

## CHAPTER 62.

## CITIES, GENERAL CHARTER LAW.

62.01 Saving clause.	62.14 Board of public works.
62.02 Repeal of special charters.	62.15 Public works.
62.03 First class cities excepted.	62.16 Street grades; service pipes.
62.04 Intent and construction.	62.18 Sewers.
62.05 Classes of cities.	62.185 Sewer district bonds.
62.071 Annexations to cities of the 1st class.	62.19 Water and heat pipe extensions.
62.075 Detachment of farm lands from cities.	62.20 Payment for public work.
62.08 Alteration of wards.	62.21 Special assessments.
62.09 Officers.	62.211 Limitation on use of ss. 62.20 and 62.21.
62.11 Common council.	62.22 Acquiring property; opening or changing streets.
62.115 Defense of officers by city attorney.	62.23 City planning.
62.12 Finance.	62.25 Claims and actions.
62.13 Police and fire departments.	62.26 General provisions.
62.135 Contractual rights of firemen and policemen.	

**62.01 Saving clause.** That no inconvenience may arise by reason of change of government of cities from special charter to general charter, or by reason of the revision of the general charter law, it is declared that:

(1) All vested rights, pending actions and prosecutions, and existing judgments, claims, and contracts, both as to individuals and bodies corporate, shall continue as though no change had taken place.

(3) Ordinances in force, so far as not inconsistent herewith, shall continue in force until altered or repealed.

(5) Nothing herein shall change the time for paying taxes as provided in any special city charter until the council shall by ordinance change the same to conform to general law.

**62.02 Repeal of special charters.** All special charters for cities of the second, third and fourth classes are hereby repealed and such cities are hereby incorporated under chapter 62 of the statutes. The city clerk shall forthwith certify the boundaries of such city to the secretary of state, who shall file the same and issue to such city a certificate of incorporation as of the date when said chapter 62 became effective, and record the same.

**62.03 First class cities excepted.** (1) The provisions of chapter 62 of the statutes shall not apply to cities of the first class under special charter.

(2) Any such city may adopt by ordinance the provisions of chapter 62 of the statutes or any section or sections thereof, which when so adopted shall apply to such city.

Where a city of the first class by ordinance adopts a particular section of ch. 62, wholly incompatible with such statute as it constituting the General Charter Law, such adoption embraces any subsequent amendment which the legislature may thereafter make in the adopted statute which is not stood at the time the adopting ordinance was enacted. State ex rel. Cities S.O. Co. v. Bd. of Appeals, 21 W (2d) 516, 124 NW (2d) 809.

**62.04 Intent and construction.** It is declared to be the intention of the revision of the city charter law, to grant all the privileges, rights and powers, to cities which they heretofore had unless the contrary is patent from the revision. For the purpose of giving to cities the largest measure of self-government compatible with the constitution and general law, it is hereby declared that sections 62.01 to 62.26, inclusive, shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof.

**62.05 Classes of cities.** (1) Cities shall be divided into four classes for administration and the exercise of corporate powers as follows:

(a) Cities of one hundred and fifty thousand population and over shall constitute cities of the first class.

(b) Cities of thirty-nine thousand and less than one hundred and fifty thousand population shall constitute cities of the second class.

(c) Cities of ten thousand and less than thirty-nine thousand population shall constitute cities of the third class.

(d) Cities of less than ten thousand population shall constitute cities of the fourth class.

(2) Population of cities shall be determined by the last federal census, including a special federal census taken of such city, except in newly incorporated cities when a census is taken as provided by law. Cities shall pass from one class to another when such census shows that the change in population so requires, when provisions for any necessary changes in government are duly made, and when a proclamation of the mayor, declaring the fact, is published according to law.

**History:** 1961 c. 677.

**62.071 Annexations to cities of the first class.** (1) Except as provided in subs. (3) and (4), no petition for annexation to a city operating its schools under ch. 119 shall be considered which will result in detachment of more than 20% of the equalized value of a school district. Upon receipt of a petition for annexation the city clerk shall determine in the following manner whether the proposed annexation will result in such detachment. The equalized value of the school district shall be determined as of the date of filing the petition for annexation. The city clerk shall add to the equalized value of the territory proposed to be annexed, as of the date of filing the petition for annexation, the equalized value as of the date of such detachment of any territory detached within the 3 years previous to the filing of the annexation petition from the district in any manner, and he shall certify a copy of his determination to the school district clerk and the secretary of the county school committee. If the total of such value exceeds 20% of the equalized value of the district as of the date of filing the annexation petition, the proposed annexation shall not occur except as provided in subs. (3) and (4). All equalized values shall be determined by the state supervisor of assessments upon application by the city clerk. When more than one school district is involved in a proposed annexation, a separate determination shall be made for each district involved.

(2) If the common council wishes to consider the annexation petition, it shall direct the city clerk to notify the clerk of each school district concerned and the secretary of the county school committee that a petition for annexation, which will result in detachment of more than 20% of a school district, has been filed. Such notice shall be in writing and shall describe the territory proposed to be annexed and name the school district or districts from which it will be detached.

(3) If the area to be annexed by such proposal includes more than 20% of the equalized valuation of a district, as determined by sub. (1), then the electors residing in the remainder of such school district not included in the annexation petition shall be afforded an opportunity to determine whether such remaining area of the district shall be included with the area proposed to be annexed in the following manner. The school district clerk shall, within 20 days of receipt of the report from the city clerk, call a special meeting of the district according to s. 120.08 (2) for the purpose of voting on the question: "Shall the remainder of . . . . School District No. . . . . of the . . . . be included in the territory and petition for annexation to the City of . . . .?"

Yes  No

If the referendum at the special district meeting is decided in the affirmative, such remaining school district area shall be included within the coverage of the description in the annexation proposal and the annexation petition shall thereupon, without further notice, be considered amended to include all territory of the school district and s. 62.07 (1) shall be complied with for the entire area.

(4) If the vote at the school district referendum is negative, the annexation proceedings on the original petition may continue in the same manner as if less than 20 per cent of the district had been involved in the original petition.

**History:** 1967 c. 92.

**62.075 Detachment of farm lands from cities.** (1) PROCEDURE. When land used for agricultural purposes of an area of 200 acres or more contiguous to the boundary of any city, whether of one or more farms, which shall have been within the corporate limits of such city for 20 years or more, and during all of said time shall have been used exclusively for agricultural purposes, the circuit court of the county in which such land is situated shall enter judgment detaching such land from such city and annexing it to an adjoining town or towns, if the provisions of this section shall have been complied with. Such detachment and annexation thereof shall become effective for all purposes on the first day of January next thereafter, and the procedure therefor shall be substantially as provided in subsections (3) and (4). There shall be no adjustment, assignment and transfer of assets and liabilities under the provisions of section 66.03, but the detached territory shall continue to pay its pro rata share, based on assessed valuation, of the bonded indebtedness of the city at the time of detachment.

(2) **LAND ELIGIBLE; "OWNER" DEFINED.** No owner shall be eligible to sign a petition for the detachment of any such territory unless he is the owner of a parcel of land comprising at least 20 acres. No such land shall be detached from any city unless the remaining territory of said city shall be left reasonably compact and the boundaries thereof left substantially regular; provided, that such determination shall be made without regard to the existence of railroad rights of way, public utility easements or public or private highways traversing any part of such lands and remaining within such city. No lands shall be eligible for detachment where any public improvements have been extended to or installed for the benefit of such lands. As used in this section, "owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his interest.

(3) **HEARING; NOTICE.** When the owner or owners of all of the said lands of any such area file a verified petition in the office of the clerk of said court, setting forth the facts in accordance with subs. (1) and (2), the court shall make an order fixing the time of hearing thereof, which shall not be less than 60 nor more than 90 days thereafter, and at least 40 days prior to said time fixed, notice of hearing of such petition shall be served on such city, town or towns and all owners found in this state of any land in such area, in the manner prescribed in s. 262.09 for the service of a summons. Said notice shall be in substantially the following form:

Notice is hereby given that the petition of . . . . . will be heard by the circuit court of . . . . county, at the court house, in the city of . . . . , Wisconsin, on the . . . . day of . . . . , 19 . . . , at . . . . M., or as soon thereafter as counsel can be heard. That said petition prays for the detachment of the following area of land from the city of . . . . and annexation to the town of . . . . , in accordance with section 62.075 of the Wisconsin statutes, which area of land is described as follows:

Dated . . . .

. . . . .  
Petitioner's Attorney  
P. O. Address . . . .

(4) **OBJECTIONS; DECISIONS; APPEAL.** Such city, town or towns, owners of land in such vicinity, or owners of any interest therein, if opposed to said proceedings, shall, at least 15 days before the time of hearing fixed by said order, file in the office of said clerk of court and serve on the petitioners their verified objections to the granting of the prayer of the petition, specifying the grounds of objections thereto. Said proceedings may be adjourned or continued for cause. The issue raised by the petition shall be tried by the court upon the evidence submitted by the petitioners and objectors; and witnesses shall be compelled to appear and testify as in other cases in said court and the rules of evidence, practice and procedure shall be the same. The court may in its discretion render judgment in accordance with subs. (1) and (2) of this section, detaching from such city and annexing to such town or towns such area, if the facts required by said subsections be proved by a preponderance of the evidence; as to any land that such facts be not so proved, the petition shall be dismissed. In the event of a contest costs may be awarded to the successful party. Any person aggrieved by the final judgment may have a transcript served and approved according to the statutes and rules of court; and may appeal to the supreme court from such judgment within 6 months after service of notice of entry thereof by serving a notice of appeal and undertaking in the form and manner provided by ss. 274.11 to 274.16.

(5) **NOTICE OF ENTRY OF JUDGMENT; UPON WHOM SERVED.** A certified copy of every such order shall be filed with the town and city clerk and with the county clerk and 4 copies with the secretary of state. The secretary of state shall forward 2 copies to the highway commission and one copy to the department of taxation.

(6) **SCHOOL DISTRICTS.** No lands detached from any city pursuant to this section shall be eligible for detachment from any school district.

(7) **PLATTED LANDS.** No land which has been platted may be detached, and any land detached pursuant to this section shall not be eligible for platting pursuant to chapter 236 unless re-annexed to the city.

**History:** 1963 Sup. Ct. Order, 17 W (2d) xx.

**62.08 Alteration of wards.** (1) Any city may change the numbers and boundaries of its wards, create new wards, or consolidate old ones, by an ordinance introduced at a regular meeting of the council, published as a class 2 notice, under ch. 985, and thereafter adopted by a two-thirds vote of all the members of the council; but no further such change shall be made in any such ward for 2 years except by adding thereto territory newly attached to the city.

(2) Wards shall be as compact in area as possible and contain as nearly equal population as practicable in cities of the first class, and have no less than 1,500 in cities of the second class, nor less than 1,000 in cities of the third class, nor less than 500 in cities of the fourth class having more than 4 wards; except that in the event of annexation of lands to any city no limitations relating to population or area shall be effective in the creation of a new ward or wards in the area or areas or portions thereof so annexed or being annexed; and further except that all wards and ward lines may be established in such manner or be so arranged or set up as shall appear to the common council most advisable and the common council may so provide with respect to municipal election of aldermen.

(3) Whenever the boundaries of wards are altered, or new wards created, every ward or precinct officer residing within the territory of a new or altered ward shall hold the same respective office therein for the remainder of his term; and all other vacancies shall be filled as provided by law for the filling of such vacancies.

(4) The common council of any city may not more frequently than once in 2 years by a two-thirds vote of all its members at any time redistrict, readjust and change the boundaries of wards so that they shall be as nearly equal in population as may be, and to that end such council may create new wards and consolidate old ones. In redistricting such cities the original numbers of the wards in their geographical outlines shall as far as possible be retained, and the wards so created and those the boundaries of which are changed shall be in as compact form as possible.

**History:** 1965 c. 252.

**62.09 Officers.** (1) **ENUMERATION AND CHANGE.** (a) The officers shall be a mayor, treasurer, clerk, comptroller, attorney, engineer, one or more assessors, one or more constables as determined by the common council, a health commissioner or board of health, street commissioner, a board of police and fire commissioners, except in cities where not applicable, chief of police, chief of the fire department, a board of public works, a board of education or of school commissioners, except in cities where not applicable, 2 aldermen from each ward, and such other officers or boards as are created by law or by the council. If one alderman from each ward is provided pursuant to s. 66.018 (1), the council may, by ordinance adopted by a two-thirds vote of all its members and approved by the electors at the general or special election, provide that there shall be 2 aldermen from each ward.

(b) The council by a two-thirds vote, may dispense with the offices of street commissioner, engineer, comptroller, constable and board of public works, and provide that the duties thereof be performed by other officers or board, by the council or a committee thereof. The council may, by charter ordinance, adopted pursuant to s. 66.01, provide that there shall be one alderman from each ward. Any office dispensed with under this paragraph may be recreated in like manner, and any office created under this section may be dispensed with in like manner.

(2) **ELIGIBILITY.** (a) No person shall be elected by the people to a city office who is not at the time of his election a citizen of the United States and of this state, and an elector of the city, and in case of a ward office, of the ward, and actually residing therein.

(d) An appointee by the mayor requiring to be confirmed by the council who shall be rejected by the council shall be ineligible for appointment to the same office for one year thereafter.

(3) **MANNER OF CHOOSING.** (a) The mayor and aldermen shall be elected by the voters.

(b) The other officers except as provided in section 62.13 shall be selected by one of the following methods:

1. Appointment by the mayor.
2. Appointment by the mayor subject to confirmation by the council.
3. Appointment by the council.
4. Election by the voters.
5. Selection under any of the above methods, the selection to be made from an eligible list established pursuant to section 66.19.
6. Such other 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.

(c) Any city may also proceed pursuant to section 66.01 to consolidate any such other office or offices.

(d) Whenever a city is newly created the officers other than those specified by paragraph (a) shall be appointed by the mayor until provided otherwise pursuant to paragraph (b).

(e) Appointments by the mayor shall be subject to confirmation by the council unless otherwise provided by law.

(4) QUALIFYING. (a) Every person elected or appointed to any office shall take and file the official oath within ten days after notice of his election or appointment.

(b) The treasurer, comptroller, chief of police and such others as the statutes or the council may direct, shall execute and file an official bond in such sum as the council may determine, with 2 or more sureties or such bond may be furnished by a surety company as provided by section 204.07. The council may at any time require new and additional bonds of any officer. All official bonds must be approved by the mayor, and when so approved shall be filed within 10 days after the officer executing the same shall have been notified of his election or appointment. Official bonds filed with the city clerk shall be recorded by him in a book kept for that purpose.

(c) When an appointive officer has filed the oath, and bond if required, the clerk shall issue to him a certificate of appointment. If the appointment is to a board or commission the appointee shall file the certificate with the secretary thereof.

(5) TERMS; SUBSTITUTES. (a) The regular term of office of mayor and alderman shall commence on the 3rd 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.

(b) Except as otherwise specially provided the regular term of elective officers shall be 2 years. A different tenure for such officers or any of them may be provided by charter ordinance.

(c) The council may, by a record vote of two-thirds of all the members, by ordinance adopted and published previous to publication of the notice of the election at which aldermen are to be elected, provide for a division of the aldermen into two classes, one class to be elected for two years and the other for four years, and thereafter the term of aldermen shall be four years.

(d) If any officer be incapacitated or absent from any cause the common council may appoint some person to discharge his duties until he returns or until such disability is removed.

(6) COMPENSATION. (a) Salaries shall be paid the mayor or aldermen only when ordered by a vote of three-fourths of all the members of the council. Salaries heretofore established shall so remain until changed by ordinance.

(b) Whenever such salaries are to be changed or established the council shall, not later than the first regular meeting in February, fix the amount of salary of each officer entitled to a salary who may be elected or appointed for a definite term during the ensuing year. In cities newly incorporated the compensation of the first officers may be fixed during their terms.

(c) Salaries shall be paid at the end of each month unless the council shall at any regular meeting by ordinance order payment semimonthly.

(7) GENERAL PROVISIONS. (a) The corporate authority of the city shall be vested in the mayor and common council.

(b) Officers shall have generally the powers and duties prescribed for like officers of towns and villages, except as otherwise provided, and such powers and duties as are prescribed by law and except as to the mayor shall perform such duties as shall be required of them by the council. Officers whose powers and duties are not enumerated in chapter 62 shall have such powers and duties as are prescribed by law for like officers or as are directed by the council.

(c) All officers and departments may make the necessary rules for the conduct of their duties and incidental proceedings.

(d) The general laws for the punishment of bribery, misdemeanors and corruption in office shall apply to city officers.

(e) Whenever a city official in his official capacity proceeded against or obliged to proceed before any court, board or commission, to defend or maintain his official position, or because of some act arising out of the performance of his official duties, and he has prevailed in such proceeding, or the council has ordered the proceeding discontinued, the council may provide for payment to such official such sum as it sees fit, to reimburse him for the expenses reasonably incurred for costs and attorney's fees.

(8) MAYOR. (a) The mayor shall be the chief executive officer. He shall take care that city ordinances and state laws are observed and enforced and that all city officers and employes discharge their duties.

(b) He shall from time to time give the council such information and recommend such measures as he may deem advantageous to the city. When present he shall preside at the meetings of the council.

(c) He shall have the veto power as to all acts of the council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to him by the clerk and shall be in force upon his approval evidenced by his signature, or upon his failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If he disapproves he shall file his objections with the clerk, who shall present them to the council at its next meeting. A three-fourths vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.

(d) Except in cities that have adopted subsection (6) of section 62.13, he shall be the head of the fire and police departments, and where there is no board of police and fire commissioners shall appoint all policemen, and he may, in any city, appoint watchmen to serve without pay, and in case of riot or other emergency, appoint as many special policemen as may be necessary.

(e) The council at its first meeting subsequent to the regular election and qualification of new members, shall after organization, choose from its members a president, who, in the absence of the mayor, shall preside at meetings of the council, and during the absence or inability of the mayor shall have the power and duties of the mayor, except that he shall not have power to approve an act of the council which the mayor has disapproved by filing objections with the clerk. He shall when so officiating be styled "Acting Mayor."

(9) TREASURER. (a) The treasurer shall collect all city, school, county and state taxes, receive all moneys belonging to the city or which by law are directed to be paid to him, and pay over the money in his hands according to law.

(b) He shall keep a detailed account in suitable books in such manner as the council shall direct. He shall keep in a separate book an account of all fees received. His books shall at all reasonable times be open to inspection.

(c) He shall each month at the first meeting of the council and as often as it shall require make to the council a verified report of moneys received and disbursed and of the condition of the treasury. Ten days before each regular city election he shall file in the clerk's office a full and minute verified report of moneys received and disbursed, tax certificates, vouchers and other things of pecuniary value in his custody, and of all transactions of his office from the date of the preceding like report.

(d) He shall receive no fees or other compensation except the salary fixed prior to his election, except that in case of a sale by him of goods or chattels for payment of taxes he shall receive such fees as are allowed constables therefor. All other fees collected by him shall be paid into the treasury at the end of each day.

(e) He shall deposit immediately upon receipt thereof the funds of the city in the name of the city in the public depository designated by the council. Such deposit may be in either a demand deposit or in a time deposit, maturing in not more than one year. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by s. 34.01 (6). The interest arising therefrom shall be paid into the city treasury.

(f) He may in writing, filed in the office of the clerk, appoint a deputy who shall act under his direction and in his absence or disability, or in case of a vacancy shall perform his duties. The deputy shall receive such compensation as the council shall provide. The acts of such deputy shall be covered by official bond as the council shall direct.

(g) He shall make partial apportionment up to 90% of levies by school districts, excepting districts operating under subch. II of ch. 120, out of funds available from said school district levies and in the city treasury prior to the tax apportionment provided by s. 74.03 (5) upon the filing of a written request by the school district board stating that such advances are needed to continue operating.

(10) COMPTROLLER. (a) The comptroller shall monthly report in writing to the council at its first meeting the condition of outstanding contracts and of each of the city funds and claims payable therefrom, and shall each year on or before October first file with the clerk a detailed statement of the receipts and disbursements on account of each fund of the city and of each ward or other financial district during the preceding fiscal year, specifying the source of each receipt and the object of each disbursement, and also an estimate of the receipts and disbursements for the current fiscal year.

(b) He shall each month and as often as reported examine the treasurer's accounts as reported and as kept, and attach thereto a report to the council as to their correctness and as to any violation by the treasurer of his duty in the manner of keeping accounts or disbursing moneys.

(c) He shall examine each claim presented against the city, and determine whether it is in proper form, and if it is on contract, whether authorized and correct. For these

purposes he may swear witnesses and take testimony. If he finds no objection he shall mark his approval on the claim. If he disapproves in whole or in part, he shall report to the council his reasons. He shall in all cases report evidence taken. No claim shall be considered by the council or be referred to a committee until it has been so examined and reported on.

(f) He shall countersign all contracts with the city if the necessary funds have been provided to pay the liability that may be incurred thereunder, and no contract shall be valid until so countersigned.

(g) He shall each year make a list of all certificates for the payment of which special taxes are to be levied, in time for the same to be inserted in the tax roll, and certify its correctness.

(h) He may in writing, filed in the office of the clerk, appoint a deputy who shall act under his direction and in his absence or disability, or in case of a vacancy shall perform his duties. The deputy shall receive such compensation as the council provides. The acts of such deputy shall be covered by official bond as the council directs.

(11) CLERK. (a) The clerk shall have the care and custody of the corporate seal and all papers and records of the city.

(b) He shall attend the meetings of the council and keep a full record of its proceedings.

(c) He shall enter at length, immediately after it goes into effect, every ordinance in an "ordinance book," with proof of publication, date of passage and page of journal where final vote is recorded. He shall keep a record of all licenses and permits granted and record all bonds, in appropriate books.

(d) He shall draw and sign all orders upon the treasury in the manner provided by section 66.042, and keep a full account thereof in appropriate books. He shall carefully preserve all receipts filed with him.

(e) He shall keep an accurate account with the treasurer and charge him with all tax lists presented to him for collection and with all moneys paid into the treasury.

(f) He shall keep all papers and records in his office open to inspection at all reasonable hours.

(g) By March 15 he shall publish as a class 1 notice, under ch. 985, a statement showing the receipts and disbursements as to each fund during the preceding fiscal year. This shall not apply to cities operating under s. 64.34.

(h) He shall have power to administer oaths and affirmations under these statutes.

(i) He may in writing filed in his office appoint a deputy, who shall act under his direction, and in his absence or disability or in case of a vacancy shall perform his duties, and shall have power to administer oaths and affirmations. The deputy shall receive such compensation as the council shall provide. The clerk and his sureties shall be liable on his official bond for the acts of such deputy.

(12) ATTORNEY. (a) The attorney shall conduct all the law business in which the city is interested.

(c) He shall when requested by city officers give written legal opinions, which shall be filed with the clerk.

(d) He shall draft ordinances, bonds and other instruments as may be required by city officers.

(e) He shall examine the tax and assessment rolls and other tax proceedings, and advise the proper city officers in regard thereto.

(f) He may appoint an assistant, who shall have power to perform his duties and for whose acts he shall be responsible to the city. Such assistant shall receive no compensation from the city, unless previously provided by ordinance.

(g) The council may employ and compensate special counsel to assist in or take charge of any matter in which the city is interested.

(13) POLICE. (a) The chief of police shall have command of the police force of the city under the direction of the mayor. It is his duty to obey all lawful written orders of the mayor or common council. The chief and each policeman 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; shall arrest with or without process and with reasonable diligence take before the municipal justice or other proper court every person found in the city in a state of intoxication or engaged in any disturbance of the peace or violating any law of the state or ordinance of such city and he may command all persons present in such case to assist him therein, and if any person, being so commanded, refuses or neglects to render such assistance he shall forfeit not exceeding \$10. They shall collect the same fees allowed to constables for similar services.

(b) The chief of police shall have charge of all city jails, including that portion of any jail which is used by the city in a joint city-county building.

(c) Every officer in charge of a jail shall keep a record concerning each person placed in such jail, including his name, residence and description, the time and cause of his confinement, and the authority under which he was confined; and when any person is released, the time of and the authority for such release.

(d) The personnel required to comply with ss. 53.41 and 53.42 shall be provided at the expense of the municipality.

(14) ALDERMEN POLICEMEN. Every alderman shall have the powers of a city policeman.

**History:** 1961 c. 33, 495, 534; 1963 c. 190, 365, 436; 1965 c. 20, 252, 617; 1967 c. 24, 92.

**Cross Reference:** City attorney may not be employed by common carrier or public utility; see 196.675.

Discussion of ch. 62 concerning division of a city into wards and the election of aldermen and supervisors. 51 Atty. Gen. 199.

**62.11 Common council.** (1) **HOW CONSTITUTED.** The mayor and aldermen shall be the common council. The mayor shall not be counted in determining whether a quorum is present at a meeting, but may vote in case of a tie. When the mayor does vote in case of a tie his vote shall be counted in determining whether a sufficient number of the council has voted favorably or unfavorably on any measure.

(2) **TIME OF MEETING.** The council shall meet at least once a month, and on the first Tuesday unless a different day be fixed by the council. More frequent regular meetings may be established by the council, and the mayor may call a special meeting by written notice to each member delivered to him personally or left at his usual abode at least six hours before the meeting. Following a regular city election the new council shall first meet on the third Tuesday of April.

(3) **PROCEDURE.** (a) The council shall be the judge of the election and qualification of its members, may compel their attendance, and may fine or expel for neglect of duty.

(b) Two-thirds of the members shall be a quorum, except that in cities having not more than five aldermen a majority shall be a quorum. A less number may compel the attendance of absent members and adjourn. A majority of all the members shall be necessary to a confirmation. In case of a tie the mayor shall have a casting vote as in other cases.

(c) Meetings shall be open to the public; and the council may punish by fine members or other persons present for disorderly behavior.

(d) The ayes and noes may be required by any member. On confirmation and on the adoption of any measure assessing or levying taxes, appropriating or disbursing money, or creating any liability or charge against the city or any fund thereof, the vote shall be by ayes and noes. All aye and nay votes shall be recorded in the journal.

(e) The council shall in all other respects determine the rules of its procedure.

(f) The style of all ordinances shall be: "The common council of the city of . . . do ordain as follows."

(4) **PUBLICATION.** (a) Proceedings of the council shall be published in the newspaper designated under s. 985.06 as a class 1 notice, under ch. 985. The proceedings for the purpose of publication shall include the substance of every official action taken by the governing body. Except as provided in this subsection all ordinances shall be published as a class 1 notice, under ch. 985, within 15 days of passage, and shall take effect on the day after its publication or at a later date if expressly prescribed.

(b) All ordinances passed by the governing body of any city of the second class between January 1, 1914, and January 1, 1924, which were or may have been required to be published before becoming effective, but which were not published, shall be valid to the same extent as if they had been published in the first instance, as required by law, providing said ordinances and all amendments thereto are printed in the official journal of any such body together with the record of the passage of the same; however, the provisions of this paragraph shall not be effective in any city unless the governing body thereof shall so elect by a vote of two-thirds of its members.

(5) **POWERS.** Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, 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.

**History:** 1961 c. 622; 1965 c. 252.



It will not be an abuse of discretion by the Madison city council to spend \$5,500,000 of city funds to build a civic auditorium and parking ramp on filled-in land on the bed of Lake Monona, which bed is owned by the state and for the use of which the state has granted to the city only a revocable permit. Jackson v. Madison, 12 W (2d) 359, 107 NW (2d) 164.

The city council of a city of the fourth class could authorize the construction of a municipal television-translator tower to improve the quality of television reception in the local community, as a permissible municipal activity in promotion of public health, safety, and welfare, and an expenditure of public funds for a public purpose. Beardsley v. Darlington, 14 W (2d) 369, 111 NW (2d) 34.

An ordinance prohibiting female employees of a tavern from standing or sitting behind or at the bar or elsewhere with a

male patron is valid. It does not violate §.015 (equal rights for women) nor the equal protection clause of the constitution. Milwaukee v. Piscuine, 18 W (2d) 599, 119 NW (2d) 442.

A municipal corporation has the power to submit to arbitration any claims asserted by or against it, whether based on contract or on tort. Madison v. Frank Lloyd Wright Foundation, 20 W (2d) 361, 122 NW (2d) 409.

(5) confers power to enact an ordinance licensing retail food sellers which is valid even though the seller (a bakery) is also required to have a state license under §.10, since different activities are regulated. Johnston v. Sheboygan, 30 W (2d) 179, 140 NW (2d) 247.

See notes to 61.34, citing Clark Oil & Refining Corp. v. Tomah, 30 W (2d) 547, 141 NW (2d) 299.

**62.115 Defense of officers by city attorney.** (1) The common council of any city, however incorporated, may by ordinance or resolution authorize the city attorney to defend actions brought against any officer or employe of such city or of any board or commission thereof, growing out of any acts done in the course of his employment, or out of any alleged breach of his duty as such officer or employe, excepting actions brought to determine the right of such officer or employe to hold or retain his office or position, and excepting also actions brought by such city against any officer or employe thereof.

(2) Nothing in this section contained, nor any action taken by any city or by any city attorney pursuant to the provisions of this section, shall be construed to impose any liability, either for costs, damages or otherwise, upon such city or city attorney.

**62.12 Finance.** (1) **FISCAL YEAR.** The calendar year shall be the fiscal year.

(2) **BUDGET.** On or before October first, each year, each officer or department shall file with the city clerk an itemized statement of disbursements made to carry out the powers and duties of such officer or department during the preceding fiscal year, and a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer or department during such year, and of the condition and management of such fund; also detailed estimates of the same matters for the current fiscal year and for the ensuing fiscal year.

(3) **ACCOUNTING.** The city treasurer shall keep separate all special funds, and the city clerk shall keep a separate account with the general fund for each officer or department through which disbursements are made from the general fund to carry out the powers and duties of such officer or department. The council shall examine and adjust the accounts of the clerk, treasurer and all other officers or agents of the city after the same shall have been audited by the comptroller.

(4) **TAX LIMITATION.** The tax levied by the council for any one year for municipal purposes, together with all other taxes to be levied for any city purpose except as provided in section 67.035, shall not exceed 3½ per cent of the assessed value of the real and personal property in the city in that year, except that in addition a special tax for school purposes not exceeding 8 mills on the dollar of such assessed value may be levied.

(5) **LICENSE MONEYS.** Moneys received for licenses may be used for such purpose as the council shall direct in the absence of specific appropriation by law.

(6) **FUNDS; APPROPRIATIONS; DEBTS.** (a) Unless otherwise provided by law city funds shall be paid out only by authority of the council. Such payment shall be made in the manner provided by section 66.042.

(b) The council shall not appropriate nor the treasurer pay out 1. Funds appropriated by law to a special purpose except for that purpose, 2. Funds for any purpose not authorized by the statutes, nor 3. From any fund in excess of the moneys therein.

(c) No debt shall be contracted against the city nor evidence thereof given unless authorized by a majority vote of all the members of the council.

(7) **CITY DEPOSITORIES.** (a) The council shall designate a bank or banks within this state with which city funds shall be deposited, and when the money is deposited in such depository in the name of the city, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the city treasury.

(8) **CLAIMS.** (a) All claims and demands against the city shall be itemized and filed with the clerk, who shall deliver the same to the comptroller for examination. The comptroller shall within 30 days thereafter examine such claim or demand and return the same to the clerk with his report thereon in writing, who shall place the same before the council for action at its next meeting.

(b) Payment of regular wages or salary pursuant to the budget and salary schedule adopted by the council may be by pay roll, verified by the proper official, and filed in time for payment on the regular pay day.

(9) LOANS. The council may loan money to any school district located within the city, or within which the city is wholly or partially located, 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 city accordingly and give its note therefor. No such loan shall be made to extend beyond August 30 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 city council.

**History:** 1963 c. 365.

**Cross Reference:** For procedure upon disallowance of claims, see 62.25.

**62.13 Police and fire departments.** (1) COMMISSIONERS. Each city shall have a board of police and fire commissioners consisting of 5 citizens, 3 of whom shall constitute a quorum. The mayor shall annually, between the last Monday of April and the first Monday of May, appoint in writing to be filed with the secretary of the board, one member for a term of 5 years. No appointment shall be made which will result in more than 3 members of the board belonging to the same political party. The board shall keep a record of its proceedings.

(2) EXCEPTION. Subsections (1) to (6) shall not apply to cities of less than 4,000 population except by ordinance adopted by a majority of all the members of the council. A repealing ordinance may be adopted by a like vote.

(3) CHIEFS. The board shall appoint the chief of police and the chief of the fire department, who shall hold their offices during good behavior, subject to suspension or removal by the board for cause.

(4) SUBORDINATES; REEMPLOYMENT. (a) The chiefs shall appoint subordinates subject to approval by the board. Such appointments shall be made by promotion when this can be done with advantage, otherwise from an eligible list provided by examination and approval by the board and kept on file with the clerk.

(b) Any person who, on June 23, 1943 shall have served and acted as a full-time city police patrolman or police officer performing the services by virtue of regular assignment therefor under the orders and supervision of the chief of police of said city, and receiving his salary on the regular official pay roll of said police department for a continuous period of more than 10 years, although not regularly appointed from an eligible list, shall be deemed to have been regularly appointed, as of the time of the commencement of his service, and upon payment into the police pension fund of the amounts required by law since said time, shall be entitled to the same pension rights under this section as if employed for such period as a regular appointee.

(c) For the choosing of such list the board shall adopt, and may repeal or modify, rules calculated to secure the best service in the departments. These rules shall provide for examination of physical and educational qualifications, habits, reputation, and experience, and may provide such competitive examinations as the board shall determine, and for the classification of positions with special examination for each class. The board shall print and distribute the rules and all changes in them, at city expense.

(d) The examination shall be free for all citizens of the United States over 21 and under 55 years of age, with proper limitations as to residence, health, habits and character. They shall be practical in their character, and relate to those matters which will fairly test the capacity of the candidates for the positions they seek, and may include tests of manual skill and physical strength. The board shall control examinations and may designate and change examiners, who may or may not be otherwise in the official service of the city, and whose compensation shall be fixed by the board and paid by the city. In the case of veterans, other conditions being equal, a preference shall be given in favor of veterans of any of the wars of the United States. Preference is defined to mean that whenever an honorably discharged veteran competes in any examination he shall be accorded 5 points, and if such veteran has a disability which is directly or indirectly traceable to war service, he shall be accorded another 5 points, in addition to earned ratings therein, except that such preference shall not be granted to any veteran competing in such examination who has not obtained at least a passing grade.

(e) The council of any city of the second, third or fourth class may provide that one or more members of the police force shall be women. The fire and police commission shall select each police woman from an eligible list.

(f) Any person who has completed at least 20 years of service on an authorized police department and who has retired on the assumption that he was eligible for a pension under sub. (9) may be reemployed in a position commensurate with his physical and mental abilities within the department for such period as may be required to make him eligible for a pension without regard to the qualifications imposed on persons first entering such service.

(5) DISCIPLINARY ACTIONS AGAINST SUBORDINATES. (a) A subordinate may be suspended as hereinafter provided as a penalty. He may also be suspended by the commission pending the disposition of charges filed against him.

(b) Charges may be filed against a subordinate by the chief, by a member of the board, by the board as a body, or by an elector of the city. Such charges shall be in writing and shall be filed with the president of the board. Pending disposition of such charges, the board or chief may suspend such subordinate.

(c) A subordinate may be suspended for cause by the chief or the board as a penalty. The chief shall file a report of such suspension with the commission immediately upon issuing the suspension. No hearing on such suspension shall be held unless requested by the suspended subordinate. If the subordinate suspended by the chief requests a hearing before the board, the chief shall be required to file charges with the board upon which such suspension was based.

(d) Following the filing of charges in any case, a copy thereof shall be served upon the person charged. The board shall set date for hearing not less than 10 days nor more than 30 days following service of such charges. The hearing on the charges shall be public, and both the accused and the complainant may be represented by an attorney and may compel the attendance of witnesses by subpoenas which shall be issued by the president of the board on request and be served as are subpoenas in justice court.

(e) If the board determines that the charges are not sustained, the accused, if he has been suspended, shall be immediately reinstated and all lost pay restored. If the board determines that the charges are sustained, the accused, by order of the board, may be suspended or reduced in rank, or suspended and reduced in rank, or removed, as the good of the service may require.

(f) Findings and determinations hereunder and orders of suspension, reduction, suspension and reduction, or removal, shall be in writing and, if they follow a hearing, shall be filed within 3 days thereof with the secretary of the board.

(g) Further rules for the administration of this subsection may be made by the board.

(h) No person shall be deprived of compensation while suspended pending disposition of charges.

(i) Any person suspended, reduced, suspended and reduced, or removed by the board may appeal from the order of the board to the circuit court by serving written notice thereof on the secretary of the board within 10 days after the order is filed. Within 5 days thereafter the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in said court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence was the order of the board reasonable? No costs shall be allowed either party and the clerk's fees shall be paid by the city. If the order of the board is reversed, the accused shall be forthwith reinstated and entitled to his pay as though in continuous service. If the order of the board is sustained it shall be final and conclusive.

(j) The provisions of pars. (a) to (i) shall apply to disciplinary actions against the chiefs where applicable. In addition thereto, the board may suspend a chief pending disposition of charges filed by the board or by the mayor of the city.

(5m) DISMISSALS AND RE-EMPLOYMENT. (a) When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating.

(b) When it becomes necessary for such reasons to reduce the number of subordinates in the higher positions or offices, or to abolish any higher positions or offices in the department, the subordinate or subordinates affected thereby shall be placed in a position or office in the department less responsible according to his efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any cause set forth in this section shall be left on an eligible re-employment list for a period of two years after date of dismissal. If any vacancy occurs, or if the number of subordinates is increased, in the department, such vacancy or new positions shall be filled by persons on such list in the inverse order of the dismissal of such persons.

(6) OPTIONAL POWERS OF BOARD. (a) The board of fire and police commissioners shall have the further power:

1. To organize and supervise the fire and police departments and to prescribe rules and regulations for their control and management.

2. To contract for and purchase all necessary apparatus and supplies for the use of the departments under their supervision, exclusive of the erection and control of the police and fire station buildings.

3. To audit all bills, claims and expenses of the fire and police departments before the same are paid by the city treasurer.

(b) The provisions of this subsection shall apply only if adopted by the electors. Whenever not less than 30 days prior to a regular city election a petition therefor, signed by electors equal in number to not less than 20% of the total vote cast in the city for governor at the last general election, shall be filed with the clerk, he shall give notice in the manner of notice of the regular city election of a referendum on the adoption of this subsection. Such referendum election shall be held with the regular city election, and the ballots shall conform with the provisions of ss. 5.64 (2) and 10.02, and the question shall be "Shall subsection (6) of section 62.13 of the statutes be adopted?"

(7) COMPENSATION. The salaries of chiefs and subordinates shall be fixed by the council. All other moneys of any nature received by them shall be accounted for in the manner provided in paragraph (a) of subsection (9) and paragraph (a) of subsection (10), respectively, and the chiefs shall make verified reports thereof to the council quarterly. Unless the council otherwise provides, in cities of the fourth class rewards for the apprehension of criminals may be retained by the person entitled thereto. Such salaries when so fixed may be increased but not decreased by the council without a previous recommendation of the board. The council may provide that the salaries shall increase with length of service, and nothing herein shall interfere with the power of the council to grant a pension to persons provided in subsections (9) and (10).

(7m) REST DAY. (a) The council of every city of the fourth class shall provide for, and the chief of the police department shall assign to, each policeman in the service of such city one full rest day of 24 consecutive hours during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department.

(b) The council of every city of the second or third class shall provide for, and the chief of the police department shall assign to, each policeman in the service of such city 2 full rest days of 24 consecutive hours each during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that any such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department. This section shall not apply to villages to which s. 61.65 is applicable.

(7n) HOURS OF LABOR. The council of every city of the second, third or fourth class, shall provide for a working day of not more than eight hours in each twenty-four except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such work day shall be extended beyond the eight-hour period at such time; and when such emergency ceases to exist, all overtime given during such emergency, shall be placed to the credit of such policeman, and additional days of rest given therefor.

(8) FIRE DEPARTMENT. The council may provide by ordinance for either a paid or a volunteer fire department, and for the management and equipment of either insofar as not otherwise provided for by law.

(9) POLICE PENSION FUND. (a) *Sources of the fund.* 1. Each city of the second or third class shall have a police pension fund. There shall be paid into such fund the following: Two and one-half per cent of receipts from licenses; 4 per cent of the salary of each member of the department; 25 per cent of all fines imposed for violations of city ordinances; fines imposed on members for violation of department rules; deductions from salaries for time lost on account of sickness; rewards in moneys, fees, gifts or emoluments that may be paid or given for or on account of any service of the department or any member thereof, except when allowed to be retained by said member by resolution of the board of trustees of said fund, or given to endow a medal or other permanent competitive award; receipts from sales of unclaimed property; and earnings upon the deposit, loan or investment of said fund.

2. The board of trustees may take for such fund by grant, gift, devise or bequest any money, property or thing of value.

3. Any excess of annual income over the annual disbursements shall revert to the principal of the fund and become a permanent addition thereto until the market value of the securities, and cash, in the fund shall equal one hundred fifty thousand dollars for cities of the second class, one hundred thousand dollars for cities of the third class, and fifty thousand dollars for cities of the fourth class. The board of trustees shall thereafter refund to the city treasurer, at the close of each year, the excess of receipts over disbursements for that year.

4. The pensions provided by this section shall be paid in full when due and only from revenue received from the sources enumerated in subdivision 1 of paragraph (a) of this subsection. Temporary withdrawals may be made from the permanent fund to meet current disbursements when no other funds are available, but such withdrawals shall be included in the next succeeding tax levy and shall be replaced as soon as other funds can be obtained. Should the annual income received from sources defined in subdivision 1 of paragraph (a) of this subsection be insufficient to pay the pension requirements for that year, such deficit shall be included in the next succeeding tax levy. Such sums shall be transferred to the fund by the city treasurer on the ensuing June first, and such reimbursement shall be considered as a replacement of principal, and not as current income. The estimated excess, or deficit, in the annual account shall be certified by the secretary of the board of trustees to the city treasurer on or before August first of each year.

(b) *Board of trustees.* 1. The mayor, treasurer, comptroller, and the chief and three active subordinates of the department, shall be the board of trustees of the said pension fund. The three subordinates from the department shall be elected annually, by ballot, at least three days before the annual election of officers of the board. Each subordinate of the department shall be entitled to vote for such three members of the board upon one ballot, and the three persons receiving the highest number of votes shall be elected. The members of the board shall receive no compensation for service thereon.

2. The board shall meet at least once annually in January and select from its members a president and a secretary, and shall fill vacancies in such offices. The city treasurer shall be ex officio treasurer of such board, and as such, custodian of the fund and all securities and property belonging thereto. He shall keep books of account thereof in such manner as the board shall direct. Such books shall always be open to inspection by the board or a member thereof. The city treasurer shall be liable on his official bond for the performance of such duties.

3. The board shall have exclusive control and management of the fund. The moneys therein shall be paid out only upon warrant signed by the president and countersigned by the secretary of the board. No such warrant shall be drawn except upon order of the board duly recorded in its proceedings. The board may invest the fund or a part thereof in the name of the board in such securities as are authorized by chapter 320 for investment of trust funds, or in any bonds or securities issued under the authority of any municipality, whether the same create a general municipal liability or a liability of the property owners of such municipality for special improvement made therein and may sell such securities.

4. The board shall hear and decide all applications for pensions, and shall have power to compel witnesses to attend and testify before the board thereon and upon all matters connected with the fund, in the same manner as provided by law for taking testimony before notaries public. Any member of the board may administer oaths to such witnesses.

5. The board shall make the needful rules for its government, the conduct of its proceedings, and the management of the fund. It shall cause its secretary to keep a record of all its proceedings. It may appoint a clerk, and provide for the payment from the fund of clerk hire, printing, and other necessary incidental expenses.

(c) *Pensions.* The provisions of subsection (9) of this section shall apply only to members of the department regularly receiving compensation for their services, and such member shall have a vested right in and to said pension fund so that no payments made thereto shall be diverted or used, temporarily or otherwise, for any purpose other than provided by this subsection. Persons shall be entitled to pensions only as follows:

1. *Disability.* If any member of the department, while contributing to the fund, shall, within the hours when he was required to be on active duty, and while engaged in the performance of duty, or while engaged in the performance of any other duties under the direction of any superior officer, be injured, or contract a disease due to his occupation, and be found upon examination by a medical officer, if any ordered by the board, or by a licensed physician ordered by the board, to be permanently disabled, physically or mentally, by reason thereof, so as to render necessary his retirement from service in such department, the board shall retire him and order payments to him monthly of a sum equal to one-half his monthly compensation at the date of his retirement.

2. *Death.* If such injury or disease shall result in death, or if after retirement upon a pension or after ten years' service and while in the service, any member of the department shall die from any cause, and shall leave surviving a widow, a child under the age of eighteen years, or a dependent parent, the board shall order monthly pension as follows: (a) To the widow, one-third of the monthly compensation of the deceased at the time of his death or retirement on pension, unless she shall have married him after his retirement on pension. (b) To the guardian of each such child, twelve dollars for each child until it is eighteen years of age. (c) To the dependent parent, only in case no widow is entitled to pension, the amount the widow would have received, to be paid to but one parent, to be determined by the board. (d) If the widow dies or remarries, her allowance shall cease. (e) The total monthly pension paid all beneficiaries shall not exceed sixty-five per cent of the monthly compensation of the deceased at the date of his death or retirement, and if this is insufficient to pay the full schedule it shall be pro rated on the basis of the schedule. (f) If at any time the moneys available shall be insufficient to meet all pension requirements, each beneficiary shall be paid a pro rata amount. When the fund is replenished such beneficiaries as are still entitled to pension shall be paid all withheld amounts. It shall be the duty of the board of trustees to require annual sworn affidavits from all widow beneficiaries establishing the right to receive benefits under this section, and the board of trustees may withhold pension payments until such time as such affidavits are presented.

3. *Service.* A member of the department who has served 22 years or more may apply to be retired or may be retired on motion of the board, except that a member joining the police department after January 1, 1940, must also have attained the age of 55 years. Upon such retirement, or upon discharge after such service, the board shall order to be paid him a monthly pension equal to one-half his monthly compensation at such time provided, however, that in the event that such member received an increase in his compensation in the year preceding his retirement, which said increase was granted for the purpose of increasing his pension, such increase in compensation shall be disregarded in computing the amount of his pension, and provided further that in the event that a member has been promoted in rank within the year preceding his retirement and said promotion results in an increase in his compensation, his pension shall be computed on the basis of the current compensation for the position from which he was promoted.

4. *Light duty.* The board on recommendation of the chief may assign any retired pensioner to light duty in the department.

5. *Law governing.* All pensions shall be paid in accordance with the law that was or shall be in force at the time the claim arose.

(d) *Exemption.* Money due or to become due to any pensioner or beneficiary from the pension fund shall be exempt from any process, or order of any court of this state, upon account of any claim or demand against any such pensioner or beneficiary.

(e) *Second and third class cities.* No person who, prior to January 1, 1948, had not contributed to a police pension fund established pursuant to this subsection 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 city of the second or third class, 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 subsection, and who can otherwise qualify, shall be, or become, a participating employe under ss. 66.90 to 66.918.

(9a) *FOURTH CLASS CITIES.* In cities of the fourth class the council may annually and from time to time provide by ordinance for the pensioning, out of the general fund

or otherwise, of members of the police department who have served for a term of 20 years or more, and shall have reached the age of 55 years, or who shall be disabled or superannuated, and for the widows and orphans of deceased members. Such pension shall not exceed one-half the salary of such officer at the time of his pensioning or death. It is declared to be the policy of the legislature that no ordinance enacted pursuant to this section shall be amended after June 1, 1951 so as to increase or decrease the contributions of policemen for pension purposes or in any way to increase or decrease the benefits to policemen or their beneficiaries or change any of the requirements for eligibility to such benefits, nor shall this section or any ordinance enacted pursuant thereto be repealed until all of the obligations created by such ordinances have been paid. No person who, prior to January 1, 1948, had not contributed to a police pension fund established pursuant to this subsection shall be permitted to contribute to such fund or become a member thereof on or after said date; nor shall he or his widow or child be, or become, entitled to receive any benefit from such fund or under any such ordinance which may have been passed after December 31, 1947 pursuant to this subsection. Any person who, after December 31, 1947, becomes a member of the police department in a city of the fourth class, 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 subsection, and who can otherwise qualify, shall be, or become, a participating employe under ss. 66.90 to 66.918.

(10) FIREMEN'S PENSION FUND. (a) Each city of the second and third class having a paid fire department shall have a firemen's pension fund. There shall be paid into such fund the following: Receipts from taxation of fire insurance companies or agents; 4 per cent of the salary of each member of the department; fines imposed on members for violation of department rules; deductions from salaries for time lost on account of sickness; rewards in moneys, fees, gifts or emoluments that may be paid or given for or on account of any service of the department or any member thereof, except when allowed to be retained by said member by resolution of the board of trustees of said fund, or given to endow a medal or other permanent competitive award; and earnings upon the deposit, loan or investment of said fund.

(b) The board of trustees may take for such fund by grant, gift, devise, or bequest any money, property, or thing of value, the amount of value of which does not exceed fifty thousand dollars.

(c) Such portion of the income in any year which shall not be required to be disbursed in that year under paragraph (e) of this subsection, shall be retained as a permanent fund, and thereafter when the amount in said fund shall be one hundred fifty thousand dollars, only the income therefrom, with the other revenues of said fund, shall be available for the payment of pensions. The council may then diminish the amount paid into said fund from taxation of fire insurance companies or agents, but to such extent only as will leave sufficient income to the said fund to meet the pension requirements.

(d) Should the income to be available in any year for the payment of pensions be less than the amount required for that year, the city treasurer shall on the first day of August pay into said fund from income tax receipts an amount equal to the deficiency. Temporary withdrawals may be made from the permanent fund to meet current disbursements when no other funds are available, but such withdrawals shall be replaced as soon as other funds can be obtained.

(e) The provisions of paragraphs (b) to (d) of subsection (9) shall apply to the firemen's pension fund, except that a member joining the fire department after July 1, 1917, and before January 1, 1940 shall not voluntarily retire after 22 years of service and be entitled to a pension, unless he shall also have attained the age of 52 years, and except, if any member of the department while contributing to the fund, shall sustain injury while not on duty, and be found upon examination by a medical officer, if any be ordered by the board, or by a licensed physician ordered by the board, to be permanently disabled, physically or mentally by reason thereof, so as to render necessary his retirement from service in such department, the board shall retire him and order payment to him monthly of a sum equal to 10 per cent of his monthly compensation at the date of his retirement if such disability occurs at any time after the completion of 6 years of service, and an additional amount equal to 2½ per cent of the monthly compensation for each additional year of service over said 6 years service, but at no time shall the total monthly pension exceed the sum of 50 per cent of his monthly compensation excepting that no pension shall be paid where the disability or disease herein results from gross negligence or wilful misconduct.

(f) No person who, prior to January 1, 1948, had not contributed to a firemen's pension fund established pursuant to this subsection 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 city of the second or third class, 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 firemen's pension fund established pursuant to this subsection, and who can otherwise qualify, shall be, or become, a participating employe under ss. 66.90 to 66.918.

(g) Each city of the fourth class shall install a pension system for full-time firemen pursuant to this subsection, unless the common council shall adopt a pension plan for such firemen in the same manner as provided for policemen by sub. (9a), or unless the city shall act or shall have acted to become a participating municipality pursuant to ss. 66.90 to 66.918, in which event members of the fire department shall be included under ss. 66.90 to 66.918 if they can otherwise qualify thereunder provided there is not existing in such city a system created pursuant to this section. It is declared to be the policy of the legislature that no ordinance enacted pursuant to this section shall be amended after June 1, 1951 so as to increase or decrease the contributions of firemen for pension purposes or in any way to increase or decrease the benefits to firemen or their beneficiaries or change any of the requirements for eligibility to such benefits, nor shall this section or any ordinance enacted pursuant thereto be repealed until all of the obligations created by such ordinances have been paid. No person who, prior to January 1, 1948, had not contributed to a firemen's pension system established pursuant to this paragraph or sub. (9a) shall be permitted to contribute to such a system or become a member thereof on or after such date; nor shall he or his widow or child be, or become, entitled to receive any benefit from either such system or under any ordinance which may have been passed on December 31, 1947, pursuant to this paragraph or sub. (9a). Any person who, after December 31, 1947, becomes a full-time fireman in a city of the fourth class or who was such a full-time fireman on said date, but who, in each such case had not, on or before such date, properly contributed to a firemen's pension system established pursuant to this paragraph, or sub. (9a), and who can otherwise qualify, shall be, or become, a participating employe under ss. 66.90 to 66.918.

(h) 1. Notwithstanding any provisions of law to the contrary, whenever a body corporate within a county having a population of 500,000 or more consolidates or has consolidated with a city of the first class and such body corporate maintains or has maintained a pension system for firemen under ch. 60 or 62, the common council of such city of the first class may by charter ordinance provide that the duties of the pension board or board of trustees formerly governing such pension system of the body corporate shall be assumed by a retirement board of the city of the first class in the manner determined by the common council of such city when so directed by charter ordinance.

2. The common council of such city may by charter ordinance authorize the consolidation of such pension system for firemen organized under ch. 60 or ch. 62 with the firemen's annuity and benefit fund created by chapter 423, laws of 1923, provided that the consolidation authorized will in no manner impair the rights of members of the pension systems to be consolidated, nor impair the actuarial soundness of any of such pension funds.

(10m) RULES GOVERNING LEAVING CITY. Subject to approval of the common council the fire chief may establish rules requiring firemen to obtain permission before leaving the city.

(11) FIREMEN, REST DAY. The common council of every city of the fourth class, having a population of five thousand or more and a fire department shall provide for, and the chief of such fire department shall assign to each full paid member thereof, a period of twenty-four consecutive hours off duty during each seventy-two hours, except in cases of positive necessity by some sudden and serious fire, accident or other peril, which, in the judgment of the chief engineer or other officer in charge demands that such day of rest be not given at such time. The provisions of this section shall not apply to cities having a two-platoon or double shift system.

(11a) FIRE DEPARTMENT PLATOONS. (a) The common council, or other governing body of every city of the first, second and third class, whether organized under a general or special charter, having a paid fire department, shall provide for, and the governing power of the fire department shall divide the full paid fire fighting force in the fire department into 2 or more bodies or platoons. Each platoon shall work, or be on duty, alternately an equal number of hours or as nearly so as the governing power of the fire department of each such city decides, but no member of said platoon shall be on duty for a longer continuous period of time than the governing power of the fire department designates, except in cases of positive necessity by some sudden and serious



fire, accident, or other peril, which in the judgment of the chief engineer or other officer in charge demands.

(b) The hours of duty of each member of the fire fighting force of the fire department in every city of the first class shall be limited to 72 hours in any one week. If any such department shall be on a platoon system of hours of duty, 12 hours may be added to one of 2 successive weeks and such period of time deducted from the previous or succeeding week, as the case may be.

(12) LEGISLATIVE INTENT. The provisions of section 62.13 and chapter 589 of the laws of 1921 and chapter 423, laws of 1923, and chapter 586 of the laws of 1911, shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of police and fire departments.

**History:** 1961 c. 281; 1963 c. 233, 295; 1965 c. 666 s. 22 (8).

A city treasurer or ex officio officer of a pension board, such as the firemen's pension board of a city, is without authority to determine the validity of an order of the board, and the city's remedy, if dissatisfied with such order, is by certiorari, wherein the court may review the board's findings. In a judicial review of the pension board's determination, the reviewing court is limited

in matters of evidence to the question of whether the finding is supported by substantial evidence in view of the entire record. *Graff v. Denny*, 12 W (2d) 65, 106 NW (2d) 311.

Scope of review of the decision of the circuit court under (5) discussed. *State ex rel. Kaczkowski v. Fire & Police Comm.* 33 W (2d) 488, 148 NW (2d) 44.

**62.135 Contractual rights of firemen and policemen.** Firemen and policemen have been attracted to and have remained in service despite ability to receive higher wages and salaries in other employment because of the deferred compensation for their services promised to them in the form of pensions and death benefits in retirement systems of which they have been contributing members. The purpose of creating this section is to strengthen the fire and police service in cities and villages in which a firemen's and policemen's pension system exists by establishing the security of pensions and all other benefits provided by the firemen's and policemen's pension funds in such cities and villages.

(1) All pensions and other benefits of firemen and policemen, whether in service or retired and of beneficiaries, including widows and children of deceased firemen and policemen, by or for whom contributions shall have been made to the firemen's and policemen's pension fund established pursuant to sections 61.65 and 62.13 shall be assured by benefit contracts.

(2) Every fireman and policeman and beneficiary shall be deemed to have accepted the provisions hereof and shall by such acceptance have a benefit contract as of July 20, 1951, unless, within 30 days thereafter, he files with the board of trustees a written notice electing to have no such contract. The pensions and all other benefits in the amounts and on the terms and conditions and in all other respects as provided in sections 61.65 and 62.13 and then in effect in such city or village shall be obligations of such benefit contracts on the part of the city or village and the board of trustees and each fireman and policeman and beneficiary having such a benefit contract shall have a vested right to such pensions and other benefits and they shall not be diminished, impaired or increased by subsequent legislation nor by any other means.

(3) The board of trustees may issue to each fireman and policeman and beneficiary who shall have such a benefit contract a written or printed contract or may supplement any certificate or other evidence of participation issued to him by indorsement stating that the fireman or policeman or beneficiary has a benefit contract according to the terms of this subsection, but the contract shall be in full force and effect whether or not any written or printed evidence thereof shall be so issued.

(4) It is declared to be the policy of the legislature that no provisions of section 61.65 or section 62.13 (9) or (10) shall be amended so as to increase or decrease the contributions of firemen or policemen into the firemen's or policemen's pension fund, or in any way to increase or decrease the benefits to firemen, policemen or their beneficiaries or change any of the requirements for eligibility to such benefits, nor shall section 61.65 or section 62.13 (9) or (10) be repealed until all of the obligations of such funds have been paid.

**62.14 Board of public works.** (1) **HOW CONSTITUTED; TERMS.** There shall be a department known as the "Board of Public Works" to consist of 3 commissioners. In cities of the second class the commissioners shall be appointed by the mayor and confirmed by the council at their first regular meeting or as soon thereafter as may be. The members of the first board shall hold their offices, 1, 2 and 3 years, respectively, and thereafter for 3 years or until their successors are qualified. In all other cities the board shall consist of the city attorney, city comptroller and city engineer. The council, by a two-thirds vote, may determine that the board of public works shall consist of other public officers

or persons and provide for the election or appointment of the members thereof, or it may, by a like vote, dispense with such board, in which case its duties and powers shall be exercised by the council or a committee thereof, or by such officer, officers or boards as the council shall designate. The words "board of public works" wherever used in this chapter shall include such officer, officers, or boards as shall be designated to discharge its duties.

(2) ORGANIZATION. The members of the board of public works shall, on the first Tuesday in May of each year, choose a president of the board from their number, and in cities of the first class a secretary; in other cities the city clerk shall be the secretary of the board by virtue of his office.

(3) COMPENSATION. The commissioners of public works in cities of the second class shall receive a salary, but in all other cities the salaries of the attorney, comptroller and engineer respectively shall be in full for their services as members of such board.

(4) RULES FOR, BY COUNCIL. The council may make such rules from time to time as they may deem proper, not contravening any of the provisions of this chapter, for the government of the board of public works and the manner in which the business of said board shall be conducted.

(5) QUORUM; RECORD; REPORT. A majority of the board shall constitute a quorum for doing business. They shall keep a record of all their proceedings, which shall be open at all reasonable times to the inspection of any elector of such city, and shall make a report to the council on or before the first day of March in each year, and oftener if required.

(6) DUTIES AND POWERS. (a) *In general.* It shall be the duty of the board, under the direction of the council, to superintend all public works and keep the streets, alleys, sewers and public works in repair.

(b) *Unusual use of streets.* No building shall be moved through the streets without a written permit therefor granted by the board of public works, except in cities where the council shall, by ordinance authorize some other officer or officers to issue a permit therefor; said board shall determine the time and manner of using the streets for laying or changing water or gas pipes, or placing and maintaining electric light, telegraph and telephone poles therein; provided, that its decision in this regard may be reviewed by the council.

(c) *Restoring streets.* In case any corporation or individual shall neglect to repair or restore to its former condition any street, alley or sidewalk excavated, altered or taken up, within the time and in the manner directed by the board, said board shall cause the same to be done at the expense of said corporation or individual. The expense thereof, when chargeable to a lot owner, shall be certified to the city clerk by the board, and if not paid shall be carried into the tax roll as a special tax against the lot.

(7) RECORDS OF CITY ENGINEER. The city engineer shall keep on file in his office, in the office of the city clerk, a record of all his official acts and doings and also a copy of all plats of lots, blocks and sewers embraced within the city limits, all profiles of streets, alleys and sewers and of the grades thereof, and of all drafts and plans relating to bridges and harbors and of any buildings belonging to the city; and shall at the same place keep a record of the location of all bench marks and permanent corner stakes from which subsequent surveys shall be started; which said records and documents shall be the property of the city and open to the inspection of parties interested, and shall be delivered over by said engineer to his successor or to the board of public works. Whenever requested, the engineer shall make a report of all doings of his department to the board of public works.

**62.15 Public works.** (1) CONTRACTS; HOW LET. All public construction, the estimated cost of which shall exceed \$1,000 shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public construction or any part thereof may be done directly by the city without submitting the same for bids.

(1a) ESCALATOR CLAUSES. Contracts may include escalator clauses providing for additional charges for labor and materials if as a result of general inflation the rates and prices of the same to the contractor increase during performance of the contract. Such escalator provision shall be applicable to all bidders and shall not exceed 15 per cent of the amount of the firm bid nor the amount of the increase paid by the contractor. Each bid on a contract which is to include an escalator provision shall be accompanied by a schedule enumerating the estimated rates and prices of items of labor and materials used

in arriving at the bid. Only as to such items as are enumerated shall an increased charge be allowed the contractor.

(1b) EXCEPTION AS TO PUBLIC EMERGENCY. The provisions of sub. (1) and s. 144.04 are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board of public works or board of public utility commissioners, in which the public health or welfare of the city is endangered. Whenever the city council determines by majority vote at a regular or special meeting that an emergency no longer exists, this subsection no longer applies.

(1c) INCREASED QUANTITY CLAUSES. Contracts may include clauses providing for increasing the quantity of construction required in the original contract by an amount not to exceed 15 per cent of the original contract price.

(2) PLANS; CONTRACT; BOND. When the work is required or directed to be let to the lowest responsible bidder, the board of public works shall prepare plans and specifications for the same, containing a description of the work, the materials to be used and such other matters as will give an intelligent idea of the work required and file the same with the city clerk for the inspection of bidders, and shall also prepare a form of contract and bond with sureties required, and furnish a copy of the same to all persons desiring to bid on the work.

(3) ADVERTISEMENT FOR BIDS. After the plans, specifications and form of contract have been prepared, the board of public works shall advertise for proposals for doing such work by publishing a class 2 notice, under ch. 985. No bid shall be received unless accompanied by a certified check or a bid bond equal to at least 5% but not more than 10% of the bid payable to the city as a guaranty that if his bid is accepted he will execute and file the proper contract and bond within the time limited by the city. If the successful bidder so files the contract and bond, upon the execution of the contract by the city the check shall be returned. In case he fails to file such contract and bond the amount of the check or bid bond shall be forfeited to the city as liquidated damages. The notice published shall inform bidders of this requirement.

(4) SURETIES, JUSTIFICATION. The sureties shall justify as to their responsibility and by their several affidavits show that they are worth in the aggregate at least the amount mentioned in the contract in property not by law exempt from execution. A certified check in amount equal to five per cent of the bid, and a provision in the contract for the retention by the city of twenty per cent of the estimates made from time to time may be accepted in place of sureties.

(4m) SUBSTANTIAL COMPLIANCE. If any certified check or bid bond is in substantial compliance with the minimum guaranty requirements of subs. (3) or (4), the letting authority may, in its discretion, accept such check or bid bond and allow such bidder 30 days to furnish such additional guaranty as may be required by said authority. Substantial compliance hereunder may be found if said check or bond is insufficient by not more than one-fourth of one per cent of the bid.

(5) REJECTION OF BIDS. The power to reject any and all bids shall exist unless expressly waived. The board of public works may reject any and all bids, if, in their opinion, any combination has been entered into to prevent free competition. The council may, if it be of the opinion that any of the bids are fraudulent, collusive, excessive or against the best interests of the city, by resolution adopted by two-thirds of its members, reject any or all of the bids received and order the work done by the city directly under the supervision of the board of public works and the provisions of subsections (2) and (3) of section 61.54 shall apply to the performance of such work.

(6) INCOMPETENT BIDDERS. Whenever any bidder shall be, in the judgment of said board, incompetent or otherwise unreliable for the performance of the work on which he bids, the board shall report to the council a schedule of all the bids for such work, together with a recommendation to accept the bid of the lowest responsible bidder, with their reasons; and thereupon the council may direct said board either to let the work to such competent and reliable bidder or to readvertise the same; and the failure to let such contract to the lowest bidder in compliance with this provision shall not invalidate such contract or any special assessment made to pay the liability incurred thereunder.

(7) PATENTED MATERIAL OR PROCESS. Any public work, whether chargeable in whole or in part to the city, or to any lot or lots or parcels of land therein, may be done by the use of a patented article, materials or process, in whole or in part, or in combination with articles, materials, or processes not patented, when the city shall have obtained from the owner of the patented article, materials or process, before advertising for bids for such work, an agreement to furnish to any contractor, desiring to bid upon such work as a whole, the right to use the patented article, materials and processes in the construction

of said work, and also to furnish to any contractor the patented article itself upon the payment of what the authorities of said city charged with the duty of letting a contract for such public work shall determine to be a reasonable price therefor, which price shall be publicly stated and furnished upon application to any contractor desiring to bid on said work.

(8) ALTERNATIVE PLANS AND SPECIFICATIONS. Different plans and specifications for any public work may be prepared by the proper authorities requiring the use of different kinds of materials, whether patented or not, thereby bringing one kind of article, material or process in competition with one or more other kinds of articles, materials or processes designed to accomplish the same general purpose, and bids received for each such kind of article, material or process, and thereafter a contract let for one kind of article, material or process; provided, that before any contract is let all the bids received shall be opened, and considered before the kind of article or process to be used in such work shall be decided upon by the proper city authorities, and thereupon the proper city authorities shall first determine which kind of article, material or process shall be used in the work, and the contract shall be let to the lowest responsible bidder for the kind of article, material or process so selected for use in the proposed public work.

(9) GUARANTY. Any contract for doing public work may contain a provision requiring the contractor to keep the work done under such contract in good order or repair for not to exceed five years. The inclusion in the contract of any such provision shall not invalidate any special assessment or certificate thereof or tax sale certificate based thereon.

(10) ESTIMATES; DEPOSIT; DEFAULT; COMPLETION. As the work progresses under any contract for the performance of which a surety bond has been furnished, the board of public works shall, from time to time, grant to the contractor an estimate of the amount and proportionate value of the work done, withholding in all cases 10% of said estimate, which entitles the holder to receive the amount thereof, less such 10%, from the proper fund. All contracts shall contain a provision authorizing such board, in case the work under any contract is defaulted or not completed within the time required, to take charge of or authorize the surety to take charge of the work and finish it at the expense of the contractor and his sureties, and to apply the amounts retained from estimates to the completion of the work. In no case shall the 5% deposit described in sub. (4) be returned to a successful bidder until the contract is performed; but it, together with the retained amounts, shall be used in whole or in part to complete the work. Any amount remaining from the deposit or from retained estimates after the completion of a contract shall be paid to the contractor.

(11) STREET OBSTRUCTION. All contractors doing any work which shall in any manner obstruct the streets or sidewalks shall put up and maintain barriers and lights to prevent accidents, and be liable for all damages caused by failure so to do. All contracts shall contain a provision covering this liability, and also a provision making the contractor liable for all damages caused by the negligent digging up of streets, alleys or public grounds, or which may result from his carelessness in the prosecution of such work.

(12) CONTRACTS; HOW EXECUTED. All contracts shall be signed by the mayor and clerk, unless otherwise provided by resolution or ordinance, and approved as to form by the city attorney. No contract shall be executed on the part of the city until the comptroller shall have countersigned the same and made an indorsement thereon showing that sufficient funds are in the treasury to meet the expense thereof, or that provision has been made to pay the liability that will accrue thereunder.

(14) REPORT TO COUNCIL OF NONBID CONTRACTS. Whenever the council of any city shall have provided by ordinance that any class of public work or any part thereof may be done directly by the city without submitting the same for bids as provided in subsection (1), and any such public work shall be done in accordance with such ordinance, the board of public works shall keep an accurate account of the cost thereof, including the necessary overhead expense. Upon the completion of such work said board shall make a complete report thereof to the council, stating in detail the items of cost and the total cost of doing such work, and the city clerk shall publish such report as a part of the proceedings of the council. Any member of the board of public works who fails to comply with the provisions of this subsection shall be liable to a forfeiture of fifty dollars to be recovered as in case of other penalties.

History: 1965 c. 127, 252.

**62.16 Street grades; service pipes.** (1) GRADE. (a) *Establishment; damage.* The council shall have authority to establish the grade of all streets and alleys in the city, and to change and re-establish the same as it deems expedient. Whenever it changes or alters the permanently established grade of any street any person thereby sustaining damages to his property on such street may have such damages set off against any special

assessment levied against his property for any public improvement made in conjunction with such grade change or may maintain an action to recover such damages.

(b) *Record.* The grade of all streets shall be established and described, and the adoption of such grades and all alterations thereof shall be recorded by the city clerk. No street shall be worked until the grade thereof is established and recorded in the manner herein set forth.

(2) SERVICE PIPE. (a) *Expense.* Whenever the council, state highway commission, or county board shall declare its intention to improve any street in which water, gas, or heat mains and sewers, or any of them, shall have been previously laid or are to be laid the council shall also by resolution require water, heat, sewer and gas service pipes to be first laid in such street, at the cost of the property fronting therein, except as herein provided, from the sewer, water, heat and gas mains in such street to the curb line on either or both sides thereof, at such intervals as the council shall direct along that part of said street to be improved, except at street and alley crossings. Such work may be done by contract or by the city directly without the intervention of a contractor, under the supervision of the board of public works, or in the case of service pipes of a municipal owned utility under the supervision of the board or officers charged with the management of such utility. The board or officers under whose supervision such service pipes shall be laid shall keep an accurate account of the expenses of putting in the same in front of each lot or parcel of land, whether the work be done by contract or otherwise, and report the same to the comptroller who shall annually prepare a statement of the expenses so incurred in front of each lot or parcel of land, and report the same to the city clerk, and the amount therein charged to each lot or parcel of land shall be by such clerk entered in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate.

(b) *Public service corporation.* Whenever the council, state highway commission or county board shall declare its intention to improve any street in which water or gas mains of any privately owned public utility shall have been previously laid or are about to be laid the council shall by resolution require, subject to review as provided in s. 196.58, water and gas service pipes to be first laid in such street, at the cost of such utility, unless the franchise of such utility otherwise provides as to the cost, from the main to the curb line on each side thereof, at such intervals as the council shall direct, along that part of said street so to be improved, except at street or alley crossings, and may, subject to such review, fix a reasonable time within which such work shall be done by the utility. Notice of such requirement shall thereupon be given to such utility by delivering a copy thereof to the superintendent, or agent in charge thereof, requiring such utility to do such work opposite the lots indicated according to plans and specifications, to be theretofore prepared and filed in the office of the city clerk, showing the location and size and the kind and quality of material of such water and gas service pipes; and if such utility shall refuse or neglect to do the same before the expiration of the time fixed for the improvement of said street so ordered the board of public works may procure the same to be done, in which event said board shall keep accurate account of the expense of constructing such gas or water service pipes, as the case may be, and report the same to the city clerk who shall annually enter in the tax roll as special taxes against such utilities, the total of the amounts so certified to him for such charges, and the same shall be collected in all respects like other city taxes against said utilities, and the city shall have a legal and valid claim for the amount of such special taxes against such utilities. No application for such review shall be effective unless the same be made and notice thereof filed in the office of the clerk of the city making such requirement within 30 days after service of the notice of such requirement as above provided; and on such review the public service commission shall make such order as to extension of time for the doing of such work and as to all other conditions affecting such requirement as the commission shall deem reasonable or expedient.

(c) *When laid.* No street shall be improved by order of the council, state highway commission or county board unless the water, heat and gas mains and service pipes and necessary sewers and their connections shall, as required under this subsection be first laid and constructed in that portion of such street so to be improved.

**Cross Reference:** See 281.04, requiring applicant for change in streets to file his pendens.

**62.18 Sewers.** (1) CITIES MAY CONSTRUCT. Cities shall have power to construct systems of sewerage, including a sewage disposal plant and all other appurtenances thereto, to make additions, alterations and repairs to such systems and plants, and when necessary abandon any existing system and build a new system, and to provide for the payment of the same by the city, by sewerage districts or by abutting property owners or by any combination of these methods. Whenever the council shall determine to lay sewers or provide sewerage in any portion of the city it shall so order by resolution which

shall describe with reasonable particularity the district to be sewerred. Whenever the territory of any city of this state shall be adjacent to or border on the territory of any other state, such city shall have power to build or construct a sewage disposal plant in such adjacent state, either alone for its sole use or jointly with some city or municipality in such adjacent state for their joint use on terms to be agreed upon by such municipalities. And if either city or municipality shall build or construct a sewage disposal plant, the city in this state may contract with the other city or municipality for its joint use on terms to be agreed upon.

(13) SEWERS, WHERE LAID. Any contractor or other person acting under the direction of the board of public works may lay sewers in and through any alleys and streets, and through any breakwater into any lake and also in any highways of the county, whether within the limits of said city or not; such contractor shall repair such streets, alleys, breakwaters and highways and restore the same to their former condition upon the completion of such sewers.

(16) SPECIAL SEWER DISTRICT TAX. (a) Any city may levy a special tax of not more than one mill and a half on the dollar of the assessed value of the taxable property in any sewer district for the extension or improvement of the sewer system of such district.

(b) Said tax is declared to be a special tax for local improvement, as defined in section 76.23 and when any company defined in section 76.02 owns operating real property (other than poles, towers, wires, equipment, mains, lines, tracks and other service structures located within the limits of public highways or constructed and maintained on private rights of way, and conduits, cables, devices, equipment and other facilities located upon or in such operating real property) within such sewer district, the assessor in such district shall determine the value of said operating real property of all such companies as lie within the district, which value shall be determined on the same basis as is the value of other real property subject to such special tax. Such valuation shall be placed upon the tax roll for the purposes of such special tax only. The tax so assessed to such companies shall be collected as other special sewer district taxes of the district are collected.

Where a city annexes an area receiving sewer service from a sanitary district, the city could put the area into a special district and levy assessments to pay the maining cost of installing sewers. Williams v. Madison, 15 W (2d) 430, 113 NW (2d) 395.

62.185 Sewer district bonds. Whenever a city is divided into sewer districts, bonds may be issued against any such district for the purpose of paying the district's portion of any sewer. Said bonds shall be issued in the manner authorized and provided by chapter 67 of the statutes. Such bonds shall not be a general city obligation but shall be payable both as to principal and interest, solely out of the special sewer district tax provided by subsection (16) of section 62.18. Any bonds heretofore authorized to be issued in accordance with this section shall be legal, valid and binding, to the same extent as if such district, at the time of authorizing such bonds, had the power to issue the same.

62.19 Water and heat pipe extensions. The expense of laying water and heat mains which are extensions to mains of a private utility under written contract with a city to lay or extend mains on order of the council, shall be defrayed by the city at large, or by the abutting property as the council determines.

History: 1961 c. 550.

62.20 Payment for public work. [Not printed; 1947 c. 143 s. 8; see 1945 Stats.]

62.21 Special assessments. [Not printed; 1947 c. 143 s. 8; see 1945 Stats.]

62.211 Limitation on use of sections 62.20 and 62.21. The procedure specified in sections 62.20 and 62.21 [Stats. 1945] and all the rights provided therein, shall continue to be applicable to all contractor's certificates or special improvement bonds and instalments thereof and the special assessments underlying the same, authorized to be issued prior to July 1, 1943; until all such special assessments have been collected or have been outlawed by operation of the statutes of limitation. No contractor's certificates or special improvement bonds shall be authorized under said sections after June 30, 1943.

62.22 Acquiring property; opening or changing streets. (1) PURPOSES. The governing body of any city may by gift, purchase or condemnation acquire property, real or personal, within or without the city, for parks, recreation, waterworks, sewage or waste disposal, airports or approaches thereto, cemeteries, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the city, 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 public purposes; and may sell and convey such property. The power of condemnation for any such purpose shall be as provided by ch. 32.

(1m) ACQUISITION OF EASEMENTS AND LIMITED PROPERTY INTERESTS. Confirming all powers granted to it and in furtherance thereof, the governing body of any city is expressly authorized to acquire by gift, purchase or condemnation under ch. 32 any and all property rights in lands or waters, including rights of access and use, negative or positive easements, restrictive covenants, covenants running with the land, scenic easements and any rights for use of property of any nature whatsoever, however denominated, which may be lawfully acquired for the benefit of the public or for any public purpose, including the exercise of powers granted under s. 62.23; and may sell and convey such easements or property rights when no longer needed for public use or protection.

(2) DONATION OF PROPERTY TO NONPROFIT PRIVATE CORPORATIONS. The governing body of any city may donate, convey, sell or lease property owned by such city to any nonprofit private corporation for public purposes and may acquire property for the purpose of donating, conveying, selling or leasing the same to nonprofit private corporations for public purposes.

(3) RIPARIAN RIGHTS. The city may by gift, purchase or condemnation take, injure or destroy any riparian rights or privileges appurtenant to land abutting upon Lake Michigan whenever it shall become necessary for the proper construction and use of any highway, street, boulevard, park or other public improvement without taking the lands or any portion thereof to which said riparian rights are appurtenant.

(4) PROCEDURE. (a) *Petition to open streets.* As to streets it shall be competent for any ten resident freeholders in any ward to petition the council for the opening, widening, extension or change of any street in such ward, and if the land proposed to be taken for that purpose shall lie in two or more wards, then ten resident freeholders of each of the wards shall be required to join in the petition. Such petition shall be addressed to the council and shall designate in general terms the location, extent of the proposed laying out, widening, extension or change, but need not contain a particular description of the land proposed to be taken. For the purposes of such petition a person in possession of land under a contract of purchase and sale or a bond for a deed shall be deemed a freeholder.

(b) *Petition as to alleys.* As to alleys, a petition for the opening, widening, extension or change of an alley may be made to the council by the owner or owners of one-third or more of the land in the block in which the alley or proposed alley is situated, whether such owner or owners shall be residents of the city or not. Land held under a land contract or bond for a deed shall, for the purpose of such petition, be deemed to be owned by the person so holding it; infants and others under guardianship may petition by their guardians.

(c) *Action on.* When the petition shall be presented to the council it shall be referred to the board of public works, and said board shall make a report to the council stating whether or not such petition is sufficiently signed, and if so, giving a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed alley or street, widening, extension or change. Upon the coming in of such report the council may, if the petition be reported sufficiently signed, by a vote of a majority of its members adopt a resolution declaring that it is necessary to condemn the land designated in such petition and report, referring to them, for the purpose named in the petition, and direct the city attorney to commence and prosecute condemnation proceedings. Such petition shall, before any resolution upon it shall be adopted, be referred to the board of public works, who shall thereupon make a report to the council stating whether or not it is sufficiently signed, and if so, giving a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed alley as the same will be when laid out, widened, extended or changed. Upon the coming in of such report, if it shall appear thereby that the petition is signed by the owner or owners of one-third or more of the land in the block, the council may adopt a resolution by a vote of a majority of its members, the same as in the case of a petition for the opening, widening, extension or change of a street, and like proceedings shall be had thereon. If it shall afterwards appear that the petition was not sufficiently signed, that fact shall not, in the absence of fraud, vitiate the petition or the subsequent proceedings thereon.

(d) *Proceedings without petition.* The council may, without a petition, by resolution declare it necessary to condemn land, describing it, for any authorized purpose, and direct the city attorney to prosecute condemnation proceedings therefor. If the purpose is the opening, widening, extension, or change of a street or alley, the resolution must be adopted by a vote of four-fifths of all the members. Before adopting the resolution it shall be referred to the board of public works, who shall make a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed

street or alley, drain or water pipe, or land to be used for other authorized purposes, and report the same to the council.

(e) *Abandoned portion vacated.* When a street or alley shall be changed by proceedings under section 62.22 so much of the original street or alley as shall be left out of it as changed shall be deemed vacated without any other proceeding, and the fact of such vacation shall be taken into account in assessing benefits and damages by reason of the condemnation proceedings.

**History:** 1965 c. 105.

**Cross Reference:** See 281.04 for requirement of filing notice of lis pendens and map prior to filing application for laying out, widening, vacating or extending streets, alleys, etc.

Vacation of platted alley or estoppel as 113 NW (2d) 834.  
preventing opening after long period dis- See note to 62.23, citing Scanlon v. Me-  
cussed. Jefferson v. Eiffler, 16 W (2d) 123, nasha, 16 W (2d) 437, 114 NW (2d) 791.

**62.23 City planning.** (1) **COMMISSION.** (a) The council of any city may by ordinance create a "City Plan Commission," to consist of the mayor, who shall be its presiding officer, the city engineer, the president of the park board, an alderman, and 3 citizens. In case the city has no engineer or no park board, an additional citizen member shall be appointed so that the board has at all times 7 members. Citizen members shall be persons of recognized experience and qualifications. The council may by ordinance provide that the membership of the commission shall be as provided thereunder.

(b) The alderman member of the commission shall be elected by a two-thirds vote of the council, upon the creation of the commission, and during each April thereafter.

(c) The three citizen members shall be appointed by the mayor, upon the creation of the commission, to hold office for a period ending one, two and three years, respectively, from the succeeding first day of May, and thereafter annually during April one such member shall be appointed for a term of three years.

(d) The additional citizen members, if any, shall be first appointed to hold office for a period ending one year from the succeeding May first, and thereafter annually during the month of April. Whenever a park board is created, or a city engineer appointed, the president of such board or such engineer shall succeed to a place on the commission when the term of an additional citizen member expires.

(e) The city plan commission shall have power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such commission by the legislative body, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the governing body.

(f) Any city may by ordinance increase the number of members of the city plan commission so as to provide that the building commissioner or building inspector shall serve as a member thereof.

(2) **FUNCTIONS.** It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment bear relation to the development of the municipality provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a municipality may not be included in the master plan without the consent of the county board of supervisors. The master plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the commission's recommendations for such physical development, and may include, among other things without limitation because of enumeration, the general location, character and extent of streets, highways, freeways, street grades, roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways, playgrounds, sites for public buildings and structures, airports, pierhead and bulkhead lines, waterways, routes for railroads, street railways and busses, and the general location and extent of sewers, water conduits and other public utilities whether privately or publicly owned, the acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, routes or terminals, the general location, character and extent of community centers and neighborhood units, the general character, extent and layout of the replanning of blighted districts and slum areas, and a comprehensive zoning plan. The commission may from time to time amend, extend or add to the master plan or carry any part or subject matter into greater detail. The commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

(3) **THE MASTER PLAN.** (a) The master plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote



public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

(b) The commission may adopt the master plan as a whole by a single resolution, or, as the work of making the whole master plan progresses, may from time to time by resolution adopt a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan. The adoption of the plan or any part, amendment or addition, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the city plan commission. The resolution shall refer expressly to the maps, descriptive matter, and other matters intended by the commission to form the whole or any part of the plan, and the action taken shall be recorded on the adopted plan or part thereof by the identifying signature of the secretary of the commission, and a copy of the plan or part thereof shall be certified to the common council. The purpose and effect of the adoption and certifying of the master plan or part thereof shall be solely to aid the city plan commission and the council in the performance of their duties.

(4) MISCELLANEOUS POWERS OF THE COMMISSION. The commission may make reports and recommendations relating to the plan and development of the city to public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens. It may recommend to the mayor or council, programs for public improvements and the financing thereof. All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members and employes, in the performance of its functions, may enter upon any land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

(5) MATTERS REFERRED TO CITY PLAN COMMISSION. The council, or other public body or officer of the city having final authority thereon, shall refer to the city plan commission, for its consideration and report before final action is taken by the council, public body or officer, the following matters: The location and architectural design of any public building; the location of any statue or other memorial; the location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any street, alley or other public way, park, playground, airport, area for parking vehicles, or other memorial or public grounds; the location, extension, abandonment or authorization for any public utility whether publicly or privately owned; all plats of lands in the city or within the territory over which the city is given platting jurisdiction by chapter 236; the location, character and extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or vacation camps for children; and the amendment or repeal of any ordinance adopted pursuant to this section. Unless such report is made within 30 days, or such longer period as may be stipulated by the common council, the council or other public body or officer, may take final action without it.

(6) OFFICIAL MAP. (a) The council of every city may by ordinance or resolution establish an official map of the city or any part thereof showing the streets, highways, parkways, parks and playgrounds theretofore laid out, adopted and established by law, and such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways and parkways, and the location and extent of parks and playgrounds shown thereon. Such official map is declared to be established to conserve and promote the public health, safety, convenience or general welfare. Said ordinance or resolution shall make it the duty of the city clerk at once to file with the register of deeds of the county or counties in which such city is situated a certificate showing that the city has established such official map. An ordinance or resolution establishing any part of an official map enacted prior to June 16, 1965 which would be valid under this paragraph is hereby validated.

(b) Such city council is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to establish the exterior lines of planned new streets, highways, parkways, parks or playgrounds, or to widen, narrow, extend or close existing streets, highways, parkways, parks or playgrounds. No such change shall become effective until after a public hearing in relation thereto before the city council or a committee appointed by the city council from its members, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the public hearing shall be published as a class 2 notice, under ch. 985. Before making such addition or change, the council shall refer the matter to the city plan commission for report thereon, but if the city plan commission shall not make its report within 60 days of such reference, it shall forfeit the right to further suspend

action. Such additions and changes when adopted shall become a part of the official map of the municipality, and shall be deemed to be final and conclusive with respect to the location and width of the streets, highways and parkways and the location and extent of parks and playgrounds shown thereon. The placing of any street, highway, parkway, park or playground line or lines upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street, parkway, park or playground, or the taking or acceptance of any land for such purposes.

(c) The locating, widening or closing, or the approval of the locating, widening or closing of streets, highways, parkways, parks or playgrounds by the city under provisions of law other than this section shall be deemed to be a change or addition to the official map, and shall be subject to the provisions of this section, except that changes or additions made by a subdivision plat approved by the city under ch. 236 shall not require the public hearing specified in par. (b) if the changes or additions do not affect any land outside the platted area.

(d) For the purpose of preserving the integrity of such official map, no permit shall hereafter be issued for any building in the bed of any street, highway or parkway, shown or laid out on such map except as provided in this section. The street, highway or parkway system shown on the official map may be shown on the official map as extending beyond the boundaries of a city or village a distance equal to that within which the approval of land subdivision plats by the city council or village board is required as provided by s. 236.10 (1) (b) 2. Any person desiring to construct a building in the bed of a street, highway or parkway so shown as extended may apply to the authorized official of the city or village for a building permit. Unless such application is made, and the permit granted or not denied within 30 days, such person shall not be entitled to compensation for damage to such building in the course of construction of the street, highway or parkway. If the land within such mapped street, highway or parkway is not yielding a fair return, the board of appeals in any municipality which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case, by the vote of a majority of its members, to grant a permit for a building in such street, highway or parkway, which will as little as practicable increase the cost of opening such street, highway or parkway, or tend to cause a change of such official map; and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall be designated to promote the health, convenience, safety or general welfare of the community. Such board shall refuse a permit where the applicant will not be substantially damaged by placing his building outside the mapped street, highway or parkway.

(e) In any city in which there is no such board of appeals, the city council shall have the same powers and shall be subject to the same restrictions. For this purpose such council is authorized to act as a discretionary administrative or quasi judicial body. When so acting it shall not sit as a legislative body but in a separate meeting and with separate minutes kept.

(f) Before taking any action authorized in this subsection, the board of appeals or city council shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days before the hearing notice of the time and place of the hearing shall be published as a class 1 notice, under ch. 985. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations.

(g) In any city which has established an official map as herein authorized no public sewer or other municipal street utility or improvement shall be constructed in any street, highway or parkway until such street, highway or parkway is duly placed on the official map. No permit for the erection of any building shall be issued unless a street, highway or parkway giving access to such proposed structure has been duly placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways or parkways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to such appeals and to such boards as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway or parkway layout. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations. In any city in which there is no such board of appeals the city

council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For such purpose such council is authorized to act as a discretionary administrative or quasi judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.

(h) In those counties where the county maintains and operates parks, parkways, playgrounds, bathing beaches and other recreational facilities within the limits of any city, such city shall not include said facilities in the master plan without the approval of the county board of supervisors.

(7) ZONING. (a) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes provided that there shall be no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation, heretofore or hereafter enacted or adopted pursuant thereto, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. It shall not be deemed limitation of any power elsewhere granted.

(b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts.

(c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

(d) *Method of procedure.* 1. The city plan commission, or board of public land commissioners, or if the city has neither, a city plan committee of the council, shall, upon request of the council, recommend the district plan and regulations for the city. Tentative recommendations shall first be formulated and a public hearing or hearings held thereon by the plan commission, or plan committee, functioning in lieu thereof. At least 10 days' prior written notice of such hearings shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations but failure to give such notice shall not invalidate such district plan or regulations. The council may change the districts and regulations after first submitting the proposed changes to the city plan commission or board of public land commissioners for recommendation and report and after publishing a class 2 notice, under ch. 985, of the proposed changes and hearings thereon. At least 10 days' prior written notice of changes in the district plan shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of the land to be affected by the proposed change but failure to give such notice shall not invalidate any such change. The council or committee thereof shall give an opportunity to any person interested to be heard. In case of a protest against such change, duly signed and acknowledged by the owners of 20% or more either of the areas of the land included in such proposed change, or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council. Notices of such tentative recommendations or proposed changes in the plan and regulations may contain the street names and house or lot numbers for purposes of identification if the commission, council or board so determines.

2. The council may repeal or repeal and reenact all or any part of the district or other zoning regulations in accordance with subd. 1. Any repeal or repeal and reenactment of such regulations prior to June 6, 1965 which would be valid under this subdivision is hereby validated.

(da) *Interim zoning.* The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim

zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

(e) *Board of appeals.* 1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for three years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members chairman. The board may employ a secretary and other employes. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor may appoint, for a term of 3 years, an alternate member of such board, in addition to the 5 members above provided for, who shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternate.

3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

7. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, require-

ment, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

9. The concurring vote of 4 members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. The grounds of every such determination shall be stated.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board of appeals.

11. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of appeals in order to review such decision of the board of appeals, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board of appeals, and on due cause shown, grant a restraining order.

12. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from, and shall be verified.

13. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and to report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(ca) *Filing fees.* The common council may by ordinance or resolution establish reasonable fees for the filing of a petition for amendment of the zoning ordinance or official map, or for filing an appeal to the board of appeals.

(f) *Enforcement and remedies.* 1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. In case of a violation of this section or of such ordinance or regulation such council may provide for the punishment by fine and by imprisonment for failure to pay such fine. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(h) *Nonconforming uses.* The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. Such nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use. If such nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to the ordinance.

(7a) *EXTRATERRITORIAL ZONING.* The governing body of any city which has created a city plan commission under sub. (1) and has adopted a zoning ordinance under sub. (7) may exercise extraterritorial zoning power as set forth in this subsection. Insofar as applicable the provisions of sub. (7) (a), (b), (c), (ea) and (h) shall apply to extraterritorial zoning ordinances enacted under this subsection. This subsection shall also apply to the governing body of any village.

(a) Extraterritorial zoning jurisdiction means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1½ miles of a fourth class city or a village. Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.32 shall apply and any subsequent alteration of the corporate limits of the city by annexation, detachment or consolidation proceedings shall not affect the dividing line as initially determined under s. 66.32. The governing body of the city shall specify by resolution the description of the area to be zoned within its extraterritorial zoning jurisdiction sufficiently accurate to determine its location and such area shall be contiguous to the city. The boundary line of such area shall follow government lot or survey section or fractional section lines or public roads, but need not extend to the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution the governing body shall declare its intention to prepare a comprehensive zoning ordinance for all or part of its extraterritorial zoning jurisdiction by the publication of the resolution in a newspaper having general circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy of the resolution and a scale map reasonably showing the boundaries of the extraterritorial jurisdiction to the clerk of the county in which the extraterritorial jurisdiction area is located and to the town clerk of each town, any part of which is included in such area.

(b) The governing body may enact, without referring the matter to the plan commission, an interim zoning ordinance to preserve existing zoning or uses in all or part of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment, unless extended as provided in this paragraph. Within 15 days of its passage, the governing body of the city shall publish the ordinance in a newspaper having general circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, and the city clerk shall mail a certified copy of the ordinance to the clerk of the county in which the extraterritorial jurisdiction is located and to the clerk of each town affected by the interim zoning ordinance and shall file a copy of the ordinance with the city plan commission. The governing body of the city may extend the interim zoning ordinance for no longer than one year, upon the recommendation of the joint extraterritorial zoning committee established under par.

(c). No other interim zoning ordinance shall be enacted affecting the same area or part thereof until 2 years after the date of the expiration of the interim zoning ordinance or the one year extension thereof. While the interim zoning ordinance is in effect, the governing body of the city may amend the districts and regulations of the ordinance according to the procedure set forth in par. (f).

(e) If the governing body of the city adopts a resolution under par. (a), it shall direct the plan commission to formulate tentative recommendations for the district plan and regulations within all or a part of the extraterritorial zoning jurisdiction as described in the resolution adopted under par. (a). When the plan commission is engaged in the preparation of such district plan and regulations, or amendments thereto, a joint extraterritorial zoning committee shall be established. Such joint committee shall consist of 3 citizen members of the plan commission, or 3 members of the plan commission designated by the mayor if there are no citizen members of the commission, and 3 town members from each town affected by the proposed plan and regulations, or amendments thereto. The 3 town members shall be appointed by the town board for 3 year terms and shall be residents of the town and persons of recognized experience and qualifications. Town board members are eligible to serve. If the town board fails to appoint the 3 members within 30 days following receipt of the certified resolution under par. (a), the board shall be subject to a mandamus proceeding which may be instituted

by any resident of the area to be zoned or by the city adopting such resolution. The entire plan commission shall participate with the joint committee in the preparation of the plan and regulations, or amendments thereto. Only the members of the joint committee shall vote on matters relating to the extraterritorial plan and regulations, or amendments thereto. A separate vote shall be taken on the plan and regulations for each town and the town members of the joint committee shall vote only on matters affecting the particular town which they represent. The governing body shall not adopt the proposed plan and regulations, or amendments thereto, unless the proposed plan and regulations, or amendments thereto, receive a favorable vote of a majority of the 6 members of the joint committee. Such vote shall be deemed action taken by the entire plan commission.

(d) The joint committee shall formulate tentative recommendations for the district plan and regulations and shall hold a public hearing thereon. Notice of a hearing shall be given by publication in a newspaper having general circulation in the area to be zoned, as a class 2 notice, under ch. 985, during the preceding 30 days, and by mailing the notice to the town clerk of the town for which the plan and regulations are proposed. The notice shall contain the layout of tentative districts either by maps or words of description, and may contain the street names and house lot numbers for purposes of identification if the joint committee or the governing body so determines. At a public hearing an opportunity to be heard shall be afforded to representatives of the town board of the town and to any person in the town for which the plan and regulations are proposed.

(e) The governing body of the city may adopt by ordinance the proposed district plan and regulations recommended by the joint committee after giving notice and holding a hearing as provided in par. (d), or the governing body may change the proposed districts and regulations after first submitting the proposed changes to the joint committee for recommendation and report. The joint committee and the governing body may hold a hearing on the proposed changes after giving notice as provided in par. (d). The joint committee recommendation on the proposed changes shall be submitted to the governing body in accordance with the voting requirements set forth in par. (c).

(f) The governing body of the city may amend the districts and regulations of the extraterritorial zoning ordinance after first submitting the proposed amendment to the joint committee for recommendation and report. The procedure set forth in pars. (c), (d) and (e) shall apply to amendments to the extraterritorial zoning ordinance. In the case of a protest against an amendment the applicable provisions under sub. (7) (d) shall be followed.

(g) Insofar as applicable the provisions of subs. (7) (e), (f), (8) and (9) shall apply. The governing body of a city which adopts an extraterritorial zoning ordinance under this subsection may specifically provide in the ordinance for the enforcement and administration of this subsection. A town which has been issuing building permits may continue to do so, but the city building inspector shall approve such permits as to zoning prior to their issuance.

(8) OTHER MEASURES OF ENFORCEMENT AND REMEDIES; PENALTY. Any building erected, constructed or reconstructed in violation of this section or regulations adopted pursuant thereto shall be deemed an unlawful structure, and the building inspector or city attorney or other official designated by the council may bring action to enjoin such erection, construction or reconstruction, or cause such structure to be vacated or removed. It shall be unlawful to erect, construct or reconstruct any building or structure in violation of this section or regulations adopted pursuant thereto. Any person, firm or corporation violating such provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500. Each and every day during which said illegal erection, construction or reconstruction continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed or reconstructed, or any land is or is proposed to be used in violation of this section or regulations adopted pursuant thereto, the building inspector or the city attorney or any adjacent or neighboring property owner who would be specially damaged by such violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or enjoin or abate or remove such unlawful erection, construction or reconstruction.

(9) BUILDING INSPECTION. (a) The city council may provide for the enforcement of this section and all other laws and ordinances relating to buildings by means of the withholding of building permits, and for such purposes may establish and fill the position of building inspector. From and after the establishment of such position and the filling of the same, it shall be unlawful to erect, construct or reconstruct any building or other structure without obtaining a building permit from such building inspector; and such

building inspector shall not issue any permit unless the requirements of this section are complied with.

(b) The council may by ordinance designate general fire limits and regulate for safety and fire prevention the construction, alteration, enlargement and repair of buildings and structures within such limits, and may designate special fire limits within the general limits, and prescribe additional regulations therein. Any such proposed ordinance or amendment thereto shall be referred to the city plan commission, if such commission exists, for consideration and report, before final action is taken thereon by the council. However, no such ordinance or amendment thereto shall be adopted or become effective until after a public hearing in relation thereto, which may be held by the city plan commission or council, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of the hearing shall be published as a class 2 notice, under ch. 985.

(9a) MAY EXERCISE POWERS OF BOARD OF PUBLIC LAND COMMISSIONERS. In cities of the first class, said city plan commission may exercise all of the powers conferred on board of public land commissioners under section 27.11.

(10) WIDENING STREETS. (a) When the council by resolution declares it necessary for the public use to widen any street or a part thereof, it may proceed as prescribed in ch. 32, except as herein modified. The determination of necessity by the council shall not be a taking, but shall be an establishment of new future boundary lines.

(b) After such establishment no one shall erect any new structure within the new lines, nor rebuild or alter the front or add to the height of any existing structure without receding the structure to conform to the new lines. No damages shall be received for any construction in violation hereof.

(c) The council may at any time after the establishment of new lines provide compensation for any of the lands to be taken, whereupon such lands shall be deemed taken, and the required further proceedings shall be commenced.

(d) If a structure on lands thus taken is not removed after three months' written notice served in manner directed by the council, the city may cause it to be removed, and may dispose of it and apply the proceeds to the expense of removal. Excess proceeds shall be paid to the owner, and excess expense shall be a lien on the rest of the owner's land abutting on such street, and if not paid shall be assessed against such land and collected as are other real estate taxes. If the owner does not own the adjoining piece of land abutting on the new line, he shall be personally liable to the city for the expense of removal.

(e) Until the city has taken all of the lands within the new lines, it may lease any taken, to the person owning same at the time of taking, at an annual rental of not more than five per cent of the amount paid therefor by the city or of the market value, if donated. Improvements may be maintained on such leased lands until all lands within the new lines are taken, whereupon they shall be removed as provided in paragraph (d). No damages shall be had for improvements made under such lease.

(11) BUILDING LINES. (a) The council may by ordinance, in districts consisting of one side of a block or more, establish the distance from the street that structures may be erected. The city engineer shall thereupon make a survey and plat, and report the same, with description of any structure then situated contrary to such ordinance, to the council.

(b) The council may by ordinance make such regulation or prohibition of construction on any parts of lots or parcels of land or on any specified part of any particular realty, as shall be for the public health, safety or welfare.

(c) Whenever to carry out any ordinance under this subsection it is necessary to take property for public use, the procedure of chapter 32 of the statutes shall be followed.

(12) VACATION CAMP COURSES. A course of academic and vocational study, including physical training, shall be provided by the city board of education, for vacation camps established under subsection (17).

(13) FUNDS. Funds to carry out the purposes of this section may be raised by taxation or by bonds issued as provided in sections 67.05, 67.06, 67.07, 67.08 and 67.10.

(14) ASSESSMENTS. The expense of acquiring, establishing, laying out, widening, enlarging, extending, paving, repaving and improving streets, arterial highways, parkways, boulevards, memorial grounds, squares, parks and playgrounds, and erecting bridges under any plan adopted by the common council pursuant to this section or s. 27.11, including the cost of all lands and improvements thereon which it is necessary to acquire to carry out such plan, whether acquired by direct purchase or lease, or through condemnation, and also including the cost of constructing any bridge, viaduct or other improvement which is a part of the plan adopted by the common council, may be assessed, in whole or in part, to the real estate benefited thereby, in the same manner in which under existing



law in such city benefits and damages are assessable for improvements of streets. Whenever plans are adopted which are supplementary to each other the common council may by ordinance combine such plans into a single plan within the meaning of this section. Section 66.54 shall apply to all assessments made under this subsection.

(15) **EXCESS CONDEMNATION.** Whenever any of the purposes of sub. (14) are planned to be carried out by excess condemnation, benefits may be assessed in the manner provided in said subsection.

(16) **BENEFITS FROM PUBLIC BUILDINGS.** Any benefits of public buildings and groups thereof may be assessed in the manner provided in s. 62.23 (14).

(17) **ACQUIRING LAND.** (a) Cities may acquire by gift, lease, purchase or condemnation any lands (a) within its corporate limits for establishing, laying out, widening, enlarging, extending and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; (b) any lands adjoining or near to such city for use, sublease or sale for any of the following purposes:

1. To relieve congested sections by providing housing facilities suitable to the needs of such city;
2. To provide garden suburbs at reasonable cost to the residents of such city;
3. To establish city owned vacation camps for school children and minors up to twenty years of age, such camps to be equipped to give academic and vocational opportunities, including physical training.

(b) After the establishment, layout and completion of such improvements, such city may convey or lease any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air and usefulness of such public works, and to promote the public health and welfare.

(c) The acquisition and conveyance of lands for such purpose is a public purpose and is for public health and welfare.

(18) **LAKES AND RIVERS.** The city may improve lakes and rivers within the city and establish the shore lines thereof so far as existing shores are marsh, and where a navigable stream traverses or runs along the border of a city, such city may make improvements therein throughout the county in which such city shall be located in aid of navigation, and for the protection and welfare of public health and wild life.

**History:** 1961 c. 202, 324, 445, 550, 622; 1963 c. 241, 459; 1965 c. 79, 93, 252.

A zoning ordinance which excludes a church from a particular district must pass two tests, (1) whether it can reasonably be said that use for a church would have such an effect on the area that exclusion of such use will promote the general welfare, and (2) whether the exclusion imposes a burden on freedom of worship which is not commensurate with the protection of general welfare secured, and the ultimate test thereon is whether the regulation is an undue infringement on the protected freedom. A village zoning ordinance appearing to exclude churches from the entire village was invalid in that form. *State ex rel. Lake D. B. Church v. Bayside V. Bd.* 12 W (2d) 585, 108 NW (2d) 288.

The power of a council to sell real estate under 62.22 (1) is qualified by 62.23 (5) where a city plan commission has been created, and a sale of land without referring it to the commission is void. *Scanlon v. Menasha*, 16 W (2d) 437, 114 NW (2d) 791.

A city board of zoning appeals, constituted pursuant to (7) (e), may revoke a building permit issued by the city building inspector. General procedure under 62.23 discussed. *State ex rel. Cities S.O. Co. v. Bd. of Appeals*, 21 W (2d) 516, 124 NW (2d) 809.

Insurers are "persons aggrieved" for purposes of appeal where the insured owner refused to start proceedings to review an adverse ruling of the zoning board of appeals. An ordinance is invalid which prohibits repair of a building if damaged more than 50 per cent of appraised value where the appraisal is substantially below market value. *State ex rel. Home Ins. Co. v. Burt*, 23 W (2d) 231, 127 NW (2d) 270.

An ordinance which prohibited filling stations in a commercial zone unless ap-

proved by the board of appeals is invalid where the only guideline provided was the "promotion of the public health, safety, convenience, prosperity or general welfare". An ordinance prohibiting filling stations adopted after petitioners had initiated proceedings to compel issuance of a permit is invalid. *State ex rel. Humble Oil & Ref. Co. v. Wahner*, 25 W (2d) 1, 130 NW (2d) 304.

Extraterritorial zoning and a 2-year freeze as provided in (7a) are constitutional. (2) does not apply to a 2-year interim freeze ordinance. *Walworth County v. Elkhorn*, 27 W (2d) 30, 133 NW (2d) 257.

The hardship which justifies a board of appeals in granting a variance must be one which originates in the zoning ordinance, and when the claimed hardship arises because of the actions of the applicant, the board is without power to grant a variance. Self-created hardship which will bar the granting of a variance may consist of affirmative action in ignorance of existing zoning restrictions or upon a misinterpretation thereof. *State ex rel. Markdale Corp. v. Bd. of Appeals*, 27 W (2d) 154, 133 NW (2d) 795.

A comprehensive zoning ordinance dividing a village into residential, business, commercial, and other districts, which established 2 separate business classifications, one designated as a limited local-business district and the other classified as a general local-business district was neither arbitrary nor unreasonable. *State ex rel. American Oil Co. v. Bessent*, 27 W (2d) 537, 135 NW (2d) 317.

One occupying premises under an occupancy permit contrary to zoning restrictions and in violation of a city ordinance prohibiting illegal nonconforming use of property who before entering into occupancy ob-

tained from the city a certificate purporting to permit the illegal nonconforming use, could not, in an action by the city to revoke the permit, successfully defend on the ground that the city was estopped in that some years prior to his acquisition of title illegal nonconforming use of the property had been permitted and that he in reliance on the illegal permit expended a considerable sum of money to ready the building for his occupancy. *Milwaukee v. Leavitt*, 31 W (2d) 72, 142 NW (2d) 169.

A town which, pursuant to (7), adopted a comprehensive zoning ordinance dividing the municipality into separate use districts, creating an industrial district consisting of several parcels (in which district rendering plants were prohibited) could not thereafter validly amend the ordinance so as to grant an exception to one owner to permit him to operate a rendering plant in the industrial district without granting similar approval to the remaining parcels comprising the industrial district. *Boerschinger v. Elkay Enterprises, Inc.* 32 W (2d) 168, 145 NW (2d) 108.

Under (8) a property owner can maintain an action to compel a neighbor to remove a garage constructed too close to the lot line where trial court found that the garage denied plaintiff full use of light and air and

blocked their view. The fact that defendant had been issued a building permit is not a bar, nor is the fact that there were many nonconforming uses in the area. *Jelinski v. Eggers*, 34 W (2d) 85, 148 NW (2d) 750.

Petitioner cannot maintain mandamus against a city council to compel amendment of a zoning ordinance without showing he has exhausted his remedies before the appeal board. *Beres v. New Berlin*, 34 W (2d) 229, 148 NW (2d) 653.

A protest filed by adjacent landowners against an initial city zoning ordinance purporting to create a new zoning district, which ordinance was not acted upon by the common council but ordered filed, was not operative against or applicable to a second ordinance substantially differing from the first to such an extent as to require legislative reprocessing. Only landowners adjacent to the land where the proposed change is to be made (or those included in such proposed change or owning land directly opposite the area) are to be considered in determining whether the 20% requirement under (7) (d) is met. *Prescher v. Wauwatosa*, 34 W (2d) 421, 149 NW (2d) 541.

Regulations excluding churches from residential districts. 1962 WLR 368.

Effect of restrictive covenants on zoning. 1963 WLR 321.

**62.25 Claims and actions.** (1) **CLAIMS.** (a) No action shall be maintained against a city upon a claim of any kind until the claimant shall first present his claim to the council and it is disallowed in whole or in part. Failure of the council to pass upon the claim within 90 days after presentation is a disallowance.

(b) After disallowing a claim in whole or in part the council shall not thereafter allow the same.

(c) The clerk shall cause to be served on the claimant notice of any disallowance if the claimant in writing furnished the address of his usual place of abode. The notice shall be served by a police officer, without fees, in the manner of service of summons in municipal court. If the claimant be a nonresident and he furnished the address of his usual place of abode, the notice shall be sent to such address by registered mail and receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service.

(d) The claimant may accept payment of a portion of his claim without waiving right to recover the balance. No interest shall be recovered on any portion of a claim allowed after a city order is drawn and made available to the claimant. If in an action the claimant recovers a greater sum than was allowed, he shall recover costs, otherwise the city shall recover costs.

(e) Disallowance by the council shall bar any action founded on the claim unless brought within 6 months after service of notice of disallowance, or after disallowance if the address was not furnished as aforesaid.

(2) **ACTIONS.** (a) Damages, if any, in an action against a city officer in his official capacity, except the action directly involve the title to his office, shall not be awarded against such officer, but may be awarded against the city.

(b) In an action to restrain payment by a city for work performed or material furnished, the plaintiff shall give a bond conditioned for payment to the claimant, if the action is finally determined in the claimant's favor, of damages caused by the delay, including expense incurred in the action, and interest. The bond shall be with two sureties to be approved by the court, and in an amount fixed by the court and sufficient to cover all probable damages.

(d) No person shall be ineligible to sit as judge, justice or juror in an action to which the city is a party, by reason of being an inhabitant of the city.

**History:** 1967 c. 276 s. 40.

**Cross Reference:** As to filing claims and demands against the city, see 62.12 (8).

The fact that a claim is signed by a guardian ad litem before his appointment does not make it defective if it is presented after the appointment. *Rogers v. Oconomowoc*, 16 W (2d) 621, 115 NW (2d) 635.

Failure to file a claim within the time limited does not bar an action for contribution nor a cross-complaint for indemnification against a city. *Hennington v. Valuch*, 19 W (2d) 260, 120 NW (2d) 44.

Under (1) (a) the Foundation was not required to file its claim for architect's fees based on the architectural-service contract

in question as a condition precedent to such arbitration proceeding pursuant to such contract. *Madison v. Frank Lloyd Wright Foundation*, 20 W (2d) 361, 122 NW (2d) 409.

Where a city failed to serve notice of disallowance of a claim, the 6 months' limitation did not apply. Oral advice to claimant at a committee meeting that the claim could not be allowed is not sufficient. *Vollert v. Wisconsin Rapids*, 27 W (2d) 171, 133 NW (2d) 786.

The requirement in (1) (c) and (e) that

notice of disallowance of a claim be served by the city clerk upon the claimant if the claimant in writing furnished the address of his usual place of abode, in order to start the 6-months' statutory period within which an action against the city must be commenced, is construed to include a situation where the claimant furnishes the name of his attorney and the latter's address. *Novak v. Delavan*, 31 W (2d) 200, 143 NW (2d) 6.

See note to 895.43, citing *Pattermann v. Whitewater*, 32 W (2d) 350, 145 NW (2d) 705. A complaint in a tort action against a vil-

lage or a city is demurrable when the complaint fails to allege that a claim has been presented to the board or council and has been disallowed. *Foreway Express, Inc. v. Hilbert*, 32 W (2d) 371, 145 NW (2d) 668.

The failure to file a claim under 62.25 does not prevent a railroad from impleading a city in an action for damages, where the railroad claims the city was responsible because of failure to trim a tree under 195.29 (6). *Bosin v. M. St. P. & S.S.M.R. Co.* 133 F. Supp. 320.

**62.26 General provisions.** (1) **LAWS IN FORCE.** The general laws for the government of cities, villages and towns, the assessment and collection of taxes, the preservation of public and private property, highways, roads and bridges, the punishment of offenders, the collection of penalties and the manner of conducting elections shall be in force in all cities organized under the provisions of chapter 62 except as otherwise herein provided.

(2) **EQUITY IN LAND.** The acquisition or retention by a city of an equity of redemption in lands shall not create any liability on the part of the city to pay any bonds issued or mortgage or trust deed upon such lands executed prior to the acquisition by the city of such equity.

(3) **FORMS.** The use of any forms prescribed by the statutes of this state, as far as the same are applicable, shall be as legal and of the same force and effect as the use of the forms prescribed by chapter 62.

(4) **REWARDS.** When any heinous offense or crime has been committed against life or property within any city the mayor, with the consent of a majority of the aldermen, may offer a reward for the apprehension of the criminal or perpetrator of such offense.

(6) **CITIES IN MORE THAN ONE COUNTY.** In cities lying in more than one county the following shall apply:

(b) Accused persons may be put in custody of an officer or committed to the jail of the city or of the county where the offense was committed.

(d) Officers of the city, who by law have the powers of constables in the county in which the city is located, shall have such powers in either county.

(7) **CHANGE OF CITY NAME.** The name of any city of the fourth class shall be changed if a majority of the electors shall address a written petition therefor to the council designating the new name, and the council shall by a two-thirds vote of all the members adopt an ordinance changing to such new name. The change shall be in effect upon publication of the ordinance in the official paper, and the filing of a copy thereof in the office of the secretary of state.

**History:** 1961 c. 614; 1965 c. 617; 1967 c. 276.