing of election results. Specifically, Wis. Stat. § 5.64(2) governs the form of the referendum ballot. Also, in the case of an advisory referendum that is not scheduled on the date of a regular election, Wis. Stat. § 8.55 governs election notice requirements for a special referendum.

Is a village or city required to hold a referendum election on an issue merely because a resident or group of residents requests one by petition?

No. The instances in which a resident or resident group may compel a governing body to hold a referendum election using a petition or otherwise are limited to those circumstances specified by state law or local ordinance. For example, state law requires a referendum be held in some annexation actions if a sufficient number of qualified petitioners file a referendum petition.¹⁶ Likewise, a referendum would result from a proper petition for direct legislation (see Elections 593 for an in-depth discussion of direct legislation petitions) and the governing body’s failure or refusal to adopt the proposed ordinance or resolution.¹⁷ In the absence of a specific statute such as these or a local ordinance, a governing body has no legal obligation to hold a referendum election on an issue solely because residents request one by petition.

What is a charter ordinance and how does a municipality adopt one?

A charter ordinance creates or revises any part of the charter of a city or village. Charter ordinances are used when a municipality elects not to be governed by state laws relating to its local affairs and government, other than laws enacted by the legislature that are of statewide concern and with uniformity affect every city and village.¹⁸ In Wisconsin, the general city charter law is Chapter 62 of the Wisconsin Statutes (specifically, §§ 62.01-62.26) and applies to all cities except Milwaukee, which has a special charter. The village charter law is Chapter 61 and applies to all villages.

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12. In contrast, Wis. Stat. § 59.07(67) expressly authorizes counties to conduct a countrywide referendum for advisory purposes.

13. See Elections 565, 578, 593 and Powers of Municipalities 730.

14. See, e.g., *Landt v. City of Wisconsin Dells*, 30 Wis. 2d 470, 141 N.W.2d 245 (1966).

15. See WEC Advisory Referendum Petitions Frequently Asked Questions 6 available online at <https://elections.wi.gov/node/5919>.

16. Wis. Stat. § 66.0217(3).

17. Wis. Stat. § 9.20(4).

18. Wis. Stat. § 66.0101(1m), (4).

There are a number of different ways municipalities can adopt a charter ordinance under Wis. Stat. § 66.0101. However, a charter ordinance is originated in only two ways: by the governing body or by petition of the electors. A charter ordinance initiated by a governing body may be adopted by the governing body or submitted to the electorate for adoption. A charter ordinance initiated by and adopted by a municipal governing body needs a two-thirds vote of the members-elect of the city council or village board to be valid.¹⁹ However, a charter ordinance is not effective until 60 days after its passage and publication. If within the 60 days a petition signed by a number of electors in the municipality equal to not less than 7 percent of the votes cast for governor in the last general election is filed with the municipal clerk, then the charter ordinance must be submitted to a referendum and does not become effective unless approved by a majority of the electors who vote in the referendum.²⁰

Additionally, the governing body may, after adoption, submit the charter ordinance to a referendum without waiting for a petition by the electors. The charter ordinance would then become

effective if approved by a majority of the electors who vote. A governing body can also simply decide, by a majority vote, to submit a charter ordinance to a referendum, without an initial petition requiring them to do so and without adoption of the charter ordinance by the governing body. The charter ordinance would then become effective when approved by a majority of the electors voting.²¹

A charter ordinance initiated by the municipal governing body for adoption at a referendum requires only a majority vote of the members-elect of the city council or village board. Such ordinance would be submitted to a referendum vote for adoption and would be effective if approved by a majority of the electors voting.

A charter ordinance must be published as a class 1 notice. The municipal clerk must also record an adopted charter ordinance in a permanent book kept for that purpose, with a statement of the manner of its adoption. The clerk must also file a certified copy of the charter ordinance with the secretary of state who, in turn, is required to keep and publish

a list of charter ordinances arranged in alphabetical order by municipality.²²

What is a caucus?

The caucus is a method that villages may use for nominating candidates to be placed on the Spring Election ballot. Caucuses are governed by Wis. Stat. § 8.05(1). For more information on caucuses, see the Wisconsin Elections Commission’s publication *Procedures for Nomination of Candidates by Caucus*, available at https://elections.wi.gov/sites/elections.wi.gov/files/publication/65/caucus_manual_rev_2017_08_pdf_17108.pdf

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19. Wis. Stat. § 66.0101(2)(a).
 20. Wis. Stat. § 66.0101(5).
 21. Wis. Stat. § 66.0101(7).
 22. Wis. Stat. § 66.0101(3).



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