

**STRUCTURE AND ORGANIZATION OF
CITY OF WAUKESHA GOVERNMENT**

OPEN MEETINGS LAW OVERVIEW

PUBLIC RECORDS LAW OVERVIEW

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I. Three Basic Statutory Forms of City and Village Government

- A. Mayor/council
- B. Council/manager
 - 1. Legislative authority with council
 - 2. Administrative powers with manager appointed by council
- C. Commission form of government - has not been used since 1957

II. Waukesha Mayor/Council

- A. Traditional form of government used in most cities throughout the state with corporate authority vested in common council
- B. Is the legislative part of city government
- C. Mayor-Chief Executive Officer
- D. Types of mayor/council governments
 - 1. Weak system - characterized by shared administrative responsibility among mayor, elected administrative officers, various boards and independent appointed officials. Most Wisconsin cities, including Waukesha, generally fall within the weak mayor category
 - 2. Strong system - responsibility and accountability in the mayor's office would include preparation of an executive budget, administrative supervision over governmental services

III. Mayor/Council Relationship

- A. Mayor presiding officer
 - 1. Decides points of order, subject to appeal of the majority of the council
 - 2. Maintains order at council meetings
 - 3. Mayor's rulings must conform with statutory requirements (normally minimal) and local adopted rules
 - 4. Not counted in determining whether a quorum is present
 - 5. Cannot vote unless there is a tie
 - 6. May break a tie vote on the confirmation of an appointment or appointment of an officer by the council
 - 7. When mayor does vote in case of a tie, vote is counted in determining the

sufficient number of the council has voted favorably or unfavorably on a given measure

B. Veto power

1. Extends to all legislative acts of the council except:
 - i. Public works contracts
 - ii. Direct legislation by the electorate
 - iii. Charter ordinances which have been approved in a referendum
 - iv. Inapplicable to appointments made or confirmed by the council
2. Approval of council action is officially given by signing legislation within 5 days of submission to mayor by the city clerk, disapproval expressed by mayoral veto within this 5-day period
3. Two-thirds vote of the members of the council may override mayoral veto

IV. Executive Functions of Mayor

A. Chief executive officer of the City

1. Supervises and directs the day to day operations of the City
2. Duty to take care that City ordinances and state laws are observed and enforced and that all City officers and employees discharge their duties
3. Duties are not merely ministerial but necessarily includes the right to exercise discretion and judgment
4. Mayor shall be the head of the police and fire departments

B. Common council president

1. During absence or inability of the mayor, shall have power and duties of the mayor except that the president shall not have the power to approve an act of the council which the mayor has disapproved by filing objections with the clerk

C. Appointments by the mayor

1. This varies from city to city as to which offices are filled by the mayor. Generally appointments made by the mayor are subject to confirmation by the majority vote of all members of the council

- i. Mayor has tie breaking vote on all council confirmation of appointments
2. When selection is made by the council, mayor has the right to make advisory opinions and to vote in case of a tie

D. Financial duties and powers

1. All municipal obligations must be executed by the mayor
2. Contracts, conveyances, are executed on behalf of the City by the mayor and city clerk unless otherwise provided by ordinance

E. Exofficio duties

1. May sit on boards and commissions
 - i. Water Utility Commission
 - ii. Planning Commission
 - iii. Other committees as authorized by ordinance
2. May vote on boards or commissions unless otherwise provided by law

F. Emergency powers

1. In case of war, riot, natural disaster and in any event that the common council cannot meet, the mayor by proclamation may exercise such emergency powers as are necessary and expedience for the health, safety, welfare and good order of the City. Any proclamation is subject to ratification by the common council as soon as it can meet

G. City Administrator

1. Waukesha has a City Administrator. This position is not provided for under Wisconsin law but it is rather a local decision by the Common Council to hire an administrator who works under the direction of the Mayor. The City Administrator is appointed by the Mayor with the approval of the Common Council.
2. Under the direction of the Mayor, the City Administrator's primary duties are to:
 - i. Prepare an executive budget; Sec. 4.01 Municipal Code
 - ii. Supervise Department Directors;
 - iii. Make recommendations to the Mayor and Common Council; and
 - iv. Perform such other tasks as are directed by the Mayor and Common Council.

V. Meetings of the Council

A. Notice Requirements

1. At least 24 hours in advance of meeting unless 24 hour notice is impossible and impracticable, in any event not less than 2 hours before the meeting
2. Contents
 - i. Notice should set forth time, place and subject matter of the meeting as is reasonably likely to apprise members of the public and news media

thereof

ii. A detailed agenda does not require exacting specificity so long as some general notice of the type of business of the type of business to be conducted at the meeting is provided and the general notice is not a subterfuge

iii. Consent Agenda

a. A subsection of a council agenda which contains matters that are routine, non-controversial and do not require a special vote or specific action by the council

b. No separate discussion or debate may be permitted on any matter on the consent agenda

c. Alderman may request removal of an item from the consent agenda without debate or vote

d. Council should consider the item at appropriate time during council's regular order of business

3. Posting. Some sort of direct notice to the public is necessary such as the posting of the notice in one or more public places where it is likely to be seen by the public or those who may be particularly concerned with the subject matter

Notice must be given to the City's official newspaper; written or telephonic communication to members of the news media is sufficient. Those members of media that specifically make a request

B. Quorum

1. In cities having more than 5 aldermen, 2/3rds of the entire council membership constitute a quorum. The mayor is not counted for purposes of determining quorum

C. Regular meetings

1. The council meets the first and third Tuesdays of the month/more frequent meetings can be determined by council rule

D. Special meetings

1. May be called by the mayor by issuing a written notice to each member delivered personally or at usual place of abode six hours before the meeting

E. Open meetings

1. All meeting of government bodies, committees, boards and commissions must be conducted in open session with certain limited exceptions.
(Discussed in Open Meetings outline)

2. Right of public to attend a government meeting does not necessarily imply a right to participate in the conduct of the meeting

F. Recording of votes

1. Aye or nay vote must be recorded
 - i. On appointments
 - ii. Adoption of any measure assessing or levying taxes
 - iii. Appropriating or disbursing money
 - iv. Creating any liability or charge against the City or any City fund
2. Any member of the council may also require an aye or nay vote
3. Secret ballots prohibited except for election of the common council president

G. Publication of Proceedings

1. Must be published as required by state law
 - i. Class 1 notice in designated local newspaper

VI. Committees

A. Standing Committees

1. No provision under state law for appointment of committees by common council
2. Purpose
 - i. Council delegates various types of preliminary work to committees
 - ii. May conduct investigations
 - a. Make detailed studies of pending proposals
 - iii. Conduct hearings - license revocations
3. Subject to open meetings law
4. Weakness - tendency of the council to interfere with administrative detail. As reflected in the League of Municipalities handbook, "this tendency is undoubtedly increased by the use of committees who members desire to be informed on the minute workings of each department. This result is the over attention to the details of administration and the lack of emphasis on long range problems and broad policy matters."

B. Committee of the Whole

1. Governing body may convene to consider new matters
2. Public may be heard. Advice of boards or commissions may be sought. The resulting recommendation is made to the common council at its regular meeting
3. Recommendation at the committee of the whole does not preclude debate at the regular council meeting

- C. Statutory Boards and Commissions
 - 1. Police and Fire Commission
 - 2. Plan Commission
 - 3. Water Utility Commission
 - 4. Board of Public Works
 - 5. Zoning Board of Appeals
 - 6. Board of Review
 - 7. Board of Park Commissioners
 - 8. Library Board
- D. Boards and Commissions Created by Ordinance
 - 1. Chapter 3 of the Municipal Code
 - Examples:
 - i. Board of Building Appeals
 - ii. Architectural Review Board
 - iii. Ethics Board

VII. U.S. Constitution and Laws

- A. Equal Protection of Laws (14th Amendment)
 - 1. Laws, including ordinances, must have a rational basis.
Example: Can't have an ordinance requiring homosexuals to register with the City
- B. Due Process of Laws (14th Amendment)
 - 1. Fair hearing
Example: License denial hearing for City News
 - 2. Fair compensation
Example: Ch. 32, Wis. Stats., implements this
- C. Federal Civil Rights Suits
 - 1. Sec. 1983 action as main tool to enforce constitutional rights
 - 2. Attorney Fees even if plaintiff loses
Example: Internet use at Library
- D. Some Common Examples of Federal Mandates and Limitations
 - 1. Commercial drivers licenses for municipal employees
 - 2. Fair Labor Standards Act sets parameters for what City can bargain regarding hours and wages

3. Safe Drinking Water Act regulates radium in drinking water, also amount of chlorine
4. Family Medical Leave Act allows employees to take unpaid leave for family emergencies
5. Americans with Disabilities Act forced inclusion of an elevator in new Park building
6. Telecommunications Act of 1996 limits our regulation of the placement of satellite dishes and limited regulation of cable TV operators

VIII. State of Wisconsin Constitution and Laws

- A. Constitution says municipalities are a creation of the legislature; they do not have an independent existence
- B. Home Rule: you can only legislate in matters of local, not statewide concern. The latter is the province of the legislature, once it acts-you can't
- C. Some common examples of state mandates and limitations:
 1. Ch. 62 & 66 regarding public works contracts; the new City purchasing policy cannot and does not apply to such contracts
 2. Ch. 196 and DNR regarding PSC regulation of Water Utility
 3. Ch. 111 regarding discrimination based on age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, or use of unlawful products off the job.
 4. Ch. 111.70 regarding negotiation of wages, hours and conditions of employment
 5. Ch. 62.13 Police and Fire Commission has jurisdiction over personnel matters; common council has budget jurisdiction only
 6. Ch. 70 method of property taxation and granting exemptions

IX. General Rules to Guide Your Policy-Making

- A. Because federal and state regulation has become so pervasive in so many areas, protect the City's interest before taking action by requesting a review by the City Attorney as to the legality of your proposed action
- B. Ask for review of all new and amended ordinances prior to adoption
- C. Ask for review of all administrative actions prior to taking them
- D. Our door is open: stop in, call, or e-mail