

## CHAPTER 61.

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**61.01 Incorporation; area and population.** Any part of any town or towns not included in any village, lying in the same county or in 2 or more adjoining counties, not more than one half square mile in area, with a resident population of not less than 150; or of a greater area than one half square mile and a population of not less than 200; or not less than one square mile in area, with a population of at least 400 persons to every square mile thereof, may, upon application therefor by not less than 5 taxpayers and residents of such territory and upon compliance with the conditions of this chapter, become incorporated as a village by such name as may be designated in the order of the court for its incorporation with the ordinary powers of a municipal corporation, and such as are conferred by the statutes, except that no territory used principally for tourist or summer resort purposes, shall be so incorporated where one half or more thereof, in area, is owned by persons who are not qualified, because of nonresidence, to vote in the state or in the town in which is located the land so owned; unless the majority of the nonresident owners, by petition, consent to the incorporation thereof.

**History:** 1957 c. 97.

An application for incorporation of a village must be denied if at the time the petition for incorporation is filed there are pending valid annexation proceedings begun in good faith to annex to an adjacent city a part of the territory included in the proposed village. Where a pending proceeding to annex certain territory to a city is not shown to be valid on its face either by reason of the annexation petition containing an allegation that it is signed by the number of electors and property owners required by 62.07 (1) (a), or by proof of such compliance with the statute affirmatively appearing in the proceedings of the city council, it is necessary for the court in the incorporation proceeding to determine whether a valid annexation petition bearing sufficient signatures was pending before the council at the time of the filing of the incorporation petition. In relation to whether the incorporation petition should be denied, those things which transpired in the annexation proceedings subsequent to the date of the filing of the incorporation petition are not to be considered in determining the validity of the pending annexation proceed-

ings. Also see note to this case under 62.07. In re Town of Preble, 261 W 459, 58 NW (2d) 187.

The "area" population-density formula is to be determined on the basis of the entire area of the proposed village, including both the water as well as the land area, and not solely with reference to the land area. (Fenton v. Ryan, 140 W 353, followed.) In re Village of Oconomowoc Lake, 264 W 540, 59 NW (2d) 662.

The fact that the proposed village boundaries practically isolate one portion of the town from the rest of the town except for a corridor of town land which connected the 2 parts does not invalidate the proposed incorporation. In re Village of Elm Grove, 267 W 157, 64 NW (2d) 374.

An area sought to be incorporated as a village must be an urban, developed community. Mere area and required population are not sufficient. The court must determine whether the area is a village in fact. A petition for incorporation is deficient if it fails to allege that the area is a village in fact or that facts or characteristics exist showing that fact. In re

Village of Oconomowoc Lake, 270 W 530, 72 NW (2d) 544.

A town, the territory of which would be affected by a proposed incorporation as a village, had an adverse interest in the incorporation proceedings, and had the right to demur to the petition for incorporation. In re Village of Oconomowoc Lake, 270 W 530, 72 NW (2d) 544.

a village or a city, residents in the territory proposed to be incorporated have an interest in the proceedings; but neither the furnishing of services nor the ownership of property by an existing city makes such city a resident in such territory so as to require its interpleader in actions contesting such incorporation proceedings. *Schatzman v. Greenfield*, 273 W 277, 77 NW (2d) 511.

**61.02 Survey; map; census.** The persons intending to make the application for the incorporation of such village shall cause to be made by a practical surveyor an accurate survey and map of the territory intended to be embraced within the limits of such village, showing the courses and distances of the boundaries and the quantity of land contained therein; which survey and map shall be verified by the affidavit of such surveyor affixed thereto. They shall also cause to be taken an accurate census of the resident population of such territory as it may be on some day not more than 10 weeks previous to the time of making such application, exhibiting the name of every head of a family and the name of every person a resident in good faith of such territory on such day, and the lot or quarter section of land on which he resides, which shall be verified by the affidavit of the person taking the same affixed thereto.

**61.03 Same; public may examine.** Such survey, map and census, when completed and verified as aforesaid, shall be left at the residence or place of business within such territory of some person residing therein, and there kept subject to examination at all reasonable hours by every person interested for a period of five weeks from the posting or first publication of the notice of such application as hereinafter provided.

**61.04 Notice of application to court.** The intending applicants shall give notice that they will apply on some day therein specified to the circuit court of the county in which such territory or a part thereof lies for an order incorporating such territory as a village by a name to be therein specified; and such notice shall describe the boundaries of such territory by courses and distances and specify the town or towns in which it lies, and state where such survey, map and census have been left and may be examined as aforesaid.

**61.05 Notice; publication.** If there be a newspaper printed within such territory, such notice shall be printed therein once in each week for 3 consecutive weeks previous to the time specified for making such application, and if there be no such newspaper such notice shall be posted in at least 3 of the most public places in such territory at least 3 weeks before the time so specified in said notice.

**61.06 Petition; accompanying documents.** Such application shall be by petition, subscribed by the applicants, and shall have annexed such survey, map and census and the affidavits verifying the same, and an affidavit that they were left and kept subject to examination as provided in section 61.03, together with a copy of the notice of application with an affidavit affixed thereto, of the publication or posting of the same as hereinbefore provided, and it shall be presented at the time specified in the notice for presenting the same or as soon thereafter as the applicants can be conveniently heard in respect thereto.

**61.07 Hearing; costs.** (1) If prior to the date set for a hearing upon such application there is filed with the court a petition protesting against the incorporation of such village, the court shall deny the application, after satisfying itself that such petition has been signed by a majority of the freeholders or the owners of more than one-half of the property by assessed value in the territory proposed to be incorporated; providing, however, that this section shall not apply to counties having a population of 250,000 or over.

(2) If such a petition is not filed, the court shall hear all parties interested for or against such application who shall seasonably appear; may in its discretion adjourn such hearing from time to time, direct a resurvey to be made or another census taken by whomsoever it shall appoint, and refer any question for examination and report thereon. Any town containing territory of the proposed new village shall upon application be a party and entitled to be heard on any matter pertaining to the right of such proposed territory to incorporate as a village.

(3) If the court shall deny such application, it may, in its discretion, by order, compel the applicants to pay such disbursements or any part thereof as shall have been incurred by the parties opposing the same. No petition for the incorporation of substantially the same territory shall be entertained for one year following the date of the denial of such application or the date of any election at which incorporation was rejected by the electors.

The denial of an application for the incorporation of a village which operates under (3) to delay a new proceedings for a half of the property value have signed and

filed a protesting petition under (1), or because on the hearing the court finds that the territory proposed to be incorporated does not have the characteristics of a village, but a denial of an application merely for failure of the applicants to comply with statutory procedural requirements does not so operate. In re Village of Elm Grove, 267 W 157, 64 NW (2d) 874.

If the statutory qualifications exist and the area within the proposed boundaries has the characteristics of a village, the size of the village and the location of its boundaries are matters within the choice of the electors of the territory proposed to be incorporated and not within the discretion of the court, and it is immaterial

that the proposed village limits do not include all of the territory which might have been included, or that the proposed area is so thickly settled as to leave little or no room for new residents. In re Village of Elm Grove, 267 W 157, 64 NW (2d) 874.

If the area proposed to be incorporated as a village has all the characteristics of a village and meets the requirements of 61.01 as to area and population, it is immaterial whether the territory proposed to be incorporated meets the qualification of a city of the fourth class in area and population, the court having no power in such case to require the territory to become a city rather than a village. In re Village of Elm Grove, 267 W 157, 64 NW (2d) 874.

**61.08 Order; contents; immaterial defects.** If the court, after such hearing, shall be satisfied of the correctness of any such survey or resurvey and census, that all the requirements of the statutes have been complied with, and that such territory as is proposed to be included contained, at the time such census was first or subsequently taken, the population in number and in proportion to the quantity of land therein required in section 61.01, it shall make an order declaring that such territory, the boundaries of which shall be therein set forth by courses and distances, shall be an incorporated village by the name specified in such application, if the electors thereof shall assent thereto as herein-after provided; and in such order it shall direct three persons of the town or towns in which such territory shall lie, to be named therein, to perform the duties of inspectors of election as herein required. If the order of incorporation as made by the court shall be irregularly or defectively entered the court or the presiding judge thereof may, at any time, sign and enter nunc pro tunc the proper order of incorporation, and the same may be recorded as herein provided within ten days after the actual signing of such order; any other irregularities or defects not going to the groundwork of the organization shall not be deemed to invalidate the incorporation of said village.

**61.09 Election.** (1) **NOTICE.** Such inspectors shall, without unnecessary delay, give notice of a meeting of the electors of the territory described in such order to be held within sixty days of the date of such order at some convenient place therein, to be specified in such notice, for the purpose of determining whether or not such territory shall be an incorporated village.

(2) **PUBLICATION OF NOTICE.** If there be a newspaper printed in such territory such notice shall be published therein once in each week for three successive weeks previous to such meeting; and if there be no newspaper so printed copies of such notice shall be posted in at least three of the most public places in such territory at least three weeks previous to such meeting.

(3) **HOW CONDUCTED.** Such inspectors shall preside and act as inspectors of election at such meeting, and may designate one of their number or some other person as clerk thereof. The ballot shall contain the words "For Incorporation" and "Against Incorporation" and shall otherwise conform to the provisions of subsection (8) of section 6.23. The polls shall be opened and closed; vacancies in the board of inspectors shall be filled and such election shall be conducted and votes canvassed according to the statutes regulating town meetings; and all laws relating to elections for town officers shall apply to and govern such meeting and the proceedings thereof and the persons voting thereat so far as properly applicable and consistent therewith.

(4) **CANVASS; STATEMENT TO BE RECORDED.** The inspectors who shall have presided at such meeting shall make a statement of the holding of such meeting showing the whole number of votes cast, the number cast for incorporation, and the number cast against incorporation, which statement they shall verify by their affidavit annexed thereto, and cause said statement to be recorded in the office of the register of deeds of the county or counties in which such territory lies as provided in section 61.11.

**61.10 Village a corporation.** (1) **DATE OF; NAME.** If a majority of the votes cast at such meeting shall be against incorporation no further proceedings shall be had in respect to such incorporation under such application and order; but if a majority of such votes shall be in favor of incorporation the inhabitants of such territory shall, from the time of the recording of the order of the court aforesaid in the office of the register of deeds, be deemed a body corporate by the name specified in such order.

(2) **REMAINS PART OF FORMER ELECTION DISTRICT; WHEN.** If after any village shall have become incorporated there shall not remain, before the next ensuing judicial election or election for state or county superintendent or before any general election, time to comply with the provisions of any law relating to the holding of any such election, then and in that event such village shall, for the purposes of any such ensuing election remain a

part of the election district or districts to which the same was attached before said separation was had.

(3) **VILLAGE POWERS.** Every village incorporated under this chapter shall be a body corporate and politic, with the powers and privileges of a municipal corporation at common law and conferred by this chapter, these statutes and the constitution of the state of Wisconsin.

(4) **EXISTING ORDINANCES.** Ordinances in force in the territory comprising the village or any part thereof, so far as not inconsistent with the provisions of chapter 61, shall continue in force until altered or repealed.

(5) **INTERIM OFFICERS.** All officers of the town embracing the territory thus incorporated as a village shall continue in their powers and duties as theretofore until the first meeting of the board of trustees at which a quorum is present. Until a village clerk is chosen and qualified, all oaths of office and other papers shall be filed with the clerk with whom the petition was filed, who shall deliver them with the petition to the village clerk when he is qualified.

**History:** 1955 c. 104.

**61.11 Documents to be filed and recorded.** The petition and all accompanying papers and all such as have been added under the direction of the court, the order of the court for incorporation and the statement and affidavit of the inspectors aforesaid shall be recorded at length by the register of deeds within 10 days after such election, and be recorded at length in the office of the village clerk by him within 30 days after election and qualification. All necessary and proper expenses and charges attending upon the incorporation and such records thereof shall be paid by such village. Four certified copies of the order of the court for the incorporation of the village, to which shall be added an affidavit of the inspectors of election that the said election resulted in favor of the incorporation of such village, shall be filed in the office of the secretary of state; which certified copies and affidavits shall show the date originals were recorded in the office of the register of deeds. Two copies shall be forwarded by the secretary of state to the highway commission, and one copy shall be forwarded to the department of taxation.

**History:** 1955 c. 13.

**61.12 Election of officers.** Within ten days after the incorporation of such village as aforesaid the inspectors named in such order of the court shall give notice in the manner prescribed in subsection (2) of section 61.09, of the time, which shall not be more than thirty days after the date of such notice, and place of a meeting of the electors of such village to elect officers thereof; such meeting shall be held at some convenient place therein, to be specified in such notice.

**61.13 Conduct of election.** Such inspectors shall preside at such first election as inspectors thereof, and shall designate one of their number or some other person to act as clerk; and all the laws of this state in relation to the election of town officers and notification of their election shall apply to such first election so far as the same can be so applied and are consistent therewith. Vacancies in the office of inspector of elections shall be filled as provided for in the case of inspectors of town meetings.

**61.14 Canvass.** The inspectors of such first election shall canvass the votes given thereat and shall make and subscribe a certificate of such canvass, which shall show the whole number of votes given for each officer, the number given for each person voted for and the office for which each such person shall have been voted for. Such certificate shall be recorded in the records of such village and filed in the office of the clerk thereof.

**61.15 Validity of incorporation; how and when tested.** In any case whether occurring heretofore or hereafter, where any village shall have attempted to incorporate under and pursuant to the provisions of this chapter, and such village and its officers, shall have assumed thereafter in good faith to act under, and to exercise the powers conferred by, the provisions of law upon villages organized under this chapter, any question of the validity of such incorporation and proceedings therefor may be tested by certiorari, or by any other proper action or proceedings brought directly for the purpose of vacating or setting aside the same, at any time within 3 months after such incorporation, but not thereafter. No such incorporation, nor any proceeding for such incorporation, shall be in any manner called in question, or held to be invalid in any action or proceeding, except one brought directly for that purpose, within the time hereinbefore limited therefor, unless the same shall have been duly vacated or set aside by a court of competent jurisdiction.

**61.17 Taxes levied before incorporation; how collected and divided.** Whenever a village is incorporated from territory within any town or towns, after the assessment of taxes in any year and before the collection of such taxes, the tax so assessed shall be col-

lected by the town treasurer of the town or the town treasurers of the different towns of which such village formerly constituted a part, and all moneys collected from the tax levied for town purposes shall be divided between such village and such town or the towns, as the case may be, in the same manner provided by section 66.03, for the division of property owned jointly by towns and villages.

**61.187 Dissolution.** (1) **PROCEDURE.** Whenever an application in writing, signed by one-third as many electors of any village as voted for village officers at the next preceding election therefor, shall be presented to the village board praying for dissolution of the village corporation, such board shall submit to the electors of such village, for determination by ballot, in substantially the manner provided by sections 6.22 and 6.23, at a general election or at a special election called by them for that purpose, the question whether or not such village corporation shall be dissolved.

(2) **DATE OF; PROPERTY; CLAIMS; TERRITORY.** If two-thirds of the ballots cast at such election on such proposition shall be for dissolution such village shall, at the expiration of 6 months from the date of such election, cease to be an incorporated village. Within 6 months the village board shall dispose of the village property and settle, audit and allow all just claims against the village. It shall settle with the treasurer and other village officers, and cause the assets of the village to be used in paying its debts. If anything remains after paying such debts it may designate the manner in which the same shall be used. If there are not sufficient funds to pay the debts of the village the board may levy a tax to cover the deficiency, which shall be collected as other taxes and be paid out by the town treasurer in payment of the outstanding village orders or bonds; and in case of such dissolution the territory embraced in the village shall revert to and become a part of the town or towns from which it was taken or in which it is then located. Within 10 days after such election, if resulting in favor of dissolution, the village clerk shall file with the register of deeds and secretary of state certified copies of said petition and the determination of inspectors of election, and shall also file with the register of deeds one copy and with the secretary of state 4 copies of his own certificate showing date when such dissolution takes effect. Said documents shall be recorded by the register of deeds and proper marginal entry made on the page where original papers were recorded. The secretary of state shall forward 2 copies of the certificate to the highway commission and one to the department of taxation.

**History:** 1957 c. 525.

**61.189 Villages of 1,000 may become cities.** (1) Whenever the resident population of any village shall exceed 1,000 as shown by the last federal census or by a census as herein provided for, such village may become a city of the fourth class, and the trustees of such village may at a regular meeting, by a two-thirds vote of the members thereof, by resolution, so determine. Such resolution shall fix the number and boundary of the wards into which such city shall be divided and fix the time for holding the first city election, which shall not be less than 20 days from the date of such resolution, and shall therein name 3 inspectors and one clerk of election for each ward.

(2) The election shall be noticed and conducted and the result canvassed and certified as in the case of regular village elections and the village clerk shall immediately file with the secretary of state 4 copies of a certification certifying the fact of holding such election and the result thereof and a description of the legal boundaries of such village or proposed city and 4 certified copies of a plat thereof; and thereupon a certificate of incorporation shall be issued to such city as provided in s. 62.06 (6). Two copies of the certification and plat shall be forwarded by the secretary of state to the highway commission and one copy to the department of taxation. Thereafter such city shall in all things be governed by the general city charter law. All debts, obligations and liabilities existing against such village at the time of such change shall continue and become like debts, obligations and liabilities against such city, and such city may carry out and complete all proceedings then pending for the issue of bonds for improvements therein.

(3) If the last federal census figures are not used the village trustees shall cause to be taken an accurate census of the resident population of the village on some day not more than 10 weeks previous to the time of the adoption of such resolution, exhibiting the name of every head of a family and the name of every person a resident in good faith on such day and the lot on which he resides, which shall be verified by the affidavit of the person taking the same affixed thereto. The original of such census shall be filed in the office of the village clerk and a duly verified copy filed with the clerk of the circuit court of the county wherein such village is situated.

**History:** 1957 c. 525.

**61.19 Annual elections; appointments.** At the annual spring election in each village in odd-numbered years, except as otherwise provided herein, there shall be chosen

the following officers, viz.: A president, a clerk, a treasurer, an assessor, a supervisor, a constable, and a justice of the peace. Any village board may provide for additional justices to be elected in odd-numbered years and the board may change by ordinance the number of or abolish such additional offices. No reduction in the number of justices shall deprive any justice of his office. In villages in counties having a population of at least 250,000 no supervisor shall be elected and the other officers named shall be elected for a term of 2 years on the first Tuesday of April of each year in which is to be held a general election for state officers. Any other officers shall be appointed annually by the village board at their first meeting after the first Tuesday in April unless such board shall otherwise provide. No person not a resident elector in such village shall be elected to any office therein. The village clerk may appoint a deputy clerk for whom he shall be responsible, and who shall take and file the oath of office, and in case of the absence, sickness or other disability of the clerk, may perform his duties and receive the same compensation unless the village board shall appoint a person to act as such clerk.

A village justice of the peace can be elected for a full term only in odd-numbered years. 39 Atty. Gen. 550.

**61.195 Discontinuance and change of term of offices.** Any village may proceed pursuant to section 66.01 to discontinue the office of marshal or constable, to change the method of selection of or tenure of any officer other than members of the village board, supervisors and justices of the peace, or to consolidate any such office or offices, or to change the term of office of members of the village board and supervisors.

**61.197 Appointment of eligibles.** (1) Officers other than members of the village board, supervisors and justices of the peace except as provided in section 61.65, shall be selected by one of the following methods:

- (a) Appointment by the village president.
- (b) Appointment by the village president subject to confirmation by the village board.
- (c) Appointment by the village board.
- (d) Election by the voters of those officers so enumerated in section 61.19, unless otherwise provided pursuant to section 61.195.
- (e) Selection under any of the above methods, the selection to be from an eligible list established pursuant to section 66.19.

(2) Such officers shall continue to be selected in the manner prevailing on April 15, 1939, provided one of the above plans was in force on that date. Such method shall be continued until changed in the manner provided by section 66.01. However, any village may require that selection be made from an eligible list as specified under paragraph (e) of subsection (1) by the enactment of an ordinary ordinance.

See note to 61.34, citing *Thompson v. Whitefish Bay*, 257 W 151, 42 NW (2d) 462.

**61.20 Election of trustees; terms; number.** (1) Villages shall have 6 trustees, except as provided otherwise in sub. (3), whose term of office shall be 2 years, 3 of whom shall be elected each year.

(3) Villages having a population of 350 or less shall have 2 trustees, who together with the president shall constitute the village board, a majority of whom shall constitute a quorum. One trustee shall be elected each year for a term of 2 years.

(4) Any village may by ordinance change the number of trustees, but such change in the number of trustees shall not affect the term of office of trustees elected prior to the adoption of such ordinance authorizing such change.

**History:** 1957 c. 97.

**61.21 Clerk to notify officers-elect; oath of office.** Within 5 days after the election or appointment of any village officer the village clerk shall notify the person so selected thereof unless he voted at such election, and every person elected or appointed to any office named in section 61.19 except justice of the peace shall within 5 days after such election or appointment or notice thereof, when so required to be given, take and file the official oath.

**61.22 Official bonds; officers not to be sureties.** Every bond required of a village officer shall be executed with sufficient sureties in a sum fixed by the village board when not otherwise prescribed and be approved by the president. Whenever the village board shall deem any bond insufficient they may require an additional bond to be executed and filed in a sum and within a time not less than ten days, to be fixed by them. No village officer shall be accepted as a surety on any bond, note or other obligation to the village.

**61.23 Terms; temporary vacancy.** (1) Except as otherwise provided by statute the term of office of all village officers shall be 2 years and until their respective successors are elected or appointed and qualify. If any officer be absent or temporarily inca-

pacitated from any cause the board may appoint some person to discharge his duties until he returns or until such disability is removed.

(2) The regular term of office of village president and trustees and supervisor shall commence on the third Tuesday of April in the year of their election. The regular terms of other officers shall commence on May 1 succeeding their election unless otherwise provided by ordinance or statute.

**61.24 President.** The president shall be by virtue of his office a trustee and preside at all meetings of the board and have a vote as trustee, sign all ordinances, rules, bylaws, regulations, commissions, licenses and permits adopted or authorized by the board and all orders drawn on the treasury except as provided by ss. 66.042 and 66.044. He shall maintain peace and good order, see that the ordinances are faithfully obeyed, and in case of disturbance, riot or other apparent necessity appoint as many special marshals as he shall deem necessary, who for the time being shall possess all the powers and rights of constables. He shall have charge of the village jail, which he shall conduct in the manner provided in s. 62.09 (13) (e); but he may delegate this duty to the constable or any police officer of the village.

**History:** 1951 c. 560; 1955 c. 330.

**61.25 Clerk.** The village clerk shall execute and file an official bond. It shall be his duty:

(1) To perform any duties prescribed by law relative to elections, to keep subject to inspection all election returns required to be filed in his office, and to notify persons elected or appointed to village offices.

(2) To transmit to the county clerk, within ten days after election and qualification, a certified statement of the name and term for which elected, of the president, clerk, treasurer, supervisor and assessor; and to the clerk of the circuit court immediately after their election or appointment and qualification, a like statement of the time and term for which elected or appointed of every justice of the peace, marshal or constable of the village.

(3) To attend all meetings of the village board; to record and sign the proceedings thereof and all ordinances, rules, by-laws, resolutions and regulations adopted, and to countersign and keep a record of all licenses, commissions and permits granted or authorized by them, and for such purpose to keep the following books: A minute book, in which shall be recorded in chronological order all the papers mentioned in section 61.11; full minutes of all elections, general or special, and the statements of the inspectors thereof; full minutes of all the proceedings of the board of trustees; the titles of all ordinances, rules, regulations and by-laws, with reference to the book and page where the same may be found. An ordinance book, in which shall be recorded at length, in chronological order, all ordinances, rules, regulations and by-laws. A finance book, in which shall be kept a full and complete record of the finances of the village, showing the receipts, the date, amount and sources thereof, and the disbursements, with the date, amount and object for which paid out; and to enter in either such other matters as the board shall prescribe, and such other books as the board direct.

(4) To countersign and cause to be published or posted every ordinance, by-law or resolution as required by law, and to have proper proof thereof made and filed.

(5) To be the custodian of the corporate seal, and to file as required by law and to safely keep all records, books, papers or property belonging to, filed or deposited in his office, and deliver the same to his successor when qualified; to permit any person with proper care to examine and copy any of the same, and to make and certify a copy of any thereof when required, on payment of the same fees allowed town clerks therefor.

(6) To draw and countersign all orders on the village treasury ordered by the board and none other.

(8) To make a tax roll and deliver the same to the village treasurer; to make and transmit to the county clerk a statement showing the assessed valuation of all the property in the village and separately the amount of all taxes levied therein, including highway and street taxes, for the current year, and the purposes for which they were levied.

(9) To perform all other duties required by law or by any ordinance or other direction of the village board.

**61.26 Treasurer.** The village treasurer shall execute and file an official bond which may be furnished by a surety company as provided by section 204.07. It shall be his duty to receive all moneys belonging or accruing to the village from any source whatever or directed by law to be paid to him; to deposit upon receipt thereof the funds of the village in the name of the village in the public depository designated by the board, and failure to comply with the provisions hereof shall be prima facie grounds for removal from office, and when the money is so deposited, the treasurer and bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01, and the interest arising there-

from shall be paid into the village treasury; to pay the same only on the written order of the president, countersigned by the clerk and specifying the number thereof, the payee and the amount and the object for which drawn; to keep just and accurate detailed accounts of all such transactions, showing when, to whom and for what purpose all payments are made, in books provided by the village board, and preserve all vouchers filed in his office; to render an account and settlement of all his official transactions to the board at its last meeting prior to the annual election, and at all other times when required by them; to deliver to his successor when qualified all books of account, papers and property of his office and all money in his hands as treasurer, and to perform such other duties as are required by law or the village board. There shall be kept but one fund in the treasury, except as otherwise provided. The treasurer shall also execute the bond required by section 70.67 of the statutes and take receipt therefor, which he shall file in the office of village clerk. On receipt of the tax roll he shall, and while acting as collector of taxes, exercise the same powers and perform the same duties as are by law conferred upon and required of town treasurers while acting in that capacity, and be subject to the same penalties and liabilities.

**61.261 Deputy village treasurer.** The village treasurer, subject to approval by a majority of all the members of the village board, may in writing, filed in the office of the clerk, appoint a deputy who shall act under his direction and who during the temporary absence or disability of the treasurer or during a vacancy in such office shall perform the duties of treasurer. The deputy shall receive such compensation as the village board shall determine. The acts of such deputy shall be covered by official bond as the village board shall direct.

**61.27 Assessor.** In all villages the assessor shall take and file the official oath. He shall begin as provided by section 70.10 to make an assessment of all of the property in his village liable to taxation, in the manner prescribed by law. He shall return his assessment roll to the village clerk at the same time and in the same manner in which town assessors are required to do. His compensation shall be fixed by the village board.

**61.28 Marshal.** The village marshal shall execute and file an official bond. He shall possess the powers, enjoy the privileges and be subject to the liabilities conferred and imposed by law upon constables, and be taken as included in all writs and papers addressed to constables. It shall be his duty to obey all lawful written orders of the village board; to arrest with or without process and with reasonable diligence to take before the justice of the peace every person found in such village in a state of intoxication or engaged in any disturbance of the peace or violating any law of the state or ordinance of such village. He may command all persons present in such case to assist him therein, and if any person, being so commanded, shall refuse or neglect to render such assistance he shall forfeit not exceeding ten dollars. He shall be entitled to the same fees allowed to constables for similar services; for other service rendered the village such compensation as the board shall fix.

**61.29 Constable.** The constable shall execute and file an official bond, and shall be governed in every respect by the law prescribed for constables in towns.

**61.30 Justice of the peace; jurisdiction.** The justice of the peace shall within 10 days after his election, take and file the official oath and execute and file an official bond. He shall hold his office for 2 years from the time of his election and until his successor is elected and qualified. He shall have concurrent jurisdiction and powers throughout the county with other justices of the peace. If elected in a village situated in 2 counties said justice of the peace shall have jurisdiction in each of said counties the same as though the village lay wholly therein, and may hold court in one county while exercising jurisdiction in the other. If a defendant resides in either of said counties, venue upon appeal or certiorari in civil cases shall be in such county, otherwise in that one of said counties where the cause of action arose if it arose in either, otherwise in either county. In criminal cases venue upon appeal or certiorari shall be in the county where the offense was committed. In case of removal of a cause, the papers shall be transmitted to the nearest justice of the peace of the village competent to try the same, and if there be none such or he be absent or sick, then to the nearest justice of the peace of the county where a defendant was served, and in criminal cases, of the county where an offense was committed. He shall hold the police court and shall have exclusive jurisdiction of all cases arising under the ordinances and bylaws of such village. The village board may fix the compensation of the justice of the peace, in which event his fees in all cases arising under the ordinances and bylaws of such village, shall be collected and paid into the village treasury in the manner provided by s. 66.12.

**History:** 1955 c. 488.

**61.305 Police justice of the peace.** The village board of any village may create the office of police justice of peace in the manner provided by section 62.24, and thereupon such court shall have the same jurisdiction as provided by section 62.24 including the jurisdiction with respect to village ordinances as for city ordinances under section 62.24 irrespective of the provisions of section 61.30.

**61.31 Peace officers, who are.** (1) The president and each trustee shall be officers of the peace, and may suppress in a summary manner any riotous or disorderly conduct in the streets or public places of the village, and may command assistance of all persons under the same penalty for disobedience provided in section 61.28.

(2) Every village police officer shall possess the powers, enjoy the privileges, and be subject to the liabilities conferred and imposed by law upon village marshals.

**61.32 Village board; meeting; salaries.** The trustees of each village shall constitute a board designated the "Village Board of" (name of village) in which shall be vested all the powers of the village not specifically given some other officer. Four trustees shall constitute a quorum, except in villages having a population of 350 or less, but a less number may adjourn from time to time. The president shall preside at all meetings when present. In his absence the board may select another trustee to preside. Regular meetings shall be held at such time as may be prescribed by their bylaws. Special meetings may be called by any 2 trustees in writing, filed with the clerk, who shall thereupon seasonably notify all the trustees of the time and place thereof in the manner directed by the bylaws. All meetings shall be open to the public. The board shall keep a record of all its proceedings, and if there be a newspaper published in any village, the board shall cause the proceedings to be published therein in such manner as the board directs. If there is no newspaper published in the village, the board may cause the proceedings to be published in a newspaper having general circulation in the village, posted in several public places or publicized in some other fashion, in such manner as the board directs. Nothing herein shall be construed as requiring the republication of any proceeding, ordinance or other matter or thing which has already been published according to law, nor shall anything herein be construed to relieve any village from publishing any proceeding, ordinance or other matter or thing required by law to be published. Notwithstanding the provisions of s. 331.25 (2) the fee for any such publication shall not exceed the rates specified in s. 331.25 (1). The board shall have power to preserve order at its meetings, compel attendance of trustees and punish nonattendance and it shall be judge of the election and qualification of its members. The president and board of trustees of any village, whether operating under general or special law, may by a three-fourths vote of all the members of the village board determine that an annual salary be paid the president and trustees. Salaries heretofore established shall so remain until changed by ordinance and shall not be increased or diminished during their terms of office.

**History:** 1955 c. 398; 1957 c. 221.

**61.325 Trustee may be appointed president.** A village trustee shall be eligible for appointment as village president to fill an unexpired term.

**61.33 Trustees not to be interested in contracts.** No trustee shall be in any manner, directly or indirectly interested in any contract with or work or labor done for or material furnished to the village or to anyone on its behalf. In case of a violation of this section such trustee or officer shall forfeit not less than \$50 nor more than \$500. But the provisions of this section shall not apply to the designation of public depositories for public funds, nor to the publication of legal notices required to be published by any village, or by any village officer, at a rate not higher than that prescribed by law, nor to any contract not exceeding \$1,000 in any one year.

**History:** 1951 c. 70.

**61.34 Powers of village board.** (1) **GENERAL GRANT.** Except as otherwise provided by law, the village board shall have the management and control of the village property, finances, highways, streets, navigable waters, and the public service, and shall have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language.

(2) **CO-OPERATION WITH OTHER MUNICIPALITIES.** The village board, in behalf of the village, may join with other villages or cities in a co-operative arrangement for executing any power or duty in order to attain greater economy or efficiency, including joint employment of appointive officers and employes.

(3) **ACQUISITION AND DISPOSAL OF PROPERTY.** The village board may acquire property, real or personal, within or without the village, for parks, libraries, historic places, recreation, beautification, streets, waterworks, sewage or waste disposal, harbors, improvement of watercourses, public grounds, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the village, by means other than condemnation, for industrial sites; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for instruction, recreation, amusement and other public purposes; and may sell and convey such property. Condemnation shall be as provided by ch. 32.

(4) **VILLAGE FINANCES.** The village board may levy and provide for the collection of taxes and special assessments; may refund any tax or special assessment paid, or any part thereof, when satisfied that the same was unjust or illegal; and generally may manage the village finances. The village board may loan money to any school district located within the village in such sums as are needed by such district to meet the immediate expenses of operating the schools thereof, and the board of the district may borrow money from such village accordingly and give its note therefor. No such loan shall be made to extend beyond the thirtieth day of August next following the making thereof or in an amount exceeding one-half of the estimated receipts for such district as certified by the state superintendent of schools and the local school clerk. The rate of interest on any such loan shall be determined by the village board.

(5) **CONSTRUCTION OF POWERS.** For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of the home rule amendment to the constitution it is hereby declared that chapter 61 shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof.

**History:** 1957 c. 98.

A village may enact ordinances for the promotion of health and sanitation, but each ordinance must be consistent and not in conflict with the law of the state, and the power to compel property owners to connect with sanitary sewers, which is delegated to villages by 144.06, may be exercised only under certain prescribed conditions. *Voss v. Lenerz*, 256 W 183, 40 NW (2d) 519.

Under ch. 187, Laws 1933, a revision bill which among other things, repealed 61.34 (7), expressly authorizing a village board to appoint a village attorney, but created an omnibus new 61.34 (1) empowering the village board to "have the management and control of the village property, finances, \* \* \* and the public service," and the provision in ch. 187 that it should not deprive a village of any privilege, right, or power possessed on the effective date of the act, the power of the village board to have an attorney was intended to be retained, and the power of the board to appoint an attorney

was incorporated in 61.19 relating to the appointment of "officers" by the board; and thereunder, and under 61.197, a village attorney could be considered a public officer to whose appointment or selection the home-rule statute, 66.01, was applicable. *Thompson v. Whitefish Bay*, 257 W 151, 42 NW (2d) 462.

Generally, with certain exceptions, including zoning ordinances, an ordinance which prohibits the future use of property, but which permits the continuation of existing uses of the same kind, and hence discriminates in favor of those enjoying the existing use and against those who would make similar uses of their property, is void for such discrimination. *Katt v. Sturtevant*, 269 W 638, 70 NW (2d) 188.

See note to 144.08, citing *Fond du Lac v. Empire*, 273 W 333, 77 NW (2d) 690.

See note to 62.11, citing *Hermann v. Lake Mills*, 275 W 537, 82 NW (2d) 167.

See note to 30.06 citing 45 Atty. Gen. 23.

**61.35 Village planning.** The provisions of section 62.23 shall apply to villages, and the powers and duties conferred and imposed by said section upon mayors, councils and specified city officials are hereby conferred upon presidents, village boards, and village officials performing duties similar to the duties of such specified city officials, respectively. Any ordinance or resolution heretofore passed by any village board under the provisions of section 61.35 shall be and remain in full force and effect until repealed or amended by such village board; in case the village has no official paper, notices of public hearings specified in section 62.23 shall be posted in 3 public places in said village the number of days specified in the respective subsections of said section 62.23 prior to the date of the required hearing.

**61.36 Streets, sidewalks, sewers and watercourses.** The village board may lay out, open, change, widen or extend roads, streets, alleys, sanitary and storm sewers, parks and other public grounds, and improve, repair or discontinue the same or any part thereof, including lighting and tree planting, and may establish and open and construct drains, canals or sewers and alter, widen or straighten watercourses; may build, alter, repair or otherwise improve or vacate or discontinue sidewalks and crosswalks; and may build and maintain roads and sidewalks required to connect the village with any transportation terminal or village property outside of its limits.

**61.39 Service pipes and sewers.** The provisions of s. 62.16 (2), relating to service pipes, and s. 62.18, relating to sewers, shall be applicable to villages.

**History:** 1957 c. 131.

**61.44 Railroads, dust prevention.** (2) The village board may require any street railway, interurban railway, or railroad company, to cause its roadbed within the limits of said village, to a distance of one foot outside each rail, to be sprinkled with water or to be oiled, in such manner as to prevent dust from arising therefrom.

**History:** 1957 c. 131.

**61.46 Village taxes.** (1) **GENERAL; LIMITATION.** The village board shall, on or before the fifteenth day of December in each year, by resolution to be entered of record, determine the amount of corporation taxes to be levied and assessed on the taxable property in such village for the current year, which shall not exceed in any one year two per centum of the assessed valuation of such property. Before levying any tax for any specified purpose, exceeding one per centum of the assessed valuation aforesaid, the village board shall, and in all other cases may in its discretion, submit the question of levying the same to the village electors at any general or special election by giving ten days' notice thereof prior to such election by publication in a newspaper published in the village, if any, and if there be none, then by posting notices in three public places in said village, setting forth in such notices the object and purposes for which such taxes are to be raised and the amount of the proposed tax.

(2) **HIGHWAY.** The village board shall, at the same time and in like manner, determine the amount, if any, of highway tax to be levied and collected in such village for the current year, which shall not exceed in any one year one-tenth of one per centum on the assessed valuation of such property. Such highway tax shall thereafter be assessed and collected by the village treasurer at the time and in the manner provided for the collection of other village taxes; and such highway tax shall be kept as a separate fund, and shall be expended under the direction of the village board in the improvement of the streets, highways and bridges in said village.

**61.47 Street and sidewalk improvement tax.** For the purpose of improving the streets, making and improving sidewalks and crosswalks and setting out shade and ornamental trees in such village; the board may determine and fix an amount not exceeding seven mills nor less than one mill on the dollar of the assessed valuation of property in said village, in addition to the highway tax provided for in subsection (2) of section 61.46, and the amount fixed shall be levied, certified and collected as provided in these statutes. All moneys so collected shall be paid to the village treasurer and expended under the direction of the board of trustees.

**61.50 Ordinances; contracts; other instruments; how executed.** (1) **PUBLICATION OF ORDINANCES.** Every contract, conveyance, commission, license or other written instrument shall be executed on the part of the village by the president and clerk, sealed with corporate seal, and in pursuance only of authority therefor from the village board. All ordinances and bylaws shall be signed by the president and countersigned by the clerk; and, if any penalty or forfeiture is thereby imposed, shall be published, and shall take effect on the day after its publication or a later date if expressly prescribed, in some newspaper having a general circulation in said village or the village board may, in lieu of the printing thereof, have copies of said ordinances and bylaws posted in at least 3 public places in said village, and proof thereof filed and recorded by the village clerk, and the same shall take effect the day after the proof of posting has been filed and recorded, or at a later date if expressly provided in the ordinance or bylaw.

(2) **PROOF OF PUBLICATION.** Proof of such publication to be by the affidavit of the printer or foreman in the office of such newspaper, or of such posting by the affidavit of the party posting the same, which shall be attached to, filed and recorded with such ordinance or by-law, which, when done such record to be prima facie evidence of the facts therein stated. All ordinances shall be suitably entitled and in this style: "The village board of . . . do ordain as follows." All authorized ordinances and by-laws shall have the force of law and remain in force until repealed.

**History:** 1957 c. 560.

**61.51 Auditing accounts.** (1) No account or demand against the village shall be paid until it has been audited and allowed and an order drawn on the treasurer therefor. Every such account shall be made out in items. After auditing, which, at the option of the board, may be done by the village manager or such other officer as may be designated, the board shall cause to be indorsed by the clerk, over his hand on each account, the words "allowed" or "disallowed," as the fact is, adding the amount allowed, if any, and specifying the items or parts of items disallowed, if disallowed in part only. The minutes of the proceedings of the board, or a statement attached thereto, shall show to whom and for what purpose every such account was allowed and the amount. Every such account or demand allowed in whole or in part shall be filed by the clerk, and those of each year

consecutively numbered, and have indorsed the number of the order on the treasurer issued in payment, and the clerk shall take a receipt thereon for such order.

(2) Payment of regular wages or salaries may be by pay roll, verified by the proper official, and filed in time for payment on the regular pay day and such payments heretofore made are validated.

(3) The fiscal year in each village shall be the calendar year.

(4) Section 62.25 (1) shall be applicable to villages.

**History:** 1955 c. 488; 1957 c. 560.

**61.54 Bids on improvements.** (1) **WHEN VILLAGE MAY REJECT AND PERFORM WORK.** Whenever any village board shall, after notice duly given, have received bids for the grading of streets, construction of sewers, laying of pavements, sprinkling and cleaning of streets or for any other public work or improvement, or for the furnishing of materials therefor, and be of the opinion that such bids are fraudulent, collusive or greater in amount than the fair reasonable value of the work to be done or materials to be furnished, or if no bids are received, said village board may, by resolution and by the vote of two-thirds of its members, direct, and determine that the bids so received shall be rejected and that the work to be done, and materials to be furnished shall be performed and furnished by said village directly, and under the direction and supervision of the village board.

(2) **POWER OF BOARD.** Whenever the village board of any village shall determine to carry on any public work or construct any improvement under the provisions of this section it shall have the power to purchase and secure all necessary and proper tools and equipment with which to perform the same.

(3) **SPECIAL ASSESSMENT NOT TO EXCEED LOWEST BID.** The cost and expense of all work done and all materials furnished by any village under this section shall be collected in the same manner as if done and furnished by any other person under contract with said village, and the power to levy special assessments to defray such cost and expense shall be the same as is now, or as hereafter may be provided by law; provided, however, that the amounts assessed hereunder against any lands or interests specially benefited or otherwise liable therefor shall in no case exceed the amounts which would have been assessed against the same had the lowest bid so received as aforesaid been accepted, and that so much of such cost and expense as shall be in excess of such lowest bid shall be borne by said village at large.

**61.55 Contracts involving over \$1,000; how let.** All contracts for public construction, in any such village, exceeding \$1,000, shall be let by the village board to the lowest responsible bidder in accordance with s. 66.29 insofar as said section may be applicable.

**History:** 1957 c. 177.

**61.56 Alternative letting of contracts.** A village board may by ordinance provide that as a complete alternative to the requirements established by sections 61.54 and 61.55 the provisions of section 62.15 shall be applicable to village contracts. The authority vested in the board of public works shall in such case be exercised by the village board, or as delegated by the village board.

**61.61 Village orders; borrowing money.** No village or any officer thereof shall have power to issue any time or negotiable order, or borrow money, except in the manner and for the purposes expressly declared by statute.

**61.65 Police and fire departments; pension funds.** (1) Every village having a population of 5,000 or more, according to the last federal census, shall have a police department, and every village having a population of 5,500 or more shall have a fire department, with chiefs and subordinates; a board of police and fire commissioners; a police pension fund and a firemen's pension fund. All matters pertaining to the board and to appointments, promotions, suspensions, removals, dismissals, reemployment, compensation, rest days, sources of pension funds, control, management and administration of pension funds, eligibility for and payment of pensions, exemptions, organization and supervision of departments, contracts and audits, shall be administered, regulated and otherwise governed by the provisions of section 62.13 and amendments thereto, in so far as the same pertains to cities of the second or third class.

(2) In the carrying out of the provisions of this section, the following words, whenever used in said section 62.13, shall, unless the context otherwise requires, have the following meaning:

- (a) "Mayor" means village president.
- (b) "Comptroller" means village clerk.
- (c) "City Treasurer" means village treasurer.
- (d) "Council" means village board.
- (e) "City" means village.

(3) When the amount in the firemen's pension fund shall be fifty thousand dollars, only the income therefrom, with the other revenues of said fund, shall be available for the payment of pensions.

(4) Persons who are members of the police departments in villages of 5,000 or more, and members of fire departments in villages of 5,500 or more, according to the last federal census, shall automatically and without examination, become members of the police and fire departments of such villages under this section and shall be entitled to pension benefits, in accordance with the provisions of this section, for all prior service rendered.

(5) The provisions of this section shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of police and fire departments.

(6) No person who, prior to January 1, 1948, had not contributed to a police pension fund established pursuant to this section shall be permitted to contribute to such fund or become a member thereof on or after such date; nor shall he or his widow, child or dependent parent be, or become, entitled to receive any benefit from such fund. Any person who, after December 31, 1947, becomes a member of the police department in a village having a population of 5,000 or more according to the last federal census, or who was a member of such department on said date, but who, in each such case had not, on or before such date, properly contributed to a police pension fund established pursuant to this section, and who can otherwise qualify, shall be, or become, a participating employe under sections 66.90 to 66.918. If any such participating employe shall be entitled to a prior service credit, he shall be given such credit at the 2 rate unless the municipality by which he is employed shall have elected to become a participating municipality under said section, in which case the rate elected by such municipality shall be used.

(7) No person who, prior to January 1, 1948, had not contributed to a firemen's pension fund established pursuant to this section, shall be permitted to contribute to such fund or become a member thereof on or after such date; nor shall he or his widow, child or dependent parent be, or become, entitled to receive any benefit from such fund. Any person who, after December 31, 1947, becomes a member of the fire department in a village having a population of 5,500 or more according to the last federal census, or who was a member of such department on said date, but who, in each such case had not, on or before such date, properly contributed to a fireman's pension fund established pursuant to this section, and who can otherwise qualify, shall be, or become, a participating employe under sections 66.90 to 66.918. If any such participating employe shall be entitled to a prior service credit, he shall be given such credit at the 2 rate unless the municipality by which he is employed shall have elected to become a participating municipality under said section, in which case the rate elected by such municipality shall be used.

**61.71 Consolidated plats; numbering of buildings.** The village board may cause a revised and consolidated plat of the lots and blocks of the village to be recorded in the office of the register of deeds, and may compel the owners and occupants of all buildings within the village to number the same in such manner as the board may from time to time prescribe.

**61.72 Pest and disease prevention.** When a village board shall appropriate money for the control of insect pests, weeds, or plant or animal diseases, the state department of agriculture upon request of the village board shall co-operate with the village and shall provide technical assistance and direction for the expenditure of such funds.

**61.73 Village housing authorities.** The provisions of 66.40 to 66.404 shall apply to villages, and the powers and duties conferred and imposed by those sections upon mayors, councils and specified city officials are hereby conferred upon presidents, village boards and village officials performing duties similar to the duties of such specified city officials respectively. Any ordinance or resolution heretofore passed by any village board creating a housing authority in substantially the manner provided in sections 66.40 to 66.404 is hereby declared to be valid, and any village housing authorities whether heretofore or hereafter created shall be entitled to participate in any state grants-in-aid for housing in the same manner as city housing authorities created under the provisions of sections 66.40 to 66.404.

**61.74 Detachment of farm lands from villages.** Land of an area of 200 acres or more contiguous to the boundary of any village which has been within the corporate limits of such village for 20 years or more and which during all of said time has been used exclusively for agricultural purposes may be detached from such village and annexed to an adjoining town or towns in a proceeding as provided by s. 62.075 in the case of such detachments from cities. For the purpose of this section, the provisions of s. 62.075 govern wherever applicable, except the word "village" is substituted for the word "city" as used therein.