CHAPTER 62
CITIES

SUBCHAPTER I
GENERAL CHARTER LAW

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(3) Ordinances in force, so far as not inconsistent herewith, shall continue in force until altered or repealed.

62.02 Repeal of special charters. All special charters for cities of the 2nd, 3rd and 4th classes are hereby repealed and such cities are hereby incorporated under this subchapter. The city clerk shall forthwith certify the boundaries of such city to the secretary of administration, who shall file the same and issue to such city a certificate of incorporation as of the date when this subchapter became effective, and record the same.

History: 1977 c. 151; 2015 a. 55.

62.03 First class cities excepted. (1) This subchapter, except ss. 62.071, 62.08 (1), 62.09 (1) (e) and (11) (j) and (k), 62.175, 62.23 (7) (em) and (he) and 62.237, does not apply to 1st class cities under special charter.

(2) Any such city may adopt by ordinance this subchapter or any section or sections thereof, which when so adopted shall apply to such city.

History: 1977 c. 151; 2015 a. 55.

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 ss. 62.01 to 62.26 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 4 classes for administration and the exercise of corporate powers as follows:

(a) Cities of 150,000 population and over shall constitute 1st class cities.

(b) Cities of 39,000 and less than 150,000 population shall constitute 2nd class cities.

(c) Cities of 10,000 and less than 39,000 population shall constitute 3rd class cities.

(d) Cities of less than 10,000 population shall constitute 4th class cities.

(3) The revision of the general charter law by chapter 242, laws of 1921 shall not affect the application of any provisions of the general charter previously adopted by any 1st class city under special charter, but such provisions shall as to such cities retain the same force and application as they had before the enactment of chapter 242, laws of 1921.


The city of Milwaukee cannot, by charter ordinance, adopt s. 62.13 (5) (b) since s. 62.13 deals with a subject of state-wide concern; it cannot do so under s. 62.03 since that requires the adoption of whole sections. 56 Atty. Gen. 59.

62.06 Claims and actions. 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 ss. 62.01 to 62.26 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.

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62.09 Officers.

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62.13 Police and fire departments.

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62.15 Public works.

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SUBCHAPTER II
FIRST CLASS CITIES

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62.96 Zoning of annexed or incorporated shorelands.

62.98 Detachment of farm lands from cities.

62.100 Construction site erosion control and storm water management zoning.

62.102 Zoning of wetlands in shorelands.

62.104 Zoning of shorelands.
(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: 1995 c. 225; 1997 a. 35.
Cross-reference: See s. 990.001 (15), which provides that “If a statute refers to a class of city specified under s. 62.05 (1), such reference does not include any city with a population which makes the city eligible to be in that class unless the city has taken the actions necessary to pass into the class under s. 62.05 (2).”

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 percent 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 the city clerk shall certify a copy of his or her determination to the school district clerk and the secretary of the school district boundary board. If the total of such value exceeds 20 percent 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 department of revenue 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 school district boundary appeal board that a petition for annexation, which will result in detachment of more than 20 percent 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 percent 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. .... 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. 66.0217 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 percent of the district had been involved in the original petition.

History: 1975 c. 20; 1983 a. 27; 1983 a. 275 s. 15 (2); 1999 a. 150 s. 672; 2009 a. 177.

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 subs. (3) and (4). There shall be no adjustment, assignment and transfer of assets and liabilities under s. 66.0235, but the detached territory shall continue to pay its proportional 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 that owner 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 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 that person’s 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. 801.12 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 ...., .... (year), 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. The city, town or towns, owners of land in the vicinity, or owners of any interest therein, if opposed to the proceedings, shall, at least 15 days before the time of hearing fixed by the order, file in the office of the clerk of circuit court and serve on the petitioners their verified objections to the grant of the prayer of the petition, specifying the grounds of objections thereto. The proceedings may be adjourned or continued for cause. The issue raised by the petition shall be tried by the circuit court upon the evidence submitted by the petitioners and objectors; and witnesses shall be compelled to appear and testify as in other cases in circuit court and the rules of evidence, practice and procedure shall be the same. The circuit court may render judgment under subs. (1) and (2), detaching from the city and annexing...
to the town or towns the area, if the facts required by the subsections are proved by a preponderance of the evidence. If the facts are not so proved, the petition shall be dismissed. In the event of a contest, costs may be awarded to the successful party. (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 administration. The secretary of administration shall forward 2 copies to the department of transportation and one copy to the department of revenue. (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 plating pursuant to ch. 236 unless re−annexed to the city. History: Sup. Ct. Order, 67 Wis. 2d 585, 574 (1975); 1977 c. 29 s. 1654 (b) (c); 1977 c. 187; 1979 c. 110 s. 60 (11); 1983 a. 219; 1985 a. 225; 1991 a. 316; 1993 a. 490; 1997 a. 250; 1999 a. 150 s. 672; 2015 a. 55.

62.08 Alteration of aldermanic districts. (1) Within 60 days after the wards have been readjusted under s. 5.15 (1) and (2) the common council of every city, including every 1st class city, shall redistrict the boundaries of its aldermanic districts, 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 majority vote of all the members of the council, so that all aldermanic districts are as compact in area as possible and contain, as nearly as practicable by combining contiguous whole wards, an equal number of inhabitants according to the most recent decennial federal census of population. Territory within each aldermanic district to be created under the plan shall be contiguous, except that territory within the city that is wholly surrounded by another city or water, or both, may be combined with noncontiguous territory, or island territory, as defined in s. 5.15 (2) (f) 3., may be combined with noncontiguous territory within the same municipality to form an aldermanic district. The aldermanic district plan shall not include provision for division of any census block unless the block is bisected by a municipal boundary or the division is made as required under s. 5.15 (2) (c). The populations of the aldermanic districts shall be determined on the basis of the federal decennial census and any official corrections to the census to reflect the correct populations of the municipality and the blocks within the municipality on April 1 of the year of the census, if the corrections are issued prior to division of the municipality into wards under s. 5.15. Within 60 days after enactment or adoption of a revised division ordinance or resolution under s. 5.15 (4) (a), the common council shall amend the aldermanic district plan to reflect the numbering of the wards specified in the plan so as far as possible be retained, and the aldermanic districts so created and those the boundaries of which are changed shall be in as compact form as possible. This subsection does not apply to changes in aldermanic districts authorized under sub. (4m).

(4m) If in a city that is solely contained within one county the aldermanic districts are coterminous with the supervisory districts of the county and the county board decreases the number of supervisors in the county after enactment of a redistricting plan under s. 59.10 (3) (cm), the common council of the city may, by a majority vote of all of the members of the council, no later than November 15 immediately preceding the expiration of the terms of office of members of the council, decrease the number of aldermanic districts and the corresponding number of members of the council in the city to maintain coterminous boundaries between the aldermanic and supervisory districts and may change the expiration date of the term of any council member to an earlier date than the date provided under the current ordinance if required to implement the redistricting or to maintain classes of members. Any amended aldermanic district plan that is adopted under this subsection is subject to the same procedures and requirements that apply to decennial plans adopted under sub. (1).

(5) If a city fails to comply with sub. (1), any elector of the city may submit to the circuit court for any county in which the city is located within 14 days from the expiration of the 60−day period under sub. (1) a proposed plan for creation of aldermanic districts in compliance with this section. If the court finds that the city's division of the city into aldermanic districts fails to comply with this section, it shall review the plan submitted by the petitioner and, if the facts are proved by a preponderance of the evidence, the petitioner may promulgate the plan, or any other plan in compliance with this section, as a temporary aldermanic district plan until superseded by a districting plan adopted by the council in compliance with this section. History: 1971 c. 304, 336; 1973 c. 12; 1979 c. 260; 1981 c. 4; 1985 a. 304; 1991 a. 316; 2005 a. 106; 2011 a. 39.

62.09 Officers. (1) ENUMERATION AND CHANGE. (a) The officers shall be a mayor, treasurer, clerk, comptroller, attorney, engineer, one or more assessors unless the city is assessed by a county assessor under s. 70.99, one or more constables as determined by the common council, a local health officer, as defined in s. 250.01 (5), or local board of health, as defined in s. 250.01 (3), street commissioner, board of police and fire commissioners except in cities where not applicable, chief of police except in a city where it is not applicable, chief of a combined protective services department except in a city where it is not applicable, board of public works, 2 alderpersons from each aldermanic district, and such other officers or boards as are created by law or by the council. If one alderperson from each aldermanic district is provided under s. 66.0211 (1), the council may, by ordinance adopted by a two−thirds vote of all its members and approved by the electors at a general or special election, provide that there shall be 2 alderpersons from each aldermanic district. If a city creates a combined protective services department under s. 62.13 (2e) (a) 1., it shall create the office of chief of such a department and shall abolish the offices of chief of police and chief of the fire department.

(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. 66.0101, provide that there shall be one alderperson from each aldermanic district. 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.

(c) A corporation or an independent contractor may be appointed as the city assessor. The corporation or independent contractor so appointed shall designate the person responsible for the assessment. The designee shall file the official oath under s. 19.01, and sign the affidavit of the assessor attached to the assessment roll under s. 70.49. No person may be designated by any corporation or independent contractor unless he or she has been
granted the appropriate certification under s. 73.09. For purposes of this subsection, “independent contractor” means a person who either is under contract to furnish appraisal and assessment services or is customarily engaged in an independently established trade, business or profession in which the services are offered to the general public.

(d) No person may assume the office of city assessor unless certified by the department of revenue under s. 73.09 as qualified to perform the functions of the office of assessor. If a person who has not been so certified is elected to the office, the office shall be vacant and the appointing authority shall fill the vacancy from a list of persons so certified by the department of revenue.

(e) The office of constable is abolished in 1st class cities. The duties of the constable in such cities shall be performed by the sheriff of the county in which the city is located.

(2) ELIGIBILITY. (a) No person shall be elected by the people to a city office who is not at the time of election a citizen of the United States and of this state, and an elector of the city, and in case of an aldermanic district office, of the aldermanic district, 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 alderpersons shall be elected by the voters.

(b) The other officers except as provided in s. 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 under s. 66.0509.

(d) No person may assume the office of city assessor unless certified by the department of revenue under s. 66.0101.

(e) Any city may also proceed pursuant to s. 66.0101 to consolidate any such other office or offices.

(d) Whenever a city is newly created the officials other than those specified by par. (a) shall be appointed by the mayor until provided otherwise pursuant to par. (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 10 days after notice of election or appointment, except that elected assessors shall take and file the official oath within 5 days before June 1.

(c) If the council requires them to do so, 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 s. 632.17 (2), or the council may provide a schedule or blanket bond that includes any or all of these officials. The council may at any time require new and additional bonds of an 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 election or appointment. Official bonds filed with the city clerk shall be recorded in a book kept for that purpose. If the council does not require any or all of these officials to execute and file an official bond, the council shall obtain a dishonesty insurance policy or other appropriate insurance policy that covers such officials, in an amount determined by the council, in lieu of the bond requirement.

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

(d) A city may pay the cost of an official bond furnished by an officer of the city, pursuant to law or any rules or regulations requiring the bond, if the officer furnishes a bond with a surety company or companies authorized to do business in this state. The cost of the bond furnished by the officer may not exceed the current rate of premium per year on the amount of the bond or obligation executed by the surety. The cost of the bond shall be charged to the fund appropriated and set up in the budget for the department, board, commission or other body, the officer of which is required to furnish a bond.

(5) TERMS. SUBSTITUTES. (a) The regular term of office of mayor and alderperson 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 provided, the regular term of elective office 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 alderpersons are to be elected, provide for a division of the alderpersons into 2 classes, one class to be elected for 2 years and the other for 4 years, and thereafter the term of alderpersons shall be 4 years.

(d) If any officer other than an alderperson is incapacitated or absent from any cause the common council may appoint some person to discharge the officer’s duties until the officer returns or until such disability is removed. If an alderperson is temporarily incapacitated because of physical or mental disability, the common council may appoint a person to discharge the alderperson’s duties until the disability is removed.

(e) Persons serving in appointive offices shall serve until their respective successors are appointed and qualify, unless otherwise provided by ordinance.

(6) COMPENSATION. (a) Salaries shall be paid the mayor or alderpersons only when ordered by a vote of three-fourths of all the members of the council.

(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 this subchapter 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.
or because of some act arising out of the performance of that official’s duties, and that official 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 the official for the expenses reasonably incurred for costs and attorney fees.

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

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

(c) The mayor 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 the mayor by the clerk and shall be in force upon approval evidenced by the mayor’s signature, or upon failing to approve or disapprove within 5 days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor’s objections shall be filed with the clerk, who shall present them to the council at its next ensuing meeting. A two-thirds 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 s. 62.13 (6), the mayor shall be the head of the fire and police departments, and where there is no board of police and fire commissioners shall appoint all police officers, and the mayor may, in any city, appoint security personnel to serve without pay, and in case of riot or other emergency, appoint as many special police officers 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 invalidity of the mayor shall have the power and duties of the mayor, except that the president shall not have power to approve an act of the council which the mayor has disapproved by exception.

(f) The comptroller may in writing, filed in the office of the clerk, appoint a deputy who shall act under the treasurer’s direction and in the treasurer’s absence or disability, or in case of a vacancy shall perform the treasurer’s 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) The comptroller 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.

(h) The comptroller may in writing, filed in the office of the clerk, appoint a deputy who shall act under the comptroller’s direction and in the comptroller’s absence or disability, or in case of a vacancy shall perform the comptroller’s 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) The clerk shall attend the meetings of the council and keep a full record of its proceedings.

(c) The clerk 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. The clerk shall keep a record of all licenses and permits granted and record all bonds, in appropriate books.
(d) The clerk shall draw and sign all orders upon the treasury in the manner provided by s. 66.0607, and keep a full account thereof in appropriate books. The clerk shall carefully preserve all receipts filed with the clerk.

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

(f) The clerk shall keep all papers and records in the clerk’s office open to inspection at all reasonable hours subject to subch. II of ch. 19.

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

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

(j) The clerk shall notify the treasurer of the county in which the city is located, by February 20, of the proportion of property tax revenue and of the credits under s. 79.10 that is to be disbursed by the taxation district treasurer to each taxing jurisdiction located in the city.

(k) The clerk shall stamp or endorse street trade permits at the request of an employer under s. 103.25 (3m) (b).

(L) The clerk shall stamp or endorse traveling sales crew worker permits at the request of an employer under s. 103.34 (11) (c).

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

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

(c) The attorney shall draft ordinances, bonds and other instruments as may be required by city officers.

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

(e) The attorney may appoint an assistant, who shall have power to perform the attorney’s duties and for whose acts the attorney 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, or the chief of a combined protective services department created under s. 62.13 (2e) (a) 1. shall have command of the combined protective services force, under the direction of the mayor. The chief shall obey all lawful written orders of the mayor or common council. The chief and each police officer or combined protective services officer 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 judge or other proper court every person found in the city engaged in any disturbance of the peace or violating any law of the state or ordinance of the city and may command all persons present in that case to assist, and if any person, being so commanded, refuses or neglects to render assistance the person shall forfeit not exceeding $10. They shall collect the same fees prescribed for sheriffs in s. 814.70 for similar services, unless a higher fee is applicable under s. 814.705 (1) (b).

(b) The chief of police, or the chief of a combined protective services department created under s. 62.13 (2e) (a) 1., 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 the jail, including the person’s name, residence and description, the time and cause of the person’s confinement, and the authority under which the person 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. 302.41 and 302.42 shall be provided at the expense of the municipality.

(15) CONSTABLES. (a) A constable who is given law enforcement duties by the common council, and who meets the definition of a law enforcement officer under s. 165.85 (2) (c), shall comply with the minimum employment standards for law enforcement officers established by the law enforcement standards board and shall complete training under s. 165.85 (4) (a) 1.

(b) A constable shall keep his or her office in the city. No constable who keeps his or her office outside the limits of the city may receive fees for any service performed during the period the outside office is maintained.

(1971 c. 124, s. 124; 1975 c. 375, s. 4; 1976 c. 112, s. 1; 1979 c. 34, s. 21; 1983 c. 206, s. 1; 1985 a. 39, s. 1; 1986 a. 225, s. 1; 1987 a. 233, s. 1; 1991 a. 115, s. 1; 1993 a. 155, s. 1; 1995 a. 328, s. 1; 1996 a. 255, s. 1; 1997 a. 27, s. 49; 1999 a. 32, s. 1; 2005 a. 37, s. 1; 2007 a. 243, s. 1; 2011 a. 32; 2015 a. 187, s. 1; 2016 a. 120, s. 1; 2017 a. 222, s. 1; 2018 a. 29, s. 1; 2019 a. 29, s. 1; 2020 a. 9, s. 1; 2021 a. 10; 2022 a. 112, s. 1)

NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.

Cross-reference: See s. 196.65, which provides that a city attorney may not be employed by common carrier or public utility.

Cross-reference: See s. 66.0609 for an alternative system of approving claims under sub. (10).

A mayor may not veto council action or inaction on public works contracts. Sturzl Construction Co., Inc. v. City of Green Bay, 88 Wis. 2d 403, 276 N.W.2d 771 (1979).

A conflicts arising from the election of a school principal to the office of alderperson does not violate s. 946.13 (1) with respect to the police officer’s contract. 63 Atty. Gen. 43.

A mayor in a city with a police and fire commission does not have the authority to order a police chief to reinstate a discharged probationary police officer. 81 Atty. Gen. 1.

When no provision fixes the term of appointive officers, such as a city treasurer, the term is limited to that of the appointing authority; removal by a successor does not implicate a due process property interest. Wolf v. City of Fitchburg, 870 F.2d 1327 (1989).

Police accountability in Wisconsin. 1974 WLR 1131.

62.11 Common council. (1) How constituted. The mayor and alderpersons 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 the mayor’s 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 is fixed by the council. More frequent regular meetings may be established by the council. The mayor may call a special meeting by notifying members in a manner likely to give each member notice of the meeting and providing the notice at least 6 hours before the meeting. Following a regular city election the new council shall first meet on the 3rd 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 5 alderpersons 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 in all other cases.

2017–18 Wisconsin Statutes updated through 2019 Wis. Act 102 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on February 19, 2020. Published and certified under s. 35.18. Changes effective after February 19, 2020, are designated by NOTES. (Published 2–19–20)

There is a 4-part test in evaluating whether a municipality may regulate a matter of statewide concern: 1) whether the legislature has expressly withheld the power to regulate the activity or subject of the ordinance from municipalities; 2) whether the ordinance logically conflicts with the state legislation; 3) whether the ordinance is a legitimate exercise of the police power; and 4) whether the ordinance is a proper exercise of the police power. Madison v. Loan Association v. Madison ESCO, 120 Wis. 2d 391, 355 N.W.2d 234 (1984).

The common council and mayor properly limited the power of the police and fire commission to promote police officers. State ex rel. Wilson v. Schocker, 142 Wis. 2d 179, 418 N.W.2d 18 (1988). Librarily construing home rule authority, a city is not authorized to institute a public safety officer program. Local Union No. 487 v. Eau Claire, 147 Wis. 2d 519, 433 N.W.2d 578 (1989).

The power granted under sub. (5) is broader than that granted under Art. XI, s. 3. Sub. (5) does not limit a city’s authority to act only in local affairs. A city may act in the interest of state-wide concern if the conditions of the 4-part test stated in this case are met. DeRosso Landfill Co. v. City of Oak Creek, 191 Wis. 2d 46, 528 N.W.2d 468 (1995).

The state regulatory statute for tobacco sales preempts municipalities from adoptingordinations that are not in strict conformity with those of the state. U.S. Cig. Inst. v. City of Fond du Lac, 199 Wis. 2d 333, 544 N.W.2d 589 (1995), 95−0213. One who deals with a municipality does so at his or her own risk and may be subject to any provisions of law that might prevent him or her from being paid by a municipal authority even though the services are rendered. Unless the power to bind the municipality financially has been specifically delegated, the only entity with the statutory authority to contract is the municipality. Holzberg v. Safway Steel Products, Inc. 2005 WI App 240, 288 Wis. 2d 250, 712 N.W.2d 35, 05−0258.

When a challenge to the exercise of police powers is directed at the legislative measure employed, the issue is properly framed as one of substantive due process. The fundamental inquiry is not whether the challenged provisions in an ordinance are rationally related to the stated purpose of the ordinance but whether the challenged provisions are rationally related to any legitimate municipal objective. Wisconsin Milwaukee Association of Commerce, Inc. v. City of Milwaukee, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287, 09−1946. An ordinance is invalid as unreasonable merely because substantially the same result might be accomplished by an enactment of a different type. U.S. Cig. Inst. v. City of Milwaukee, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287, 09−1874.

The fact that the regulation of sex offenders is a matter of statewide concern does not preclude municipalities from using their home−rule powers to impose further restrictions consistent with those imposed by the state. An ordinance regulating an area of statewide concern is preempted only if: 1) the legislature has expressly withheld the power to regulate the activity or subject of the ordinance from municipalities; 2) the ordinance logically conflicts with state legislation; 3) the ordinance defeats the purpose of state legislation; or 4) the ordinance violates the spirit of state legislation. City of South Milwaukee v. Kester, 2005 WI App 50, 347 Wis. 2d 334, 830 N.W.2d 972.

A city probably can contract with a county to provide fire protection to a county institution located outside of boundaries of the city. 62 Atty. Gen. 84.

A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The department of natural resources is granted statewide supervisory over aquatic nuisance control under s. 144.025 (2) (i) (now s. 281.17 (2)). Applications for permits to chemically treat aquatic nuisances under s. 144.025 (2) (i) may be denied even though statutory and regulatory requirements have been met if the chemical treatment would be counter−productive in achieving the goals set out in s. 144.025 (2) (i) (now s. 281.11). 63 Atty. Gen. 260.

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An ordinance is invalid as unreasonable merely because substantially the same result might be accomplished by an enactment of a different type. U.S. Cig. Inst. v. City of Milwaukee, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287, 09−1874.
section, shall be construed to impose any liability, either for costs, damages or otherwise, upon such city or city attorney.  

History: 1991 a. 316.

62.12 Finance. (1) FISCAL YEAR. The calendar year shall be the fiscal year.
(2) BUDGET. Annually on or before October 1, each officer or department shall file with the city clerk an itemized statement of disbursements made to carry out the powers and duties of the officer or department during the preceding fiscal year, a detailed statement of the receipts and disbursements on account of any special fund, a detailed statement of the receipts and disbursements on account of any special fund under the supervision of the officer or department during the year and of the condition and management of the fund and 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 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) 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.

(5) 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 s. 66.0607.

(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; or
3. Funds 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 DEPOSITORY. The council shall designate the public depository or depositories 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 bondsmen shall not be liable for such losses as are defined by s. 34.01 (2). 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 the comptroller’s 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 payroll, 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 according and give its note therefor. No such loan shall be made to exceed the sum of 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 public instruction and the local school clerk. The rate of interest on any such loan shall be determined by the city council.

History: 1973 c. 90, 333; 1975 c. 39, 80, 180, 224, 353, 421; 1977 c. 113 ss. 3, 6; 1977 c. 142; 1978 c. 203 s. 101; 1979 c. 272, 418; 1979 c. 34; 1979 c. 175 s. 51; 1981 a. 20, 61, 93; 1983 a. 27; 1983 a. 189 s. 329 (17), (21); 1985 a. 29, 225; 1991 a. 316; 1995 a. 27, 225; 1997 a. 27; 1999 a. 150 s. 672.

Cross-reference: See ss. 62.25 and 893.80 for actions upon claims.

See s. 66.0609 for an alternative system of approving claims.

Local government units cannot include the value of tax-exempt manufacturing machinery and specific processing equipment and tax exempt merchants’ stock-in-trade, manufacturers’ materials and finished products, and livestock in their property valuation totals for non-tax purposes, such as for municipal debt ceilings, tax levy limitations, shared tax distributions, and school aid payments. 63 Atty. Gen. 465.
(2m) JOINT DEPARTMENTS. CONTRACT SERVICES. (a) A city may create a joint police department or a joint fire department, or both, with another city.

(b) A city that creates a joint police department or a joint fire department, or both, with another city under par. (a) is not required to create a separate board of police and fire commissioners under this section. The cities shall create a joint board of commissioners to govern the joint department. If only one joint department is created, each city shall retain its existing board of police and fire commissioners to govern the separate department. The cities may jointly determine the number of commissioners to be appointed to the joint board by each city and the length of the commissioners’ terms. A majority of the commissioners is a quorum. A joint board of commissioners that is created under this paragraph to govern a joint police department is subject to the provisions of subs. (3) to (7n), a joint board of commissioners that is created under this paragraph to govern a joint fire department is subject to the provisions of subs. (8) to (12) and a joint board of commissioners that is created under this paragraph to govern a joint police and fire department is subject to the provisions of subs. (2) to (12).

(2s) ABOLITION OF POLICE DEPARTMENT. COUNTY LAWS. (a) Subject to pars. (b) to (d), a city may abolish its police department or combined protective services department if it enters into a contract with a county under s. 59.03 (2) (e) for the county sheriff to provide law enforcement services in all parts of the city. If the city is located in more than one county, it may not abolish its police department or combined protective services department under this paragraph unless the city enters into a contract under this paragraph with the county in which the greatest amount of the city’s equalized value, population or territory is located. If a city that is located in more than one county enters into a contract with a county under this paragraph, the jurisdiction of the county’s sheriff and deputies includes the entire territory of the city.

(b) If a city wishes to contract with a sheriff for law enforcement services, the common council shall adopt a resolution, as described under s. 59.03 (2) (a), requesting that such services be provided. The resolution shall provide that such services are to be provided exclusively by the county.

(c) The contract described under par. (a) shall address at least all of the following elements:

1. The division, with the county, of the city’s assets and liabilities that relate to the city’s police department and the amount that the county will pay, if any, for such assets.

2. A description of the level of law enforcement and the number of deputies that the county will provide to the city and the amount that the city will pay for the services in excess of the city’s portion of the county’s law enforcement levy.

3. A procedure for the city to request, or require, that the county provide additional law enforcement services and the cost the county may charge the city for providing additional services.

4. The term of the agreement and procedures for the renewal, extension, or termination of the agreement.

(d) No contract that is entered into under this subsection may take effect until all of the following occur:

1. The county board approves under s. 59.03 (2) (a) the resolution adopted under par. (b).

2. The governing bodies of the city and the county approve the contract.

3. The expiration of any collective bargaining agreement between the city and its police department employees.

4. The city and county discuss the provision of emergency “911” telephone service within the area to which the contract applies.

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

(4) SUBORDINATES. (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 has served and acted as a full-time city police patrolman, 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 or her salary on the regular official payroll of said police department for a continuous period of more than 10 years, although not regularly appointed from an eligible list, is deemed to have been regularly appointed, as of the time of the commencement of his or her service.

(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 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 U.S. citizens over 18 and under 55 years of age, with proper limitations as to health and, subject to ss. 111.321, 111.322, and 111.335, arrest and conviction record. The examination, including minimum training and experience requirements, shall be job–related in compliance with appropriate validation standards and shall be subject to the approval of the board and may include tests of manual skill and physical strength. All relevant experience, whether paid or unpaid, shall satisfy experience requirements. The board shall control examinations and make 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. Veterans and their spouses shall be given preference points in accordance with s. 63.08 (1) (fm).

(e) The council of any city of the 2nd, 3rd or 4th class may provide that members of the police force shall be of both sexes. The fire and police commission shall select each police officer from an eligible list.

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

(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 any aggrieved person. 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 just cause, as described in par. (em), 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 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 subpoena which shall be issued by the president of the board on request and be served as are subpoenas under ch. 885.
If the board determines that the charges are not sustained, the accused, if 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.

(e) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate’s record of service with the chief’s department.

(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 of the appeal on the secretary of the board within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal, 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 the 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 is there just cause, as described under par. (em), to sustain the charges against the accused? 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 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 REEMPLOYMENT. (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 the subordinate’s efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any just cause set forth in this section shall be left on an eligible reemployment list for a period of 2 years after the date of dismissal, except that if the dismissal was for disciplinary reasons the subordinate may not be left on an eligible reemployment list. If any vacancy occurs, or if the number of subordinates is increased, in the department, the vacancy or new positions shall be filled by persons on the eligible reemployment list in the inverse order of the dismissal of the persons on the list.

(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, or combined protective services, 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 station, fire station, and combined protective services station buildings.

3. To audit all bills, claims and expenses of the fire, police, and combined protective services 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 70 days prior to a regular city election a petition therefor, conforming to the requirements of s. 8.40 and signed by electors equal in number to not less than 20 percent of the total vote cast in the city for governor at the last general election, shall be filed with the clerk as provided in s. 8.37, the clerk 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 s. 8.64 (2) and (10.02) and the question shall be “Shall s. 62.13 (6) of the statutes be adopted?”

(6m) If a city of less than 4,000 population has not by ordinance applied subs. (1) to (6) to the city, the city may not suspend, reduce, suspend and reduce, or remove any police chief, combined protective services chief, or other law enforcement officer who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the city does one of the following:

(a) Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the city or be employed by the city. The committee shall act under sub. (5) in place of the board of police and fire commissioners. The city council may provide for some payment to each member for the member’s cost of serving on the committee at a rate established by the city council.

(b) Appoint a person who is not an elected or appointed official of the city and who is not employed by the city. The person shall act under sub. (5) in place of the board. The city council may provide for some payment to that person for serving under this paragraph at a rate established by the city council.
(7) Compensation. The salaries of chiefs and subordinates shall be fixed by the council. Unless the council otherwise provides, in cities of the 4th 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.

(7m) Rest day. (a) The council of every city of the fourth class shall provide for, and the chief of the police or fire department, or the chief of the combined protective services department, shall assign to, each subordinate police officer, or each subordinate designated as primarily a police officer under sub. (2e) (b), 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, the fire chief, or the chief of the combined protective services department, 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 or fire department, or the chief of the combined protective services department, shall assign to, each subordinate police officer, or each subordinate designated as primarily a police officer under sub. (2e) (b), 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, the fire chief, or the chief of the combined protective services department, demands that any such day of rest not be given at such time. Arrangements shall be made so that each full rest day 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. Except when a labor agreement under subch. IV of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd or 4th class city shall provide for, and the chief of the police or fire department, or the chief of the combined protective services department, shall assign to, each subordinate police officer, or each subordinate designated as primarily a police officer under sub. (2e) (b), 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, the fire chief, or the chief of the combined protective services department, 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.

(8) Fire department. (a) 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. In the case where a combination of paid and volunteer fire department is provided for, such city shall be reimbursed by the department of transportation, not to exceed $500 for any fire calls on a state trunk highway or on any highway that is a part of the national system of interstate highways and is maintained by the department of transportation if the city submits written proof that the city has made a reasonable effort to collect the cost from the insurer of the person to whom the fire call was provided or from the person to whom the fire call was provided, except that the city may attempt to collect the cost from the person only if the city is unsuccessful in its efforts to collect from the person’s insurer or if the person has no insurer. If the city collects the cost from an insurer or such person after the department reimburses the city, the city shall return the amount collected to the department.

(b) A city may enter into a contract for fire protective services with a village, a town, or another city. A city that contracts for fire protective services shall pay the full cost of services provided. A city that contracts for all of its fire protective services under this paragraph and for all of its police protective services under sub. (2g) is not required to have a board of police and fire commissioners. A city that contracts for all of its fire protective services under this paragraph, but not for all of its police protective services under sub. (2g), shall have a board of police and fire commissioners under this section, but the board may address only issues related to the police department.

(10m) Rules governing leaving city. Subject to approval of the common council the fire chief, police chief, or the chief of the combined protective services department, may establish rules requiring subordinate fire fighters, or each subordinate designated as primarily a fire fighter under sub. (2e) (b), to obtain permission before leaving the city.

(11) Fire fighters, rest day. The common council of every 4th class city, having a population of 5,000 or more and a fire department, or a combined protective services department, shall provide for, and the chief of the fire department, police department, or combined protective services department shall assign to each full paid subordinate member of the fire department or subordinate designated as primarily a fire fighter under sub. (2e) (b), a period of 24 consecutive hours off duty during each 72 hours, even 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 the day of rest not be given at that time. The provisions of this section shall not apply to cities having a 2–platoon or double shift system. The provisions of this subsection apply to a person designated as primarily a fire fighter who is employed by a police department, as described in sub. (2e).

(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. Section 62.13 and chapter 589, laws of 1921, chapter 423, laws of 1923, and chapter 586, laws of 1911, shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of police, fire, and combined protective services departments.

History: 1971 c. 41 s. 12; 1971 c. 213 s. 5; 1975 c. 94 ss. 26, 91 (5); 1975 c. 199, 1977 c. 20; 1977 c. 29 ss. 1654 (8) (c); 1977 c. 151, 182, 196; 1981 c. 171; 1981 c. 380; 1981 c. 392; 1982 c. 135 s. 83 (1), (5); 1985 a. 166, 1987 a. 27, 1989 a. 31, 1992 a. 32, 181, 189; 1993 a. 16, 53, 144, 213; 1995 a. 225, 270; 1999 a. 182; 2003 a. 205; 2005 a. 40; 2009 a. 173; 2011 a. 32, 75; 2013 a. 20; 2015 a. 150. An employee in charge of conduct when an officer filed by the chief was sufficiently specific when the officer did not object at the hearing. That one member of the board prejudged the case was immaterial when the decision was unanimous. State ex rel. Ritchey v. Neenah Police & Fire Commission, 48 Wis. 2d 575, 180 N.W.2d 743 (1970).

An amnesty agreement by a city not to prosecute a firefighter for striking, made as part of the settlement of the strike, does not bar a complaint by a citizen alleging a violation of the statute. Durkan v. Madison Board of Police & Fire Commissioners, 48 Wis. 2d 112, 180 N.W.2d 1 (1971).

In 3rd and 3rd class cities, monthly compensation for purposes of computing a pension does not include employer contributions to the pension fund and health and life insurance. These items cannot be included by a collective bargaining agreement. See also: Mantziwoc v. Police Pension Board, 56 Wis. 2d 602, 203 N.W.2d 74 (1973).

Standby time required of municipal police officers by the issuance of a “yellow alert” under which officers were required to leave their names, phone numbers, and
A PFC has authority under sub. (5) (g) to adopt a rule permitting a hearing examiner to conduct initial and evidentiary hearings and to make reports to the PFC on the examiner’s recommendations when the rule ensures that the ultimate decision—making authority remains with the PFC. Conroy v. Board of the Police and Fire Commissioners of the City of Madison, 2003 WI 53, 262 Wis. 2d 1, 662 N.W.2d 335, 01–0784.

The PFC has exclusive statutory authority under s. 62.13 (5) to review disciplinary actions against firefighters. Any claim that a disciplinary term is discriminatory under ch. 111 must be raised before the PFC. DWD may not take jurisdiction over a ch. 111 complaint arising out of a decision of a PFC to terminate a firefighter. City of Madison v. DWD, 2005 WI 59, 262 N.W.2d 584, 01–1410.

Sub. (4) (a), providing appointments are to be made by promotion within the ranks when qualified insiders exist, neither specifies the promotion process nor restricts a chief’s discretion in any way, other than making a chief’s selection subject to departmental approval. If promotion from within the department cannot be “done with advantage” the alternative appointment process involving “an eligible list” comes into play, but those provisions are not triggered when a chief has appointed a subordinate who can be promoted “with advantage.” Baures v. North Shore Fire Department, 2003 WI App 103, 264 Wis. 2d 815, 664 N.W.2d 113, 02–1936.

Sub. (5) (i) is not the exclusive remedy for a claim that the rules a subordinate was found to have violated were unconstitutionally vague and overbroad. Constitutional issues of vagueness or overbreadth may be considered under constitutional challenge because their effect and impact is whether the rules are found to be unconstitutionally vague and overbroad.

A municipality may order a hearing examiner to conduct initial and evidentiary hearings and to make reports to the PFC on the examiner’s recommendations when the rule ensures that the ultimate decision—making authority remains with the PFC. Conroy v. Board of the Police and Fire Commissioners of the City of Madison, 2004 WI 60, 272 Wis. 2d 1, 680 N.W.2d 335, 02–3208.

A city’s decision to order a police chief to reinstate a discharged probationary police officer. 81 Atty. Gen. 61.

The city council may determine and charge a reasonable fee for ambulance service provided under this section.

A fire chief is not barred from testifying in a court, unless such testimony would impair the chief’s impartiality or objectivity in discharging his duties. Dixon v. City of New Richmond, 334 F.3d 691 (2003).

A city’s decision to order a police chief to reinstate a discharged probationary police officer. 81 Atty. Gen. 61.

There shall be a department known as the “Board of Public Works” to consist of 3 commissioners. In cities of the 2nd 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 practicable. 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 shall be qualified. In 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 places the board in such a position or appointment, or both, that in case of the death, resignation or removal of the mayor, he or she or they may, by a like vote, determine that the board consist of such persons. In case the duties and powers shall be exercised by the council or a committee thereof, or by such officer, officers or boards as the council designates. The words “board of public works” wherever used in this subchapter shall include such officer, officers, or boards as shall be designated to discharge its duties.

The board of public works shall consist of 3 commissioners. In cities of the 2nd 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 practicable. 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 shall be qualified. In 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 place the board in such a position or appointment, or both, that in case of the death, resignation or removal of the mayor, he or she or they may, by a like vote, determine that the board consist of such persons. In case the duties and powers shall be exercised by the council or a committee thereof, or by such officer, officers or boards as the council designates. The words “board of public works” wherever used in this subchapter shall include such officer, officers, or boards as shall be designated to discharge its duties.

2017–18 Wisconsin Statutes. Published and certified under s. 35.18. February 19, 2020.
(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 as the council deems proper, not contravening this subchapter, 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 and places 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 the engineer’s office, in the office of the city clerk, a record of all the engineer’s 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 the engineer’s successor or to the board of public works. Whenever requested, the engineer shall make a report of all doings of the engineer’s department to the board of public works.

*Miscellaneous clauses.*

### Advertisements

(1) **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 bond in an amount not less than 5 percent but not more than 10 percent of the bid payable to the city as guaranty that if the bid is accepted the bidder 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 the successful bidder fails to file such contract and bond the amount of the check or bid shall be forfeited to the city as liquidated damages. The notice published shall inform bidders of this requirement.

(2) **Sureties, justification.** The sureties shall justify as to their responsibility and by their several affidavits show that they and each of them respectively shall, in the aggregate, at least in the amount mentioned in the contract in property not by law exempt from execution. A certified check in amount equal to 5 percent of the bid, and a provision in the contract for the retention by the city of 20 percent of the estimated cost of the work to be done in case the work is not properly performed, 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.

(3) **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 percent of the original contract price.

### Contracts

(1) **Contractors, how let, exception for donated materials and labor.** All public construction, the estimated cost of which exceeds $25,000, shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. If the estimated cost of any public construction exceeds $5,000 but is not greater than $25,000, the board of public works shall give a class 1 notice, under ch. 985, of the proposed construction before the contract for the construction is executed. This provision does not apply to public construction if the materials for such a project are donated or if the labor for such a project is provided by volunteers. 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 a bid for such work.

(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
(5) REJECTION OF BIDS; PERFORMANCE OF WORK BY CITY. (a) Unless the power has been expressly waived, the city may reject any bid. The board of public works may reject any bid, if, in its opinion, any combination has been entered into to prevent free competition.

(b) If the council finds that any of the bids are fraudulent, collusive, excessive, or against the best interests of the city, it may, by resolution adopted by two-thirds of its members, reject any bids received and order the work done directly by the city under the supervision of the board of public works.

(c) If a city performs any work under par. (b), it may secure all necessary materials to perform the work.

(d) The city shall collect the cost of all work performed under par. (b) in the same manner as if done by any other person under contract with the city and may, subject to par. (e), defray such costs by special assessment.

(e) If the city imposes a special assessment under par. (d), it may not assess against any property an amount that is greater than what it would have assessed against the property had the lowest bid received under this section been accepted. The city shall bear any costs in excess of that bid.

(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 the bidder 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 its reasons; and thereafter 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 contractor shall determine to be a reasonable price therefor, which price shall be publicly stated and furnished upon application by 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 therefor a contractor let for one kind of article, material or process; provided, that before any contract is let all the bids received shall be opened, and thereafter the kind of article or process to be used in such work shall be determined 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) GUARANTEE. (a) Any contract for doing public work may contain a provision requiring the contractor to keep the work done under the contract in good order or repair for not to exceed 5 years.

(b) The inclusion in the contract of a provision described in par. (a) shall not invalidate any special assessment or certificate thereof or tax 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, s. 66.0901 (9) (b) shall apply. 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 the sureties, and to apply the amounts retained from estimates to the completion of the work. In case shall the 5 percent deposit described in sub. (4) be retained 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 conforming to the standards for traffic control devices in the manual adopted by the department of transportation under s. 84.02 (4) (e) 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 the contractor’s 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 endorse- ment 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.

(13) REPORT TO COUNCIL OF NONBID CONTRACTS. (a) 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 sub. (1), and the public work shall be done in accordance with the ordinance, the board of public works shall keep an accurate account of the cost of the public work, including the necessary overhead expense.

(b) Upon the completion of the work described in par. (a), the board of public works shall make a complete report of the work to the council, stating in detail the items of cost and the total cost of doing the work. The city clerk shall publish the report as a part of the proceedings of the council.

(c) 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 $50 to be recovered as in the case of other penalties.


When work has been performed for a municipality under a contract that is void or unenforceable, a cause of action for unjust enrichment can be maintained with dam-

Example: If a city performs any work under par. (6), it may reject the contract and select another contractor.

The inclusion in the contract of a provision described in par. (a) shall not invalidate any special assessment or certificate thereof or tax certificate based thereon.

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62.155 Acquisition of facilities without bids. A city may contract for the acquisition of any element of the following without submitting the contract for bids as required under s. 62.15 if the city invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design and the developers’ experience in other similar projects:

1. A recycling or resource recovery facility.

2. If the city contains an electronics and information technology manufacturing zone that is designated under s. 238.396 (1m):
   a. Water and sewer systems.
   b. Wastewater treatment facilities.


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 reestablish the same as it deems expedient. Whenever it changes or alters the permanently established grade of any street or any person thereby sustaining damages to that person’s property on the affected street may have such damages set off against any special assessment levied against the person’s 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, department of transportation, 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 owner thereof, at such intervals as the council 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.

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.

(3) Public service corporation. Whenever the council, department of transportation or county board shall declare its intention to improve any street in which water or gas mains of any privately owned utility shall have been previously laid or are about to be laid the council shall by resolution require, subject to review in the same manner recorded in the tax roll as 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, department of transportation 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.

(d) Application to towns and villages. This subsection applies to towns and villages and when applied to towns and villages:
   1. “City” means town or village.
   2. “Comptroller” means clerk.
   3. “Council” means town board or village board.

History: 1977 c. 29 s. 1654 (8) (c); 1983 a. 532; 1991 a. 316.

Cross-reference: See s. 140.11, requiring applicant for change in streets to file notice of pendency of the application.

62.17 Enforcement of building codes. For the purpose of facilitating enforcement of municipal and state building, plumbing, electrical and other such codes, ordinances, or statutes established for the protection of the health and safety of the occupants of buildings referred to elsewhere in this section as “building codes”, any municipality may adopt an ordinance with any of the following provisions:

1. Requiring the owner of real estate subject to any building code to record with the register of deeds a current listing of the owner’s address and the name and address of any person empowered to receive service of process for the owner. Any changes of names or addresses in the recording shall be reported within 10 days of the change. This subsection does not apply to owner-occupied one- and two-family dwellings.

2. Establishing as sufficient notice to an owner that a building inspector or agency entrusted with the enforcement of the building code has found a violation of any applicable building code, if the building inspector or agency, after making an unsuccessful attempt of personal service during daytime hours at the latest address recorded with the register of deeds as that of the owner or agent of the owner, sends the notice by certified mail to the address noted in addition posts a copy of the notice in a conspicuous place in or about the building where the violation exists. If the owner has not recorded under sub. (1) with the register of deeds a current address or name and address of a person empowered to receive service of process, then posting a notice of violation on the premises and certified mailing of the notice to the last-known address of the owner as well as to the address of the premises in violation is sufficient notice to the owner that a violation has been found.

3. That when notice of a violation of the building code which is found by a building inspector or agency entrusted with the enforcement of the building code is made according to sub. (2),
such notice shall be effective notice to anyone having an interest in the premises, whether recorded or not, at the time of the giving of such notice; and shall be effective against any subsequent owner of the premises as long as the violation remains uncorrected and there exists a copy of the notice of violation in a public file maintained by the local agency charged with enforcement of the building codes.

(4) Requiring an owner to give notice to any prospective purchaser that a notice has been issued concerning a building violation, where the condition giving rise to the notice of violation has not been corrected; providing for a fine not exceeding $500 for failure to so notify; and granting the purchaser who has not received the required notice the right to make any repairs necessary to bring the property up to the requirements of the local building code and to recover the reasonable cost of those repairs from the seller.

History: 1975 c. 354; 1993 a. 301.

62.175 Sewer and water extensions in 1st and 2nd class cities; sewage from other municipalities. (1) First class cities may construct and extend the sewer and water system into the adjoining towns, subject to s. 200.63. The extensions shall be made without expense to the cities. The rates to be charged for water to consumers beyond the corporate limits of the city shall be fixed by the common council of the city upon the recommendation of the city’s board of public works.

(2) If any 1st or 2nd class city has begun to plan, construct and establish, or has completed the planning, construction and establishment of, a sewer system and a sewer disposal works, any town, village or other city located in the same county where the 1st or 2nd class city is located and whose purposed or unpurposed sewage flows directly or indirectly into any lake which is the source of the water system of the 1st or 2nd class city shall, before constructing any sewers or sewerage system or extensions of any existing sewers or sewerage system for the purposes of connection with the sewers, sewerage system and sewage disposal works of the 1st or 2nd class city, secure the written approval of the plans or approve them subject to recommended changes or substitutions in order that the sewers or sewerage system, or extensions thereof, of any of the towns, villages or cities are connected with the sewers, sewerage system and sewage disposal works of the 1st or 2nd class city, the sewers or sewerage system, or extensions thereof, will conform with the plans of the sewers, sewerage system and sewage disposal works of the 1st or 2nd class city. The sewerage commission, or other board, body or official of the 1st or 2nd class city, may approve the plans or approve them subject to recommended changes or substitutions in order that the sewers or sewerage system, or extensions thereof, of any of the towns, villages or cities are connected with the sewers, sewerage system and sewage disposal works of the 1st or 2nd class city, the sewers or sewerage system, or extensions thereof, will conform with the plans of the sewers, sewerage system and sewage disposal works of the 1st or 2nd class city.


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 sewered. 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 sewers, 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 for the extension or improvement of the sewer system of its sewer district.

(b) 1. In this paragraph:
   a. “Company” has the meaning given in s. 76.02.
   b. “Operating real property” does not include 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 the operating real property.

   2. The tax under par. (a) is declared to be a special tax for local improvement, as defined in s. 76.23. When any company owns operating real property within a sewer district described in par. (a), the assessor in the sewer district shall determine the value of the operating real property of all companies located within the district. The value of the operating real property shall be determined on the same basis as is the value of other real property subject to the special tax. The valuation of the operating real property shall be placed upon the tax roll for the purposes of the special tax only. The tax so assessed to the companies owning operating real property within the district shall be collected as other special sewer district taxes of the district are collected.


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 ch. 67. 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 s. 62.18 (16). Any bonds hereafter 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.

62.22 Acquiring property; opening or changing streets. (1) PURPOSES. (a) Except as provided in par. (b), the governing body of any city may by gift, purchase or condemnation acquire property, real or personal, within or outside the city, for parks, recreation, water systems, 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 in s. 32.32.

(b) The governing body of any city may not use the power of condemnation to acquire property for the purpose of establishing or extending a recreational trail; a bicycle way, as defined in s. 340.01 (5e); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).

(1e) CERTAIN INDUSTRIAL SITES. The governing body of a 2nd class city which is adjacent to Lake Michigan and which is located in a county with a population of less than 110,000, according to the most recent estimate by the department of administration, may acquire real property by gift outside the city boundaries 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.

(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 10 resident freeholders in any aldermanic district to petition the council for the opening, widening, extension or change of any street in such aldermanic district, and if the land proposed to be taken for that purpose shall lie in 2 or more aldermanic districts, then 10 resident freeholders of each of the aldermanic districts shall be required to join in the petition.

(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.

(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.

(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 members. Before adopting the resolution it shall 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.

(e) Abandoned portion vacated. When a street or alley shall be changed by proceedings under s. 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.


Cross-reference: See s. 840.11, requiring applicant for change in streets or alleys to file notice of pendency of the application.

The public purpose doctrine does not require in every case where public property is conveyed to the private sector that public use be reserved for perpetuity. The re habilitation of deteriorating public facilities is a legitimate public purpose. The consideration for transfers of public property to private entities may consist of benefits other than, or in addition to, money, such as the public benefit from the transfer and the obligations the private actor assumes. Bishop v. City of Burlington, 2001 WI App 154, 246 Wis. 2d 879, 631 N.W.2d 656, 00–2346.

62.225 Recycling or resource recovery facilities. A city may establish and require use of facilities for the recycling of solid waste or for the recovery of resources from solid waste as provided under s. 287.13.

62.23 City planning. (1) COMMISSION. (a) The council of any city may by ordinance create a “City Plan Commission,” to consist of 7 members. The commission shall also include, as a nonvoting member, a representative from an airport, military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in the city, if the base’s or installation’s commanding officer appoints such a representative. All members of the commission, other than the representative appointed by the commanding officer of a military base or installation, shall be appointed by the mayor, who shall also choose the presiding officer. The mayor may appoint himself or herself to the commission and may appoint other city elected or appointed officials, except that the commission shall always have at least 3 citizen members who are not city officials. 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.

(d) The members of the commission shall be appointed to hold office for a period of 3 years. Appointments shall be made by the mayor during the month of April for terms that expire in April or at any other time if a vacancy occurs during the middle of a term.

(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 city, including any areas outside of its boundaries that in the commission’s judgment bear relation to the development of the city provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a city 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 shall, as described in sub. (3)(b), contain at least the elements described in s. 66.1001 (2). 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 coordinated, 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 of a master plan. Beginning on January 1, 2010, or, if the city is exempt under s. 66.1001 (3m), the date under s. 66.1001 (3m) A., if the city engages in any program or action described in s. 66.1001 (3), the master plan shall contain at least all of the elements specified in s. 66.1001 (2). 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 elements under s. 66.1001 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 of the plan by the identifying signature of the secretary of the commission, and a copy of the plan or part of the plan shall be certified to the common council, and also to the commanding officer, or the officer’s designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. The purpose and effect of the adoption and certifying of the master plan or part of the plan 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, utility companies, civic, educational, professional, governmental 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 employees, in the performance of its functions, may enter upon any land, make examinations and surveys, and place and maintain monuments and marks thereof. 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 ch. 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) As used in this subsection, “waterways” includes rivers, streams, creeks, ditches, drainage channels, watercourses, lakes, bays, ponds, impoundment reservoirs, retention and detention basins, marshes and other surface water areas, regardless of whether the areas are natural or artificial.

(1) As used in this subsection, “waterways” includes rivers, streams, creeks, ditches, drainage channels, watercourses, lakes, bays, ponds, impoundment reservoirs, retention and detention basins, marshes and other surface water areas, regardless of whether the areas are natural or artificial.
also include the location of railroad rights−of−way, waterways and public transit facilities on its map. A city may include a waterway on its map only if the waterway is included in a comprehensive surface water drainage plan. The map is conclusive with respect to the location and width of streets, highways, waterways and parkways, and the location and extent of railroad rights−of−way, public transit facilities, parks and playgrounds shown on the map. The official map is declared to be established to conserve and promote the public health, safety, convenience or general welfare. The ordinance or resolution shall require the city clerk at one time kept with the register of deeds of the county in which the city is situated a certificate showing that the city has established an 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.

(c) The city council may amend the official map of the city so as to establish the exterior lines of planned new streets, highways, historic districts, parkways, railroad rights−of−way, public transit facilities, waterways, parks or playgrounds, or to widen, narrow, extend or close existing streets, highways, historic districts, parkways, railroad rights−of−way, public transit facilities, waterways, parks or playgrounds. No such change may become effective until after a public hearing concerning the proposed change 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 amending the map, the council shall refer the matter to the city plan commission for report, but if the city plan commission does not make its report within 60 days of reference, it forfeits the right to further suspend action. When the city council by resolution approves, adopts or repeals any part of the official map of the city, and are conclusive with respect to the location and width of the streets, highways, historic districts, waterways and parkways and the location and extent of railroad rights−of−way, public transit facilities, parks and playgrounds shown on the map. The placing of any street, highway, waterway, railroad right−of−way, public transit facility, park or playground line or lines upon the official map does not constitute the opening or establishment of any street, highway, railroad right−of−way, public transit facility, park or playground or alteration of any waterway, or the taking or acceptance of any land for these purposes.

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

(e) No permit may be issued to construct or enlarge any building within the limits of any street, highway, waterway, railroad right−of−way, public transit facility or parkway, shown or laid out on the map except as provided in this section. The street, highway, waterway, railroad right−of−way, public transit facility 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). Any person desiring to construct or enlarge a building within the limits of a street, highway, waterway, railroad right−of−way, public transit facility or parkway shown on the official map within the incorporated limits of the municipality shall apply to the authorized official of the city or village for a building permit. Any person desiring to construct or enlarge a building within the limits of a street, highway, waterway, railroad right−of−way, public transit facility or parkway shown on the official map within the incorporated limits of the municipality shall apply to the authorized official of the city or village for a building permit. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction of the street, highway, railroad right−of−way, public transit facility or parkway shown on the official map. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction or alteration of the waterway shown on the official map within the incorporated limits of the municipality. If the land within the mapped street, highway, waterway, railroad right−of−way, public transit facility 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 may, by the vote of a majority of its members, grant a permit for a building or addition in the path of the street, highway, waterway, railroad right−of−way, public transit facility or parkway, which will as little as practicable increase the cost of opening the street, highway, waterway, railroad right−of−way, public transit facility or parkway or tend to cause a change of the official map. The board may impose reasonable requirements as a condition of granting the permit to promote the health, safety, convenience or general welfare of the community. The board shall refuse a permit where the applicant will not be substantially affected by not constructing the addition or by placing the building outside the mapped street, highway, waterway, railroad right−of−way, public transit facility or parkway.

(f) 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.

(g) 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.

(h) 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.
(i) In those counties where the county maintains and operates parks, 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. (ab) Definition. In this subsection “non-conforming use” means a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.

(am) Grant of power. For the purpose of promoting health, safety, morals or the general welfare of the community, the council may regulate and restrict by ordinance, subject to par. (hm), 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, subject to s. 66.10015 (3) the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes if there is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation enacted or adopted under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. This subsection may not be deemed a limitation of any power granted elsewhere.

(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 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. No ordinance enacted or regulation adopted under this subsection may prohibit forestry operations that are in accordance with generally accepted forestry management practices, as defined under s. 823.075 (1) (d).

The council may establish mixed-use districts that contain any combination of uses, such as industrial, commercial, public, or residential uses, in a compact urban form. The council may with the consent of the owners establish special districts, to be called planned development districts, with regulations in each, which in addition to those provided in par. (c), will over a period of time tend to promote the maximum benefit from coordinated area site planning, diversified location of structures and mixed compatible uses. Such regulations shall provide for a safe and efficient system for pedestrian and vehicular traffic, attractive recreation and landscaped open spaces, re-established design and location of public and private utilities and community facilities and insure adequate standards of construction and planning. Such regulations may also provide for the development of the land in such districts with one or more principal structures and related accessory uses, and in planned development districts and mixed-use districts the regulations need not be uniform.

(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, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; 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; and to preserve burial sites, as defined in s. 157.70 (1) (b).

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. a. Upon the request of the city council, the city plan commission, the board of public land commissioners, or if the city has neither, the city plan committee of the city council shall prepare and recommend a district plan and regulations for the city. Following the formulation of tentative recommendations a public hearing shall be held by, at the council’s option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer’s designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, but failure to give such notice shall not invalidate such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the tentative recommendations and hearings thereon must be made once each of the 2 weeks preceding such hearing. If the proposed district plan or regulations have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the plan and regulations or a description of the property affected by the plan and regulations and a statement that a map may be obtained from the city council.

b. The council may make changes in the tentative recommendations after first submitting the proposed changes to the plan commission, board of public land commissioners or plan committee for recommendation and report and after publishing a class 2 notice, under ch. 985, of the proposed changes and hearings thereon as well as the notice to the clerk of any contiguous municipality and to the commanding officer, or the officer’s designee, of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, as required in subd. 1. a. Hearings on the proposed changes may be held by, at the council’s option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer’s designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city, as required in subd. 1. b. The council shall mail a copy of such notice to the owner or operator of the airport bordered by the affected area. A hearing shall be held on the proposed amendments by, at the council’s option, the council, the plan commission, the board of public land commissioners or the plan committee. The entity holding the hearing shall consider any comments made, or submitted, by the commanding officer, or the officer’s designee, of a military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, that is located in or near the city. If the proposed amend-
ments have the effect of changing the allowable use of any property within the city, the notice shall include either a map showing the property affected by the amendments or a description of the property affected by the amendments and a statement that a map may be obtained from the city council. If the council does not receive recommendations and a report from the plan commission, board of public land commissioners or plan committee within 60 days of submitting the proposed amendments, the council may hold hearings without first receiving the recommendations and report.

2m. In any city which is not located in whole or in part in a county with a population of 750,000 or more, if a proposed amendment or proposed changes to a proposed district plan and regulations in accordance with subds. 1, a, b, or c, or is agreed to by the person and the city council, including electronic mail, voice mail, or text message. The city council may charge each person on the list who receives a notice by 1st class mail a fee that does not exceed the approximate cost of providing the notice to the person. An ordinance or amendment that is subject to this subdivision may take effect even if the city council fails to send the notice that is required by this subdivision.

(d) 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.

(de) Conditional use permits. 1. In this paragraph:
   a. “Conditional use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
   b. “Substantial evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

2. a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
   b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit’s duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city’s decision to approve or deny the permit must be supported by substantial evidence.

3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.

4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit’s duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.

5. If a city denies a person’s conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

(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. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.

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 3 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 as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate 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 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.

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 chairperson and at such other times as the board may determine. The chairperson, or in the chairperson’s absence, the acting chairperson, 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.

3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.

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 to pass upon the appeal and 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 the officer, that by reason of facts stated in the certificate a stay would, in the officer’s 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. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.

7. a. In this subdivision, “area variance” means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, “use variance” means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

c. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.

d. A variance granted under this subdivision runs with the land.

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, requirement, 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.

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, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The award 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. If necessary for the proper disposition of the matter, the court may take evidence, and appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, 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 appears 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.

(ea) 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.

(em) Historic preservation. 1. Subject to subs. 2. and 2m., a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subs. 2. 2m., and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to subs. 2. and 2m., the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each
historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

2. Before the city designates a historic landmark or establishes a historic district, the city shall hold a public hearing. If the city proposes to designate a place, structure, or object as a historic landmark or establish a historic district that includes a place, structure, or object, the city shall, by 1st class mail, notify the owner of the place, structure, or object of the determination and of the time and place of the public hearing on the determination.

2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in color, scale, architectural appearance, and other visual qualities.

3. An owner of property that is affected by a decision of a city landmarks commission may appeal the decision to the common council. The common council may overturn a decision of the commission by a majority vote of the common council.

(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.

(gm) Permits. Neither the city council, nor the city plan commission, nor the city plan committee of the city council, nor the board of appeals may condition or withhold approval of a permit under this section based upon the property owner entering into a contract, or discontinuing, modifying, extending, or renewing any contract, with a 3rd party under which the 3rd party is engaging in a lawful use of the property.

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

(ham) Manufactured home communities. Notwithstanding par. (h), a manufactured home community licensed under s. 101.935 that is a legal nonconforming use continues to be a legal nonconforming use notwithstanding the occurrence of any of the following activities within the community:

1. Repair or replacement of homes.

2. Repair or replacement of infrastructure.

(hb) Repair, rebuilding, and maintenance of certain nonconforming structures. 1. In this paragraph:

a. “Development regulations” means the part of a zoning ordinance that applies to elements including setback, height, lot coverage, and side yard.

b. “Nonconforming structure” means a dwelling or other building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with one or more of the development regulations in the current zoning ordinance.

2. An ordinance may not prohibit, or limit based on cost, the repair, maintenance, renovation, or remodeling of a nonconforming structure.

(hc) Restoration or replacement of certain nonconforming structures. 1. Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this subsection may not prohibit the restoration or replacement of a nonconforming structure if the structure will be restored to, or replaced at, the size, subject to subd. 2., location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:

a. The nonconforming structure was damaged or destroyed on or after March 2, 2006.

b. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.

2. An ordinance enacted under this subsection to which subd. 1. applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(he) Antenna facilities. The governing body of a city may not enact an ordinance or adopt a resolution on or after May 6, 1994, or continue to enforce an ordinance or resolution on or after May 6, 1994, that affects satellite antennas with a diameter of 2 feet or less unless one of the following applies:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic or public health or safety objective.

2. The ordinance or resolution does not impose an unreasonable limitation on, or prevent, the reception of satellite-delivered signals by a satellite antenna with a diameter of 2 feet or less.

3. The ordinance or resolution does not impose costs on a user of a satellite antenna with a diameter of 2 feet or less that exceed 10 percent of the purchase price and installation fee of the antenna and associated equipment.

(hf) Amateur radio antennas. The governing body of a city may not enact an ordinance or adopt a resolution on or after April 17, 2002, or continue to enforce an ordinance or resolution on or after April 17, 2002, that affects the placement, screening, or height of antennas, or antenna support structures, that are used for amateur radio communications unless all of the following apply:

1. The ordinance or resolution has a reasonable and clearly defined aesthetic, public health, or safety objective, and represents the minimum practical regulation that is necessary to accomplish the objectives.
2. The ordinance or resolution reasonably accommodates amateur radio communications.

(hg) Amortization prohibited. 1. In this paragraph, “amortization ordinance” means an ordinance that allows the continuance of the lawful use of a nonconforming building, premises, structure, or fixture that may be lawfully used as described under par. (h), but only for a specified period of time, after which the lawful use of such building, premises, structure, or fixture must be discontinued without the payment of just compensation.

2. Subject to par. (h), an ordinance enacted under this subsection may not require the removal of a nonconforming building, premises, structure, or fixture by an amortization ordinance.

(hi) Payday lenders. 1. In this paragraph:
   a. “Licensee” has the meaning given in s. 138.14 (1) (i).
   b. “Payday lender” means a business, owned by a licensee, that makes payday loans.
   c. “Payday loan” has the meaning given in s. 138.14 (1) (k).

2. Except as provided in subs. 3., 4., and 5., no payday lender may operate in a city unless it receives a permit to do so from the city council, and the city council may not issue a permit to a payday lender if any of the following applies:
   a. The payday lender would be located within 1,500 feet of another payday lender.
   b. The payday lender would be located within 150 feet of a single-family or 2-family residential zoning district.
   c. The city may regulate payday lenders by enacting a zoning ordinance that contains provisions that are more strict than those specified in subd. 2.
   d. If a city has enacted an ordinance regulating payday lenders that is in effect on January 1, 2011, the ordinance may continue to apply and the city may continue to enforce the ordinance, but only if the ordinance is at least as restrictive as the provisions of subd. 2.

3. Notwithstanding the provisions of subd. 4., if a payday lender that is doing business on January 1, 2011, from a location that does not comply with the provisions of subd. 2., the payday lender may continue to operate from that location notwithstanding the provisions of subd. 2.

(hm) Migrant labor camps. The council of a city may not enact an ordinance or adopt a resolution that interferes with any repair or expansion of migrant labor camps, as defined in s. 103.90 (3), that are in existence on May 12, 1992, if the repair or expansion is required by an administrative rule promulgated by the department of workforce development under ss. 103.90 to 103.97. An ordinance or resolution of a city that is in effect on May 12, 1992, and that interferes with any repair or expansion of existing migrant labor camps that is required by such an administrative rule is void.

(i) Community and other living arrangements. For purposes of this section, the location of a community living arrangement for adults, as defined in s. 46.03 (22), a community living arrangement for children, as defined in s. 48.743 (1), a foster home, as defined in s. 48.02 (6), or an adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:

1. No community living arrangement may be established after March 28, 1978 within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other such facility. Agents of a facility may apply for an exception to this requirement, and such exceptions may be granted at the discretion of the city. Two community living arrangements may be adjacent if the city authorizes that arrangement and if both facilities comprise essential components of a single program.

2. Community living arrangements shall be permitted in each city without restriction as to the number of facilities, so long as the total capacity of such community living arrangements does not exceed 25 or one percent of the city’s population, whichever is greater. When the capacity of the community living arrangements in the city reaches that total, the city may prohibit additional community living arrangements from locating in the city. In any city of the 1st, 2nd, 3rd or 4th class, when the capacity of community living arrangements in an aldermanic district reaches 25 or one percent of the population, whichever is greater, of the district, the city may prohibit additional community living arrangements from being located within the district. Agents of a facility may apply for an exception to the requirements of this subdivision, and such exceptions may be granted at the discretion of the city.

2m. A foster home that is the primary domicile of a foster parent and that is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1m) (b) shall be a permitted use in all residential areas and is not subject to subds. 1. and 2., except that foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies shall be subject to subds. 1. and 2.

2r. a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.

b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a. and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

3. In all cases where the community living arrangement has capacity for 8 or fewer persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

4. In all cases where the community living arrangement has capacity for 9 to 15 persons being served by the program, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to locate in areas zoned exclusively for single-family or 2-family residences except as provided in subd. 9., but is entitled to apply for special zoning permission to locate in those areas. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

5. In all cases where the community living arrangement has capacity for serving 16 or more persons, meets the criteria listed in subds. 1. and 2., and is licensed, operated, or permitted under the authority of the department of health services or the department of children and families, that facility is entitled to apply for special zoning permission to locate in areas zoned for residential use. The city may grant such special zoning permission at its discretion and shall make a procedure available to enable such facilities to request such permission.

6. The department of health services shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for adults, and such information shall be available to the public. The department of children and families shall designate a single subunit within that department to maintain appropriate records indicating the location and number of persons served by each community living arrangement for children, and such information shall be available to the public.

7. In this paragraph, “special zoning permission” includes but is not limited to the following: special exception, special permit, conditional use, zoning variance, conditional permit and words of similar intent.
8. The attorney general shall take all necessary action, upon the request of the department of health services or the department of children and families, to enforce compliance with this paragraph.

9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that the existence of the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation until special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of denial of special zoning permission, whichever is later.

9m. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in s. 252.01 (2m), resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under subd. 9. to assert or prove that the existence of the community living arrangement in the city poses a threat to the health, safety or welfare of the residents of the city.

10. A determination made under subd. 9. shall be made after a hearing before the common council. The city shall provide at least 30 days’ notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense of which shall be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

(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 subp. (7) (am), (b), (c), (ea), (h) and (i) 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 1 1/2 miles of a fourth class city or a village. Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105 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. 66.0105. 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 a notice having general circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, or as a notice, as described under s. 62.11 (4) (c), 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).

(c) 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, imposition of forfeitures and injunctive action, 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 s. 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 readjusting 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 taken under this subsection is not removed after 3 months’ written notice served in the 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. Excess expenses shall be a lien on the land for the balance of the proceeds. In the event the proceeds are not paid, they shall be assessed against the owner’s 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, the owner 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 lands, to the person owning the taken lands at the time of the taking, at an annual rental of not more than 5 percent of the amount paid for the taken lands by the city or of the market value, if the lands were donated. Improvements may be maintained on the leased lands until all lands within the new lines are taken, whereupon the improvements shall be removed as provided in par. (d). No damages shall be had for improvements made under a lease entered into under this paragraph.

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.
located in aid of navigation, and for the protection and welfare of public health and wildlife.


A contract made by a zoning authority to zone, rezone, or not to zone is illegal. A contract made pursuant to the contract is void as a matter of public policy because it would violate its governmental powers and functions or thus inhibit the exercise of its police or legislative powers. When a zoning authority does not make an agreement to zone but the land made by the agreement, a zoning authority is not subject to any of the restraints running with the land, although suggested by the authority, the zoning ordinance is valid and is not considered to be contract or conditional zoning. State ex rel. Zapane v. Schimenz, 46 Wis. 2d 22, 174 N.W.2d 533 (1970).

The rezoning of one parcel in a neighborhood shopping area for local business was not a violation of s. 62.23 (7) (b) because there was no minimum size requirement and "commercial business" was not substantially different from "neighborhood shopping." State ex rel. Zapane v. Schimenz, 46 Wis. 2d 22, 174 N.W.2d 533 (1970).

Spot rezoning from residential to industrial is arbitrary and unreasonable when the result would be detrimental to the surrounding residential area, had no substantial relation to the public health, safety, morals, or general welfare of the community, and the reasons advanced therefor were neither material nor substantial enough to justify the rezoning. Heaney v. Oshkosh, 47 Wis. 2d 303, 177 N.W.2d 207 (1970).

A nonconforming use may be continued even though it violated an earlier regulatory ordinance, so long as the earlier use was not prohibited. Franklin v. Groverc, 55 Wis. 2d 151, 197 N.W.2d 772 (1972).

The owner of a tract of land may, by leaving a 100 foot strip along one side unchanged, eliminate the right of property owners adjacent to the strip to legally prevent. Rezoning a 42 acre parcel cannot be considered spot zoning. Rodgers v. Menomonee Falls, 55 Wis. 2d 561, 201 N.W.2d 29 (1973).

A zoning ordinance adopted by a new city that changed the zoning of the former town did not expire in 2 years under sub. (7) (a), even though labeled an interim ordinance. New Berlin v. Stein, 58 Wis. 2d 503, 256 N.W.2d 447 (1973).

A long-standing interpretation of a zoning ordinance by zoning officials is to be unchanged, eliminate the right of property owners adjacent to the strip to legally prevent. Rezoning a 42 acre parcel cannot be considered spot zoning. Rodgers v. Menomonee Falls, 55 Wis. 2d 561, 201 N.W.2d 29 (1973).

The minimum requirements of sub. (7) (a) (now sub. (7) (am)) do not include publication of a map. City of Lake Geneva v. Smuda, 75 Wis. 2d 532, 249 N.W.2d 783 (1977).

A nonconforming use is an active and actual use of land and buildings that existed prior to the commencement of the zoning ordinance and continued in the same or nearly the same until the present. The owner must prove that the use of the property to the effective date of the ordinance was so active and actual that it can be said he has acquired a vested interest in its continuance. If the specific use was but casual and inchoate or merely accessory or the principal use of the property was not that the owner had acquired a vested interest. City of Lake Geneva v. Smuda, 75 Wis. 2d 532, 249 N.W.2d 783 (1977).

When the zoning board of appeals had power under sub. (7) (c) 1. and 7 to invalidate determinations imposed by the plan commission and to afford relief to affected property owners without invalidating a disputed ordinance, the owners’ failure to challenge the conditions before the board precluded the owners from challenging in court the constitutionality of the commission’s implementation of the ordinance. Noddell Investment Corp. v. Glendale, 78 Wis. 2d 416, 254 N.W.2d 310 (1977).

Sub. (7) (b) allows interim freezes of existing zoning or, if none exists, interim freezing of existing uses. It does not allow a city to freeze a nonconforming business or industrial building or uses. Town of Grand Chute v. City of Appleton, 91 Wis. 2d 293, 282 N.W.2d 629 (Ct. App. 1979).

A zoning board acted in excess of its power by reopening a proceeding that had once been terminated. Goldberg v. Milwaukee Zoning Appeals Board, 115 Wis. 2d 517, 340 N.W.2d 558 (Ct. App. 1983).


Notice under sub. (7) (d) 1. b. is required when a proposed amendment makes a substantial change. Herderman v. City of Muskego, 116 Wis. 2d 667, 343 N.W.2d 814 (Ct. App. 1983).

A zoning ordinance that denied an owner the entire use value of its property was unconstitutional. State ex rel. Nagawicka Is. Corp. v. Delafield, 117 Wis. 2d 233, 343 N.W.2d 516 (Ct. App. 1983).

A zoning ordinance itself can be the “comprehensive plan” required by sub. (7) (c). No separate comprehensive plan need be adopted by a city as a condition precedent to enacting a rezoning ordinance. Bell v. City of Elkhorn, 122 Wis. 558, 364 N.W.2d 144 (1985).

A city had no authority to elect against the notice provisions of sub. (7) (d). Gloudeman v. City of St. Francis, 143 Wis. 2d 780, 422 N.W.2d 864 (Ct. App. 1988).
Construction in violation of zoning, even when authorized by a voluntarily issued permit, is unlawful. Those who build in violation of zoning rules are not shielded from razing under sub. (8) because construction was completed before the lawfulness of zoning was determined. However, in rare cases, there may be reasonable and justifiable reasons when a requested order of abatement should not be issued. Lake Bluff Housing v. City of South Milwaukee, 222 Wis. 2d 222, 588 N.W.2d 45 (Ct. App. 1999), 97–1339.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. State ex rel. Spinner v. St. Croix County Board of Adjustment, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1999), 97–2094.

A conditional use permit did not impose a condition that the conditional use not be restricted to the permitted uses. It was improper to impel the contemplated use upon that use. An enforcement action in relation to the parcel where the use was not permitted is an appropriate remedy. Bettendorf v. St. Croix County Board of Adjustment, 223 Wis. 2d 715, 591 N.W.2d 120 (Ct. App. 1999), 97–0971.

Once a municipality has shown an illegal change in use to a nonconforming use, the municipality is entitled to terminate the entire nonconforming use. The decision is whether or not the nonconforming use is the subject of the grant of a special exception does not require the showing of hardship required for a variance. Fabyan v. Waukesha County Board of Adjustment, 146 Wis. 2d 498, 430 N.W.2d 370 (App. Ct. 1994), 97–1339.

A certiorari action exists only to test the validity of judicial or quasi-judicial determinations. It does not allow for answers, denials, or defenses by the respondent. Mer- cier v. Village of Germantown, 176 Wis. 2d 14, 510 N.W.2d 697 (Ct. App. 1993), 97–1339.

A property owner has a reasonable use for the property, the statute takes precedence and the opposite is not sufficient to invalidate it, if the increase is coupled with some element of identifiability of change or extension. State ex rel. Spinner v. City of Madison, 2001 WI 27, 242 Wis. 2d 61, 624 N.W.2d 117, 97–1339.

A variance authorizes a landowner to establish or maintain a use prohibited by zoning regulations. A special exception allows the landowner to put to the property to a use expressly permitted but that conflicts with some requirement of the ordinance. The grant of a special exception does not require the showing of hardship required for a variance. Fabian v. Waukesha County Board of Adjustment, 2001 WI App 150, 246 Wis. 2d 785, 632 N.W.2d 485, 00–1958.

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It residents would not be living in a proposed community living arrangement because of disabilities, although some may have disabilities, a municipality is not required by the federal American with Disabilities Act or Fair Housing Amendments Act to make reasonable accommodations in the application of the sub. (7) (i) 1. 2500 A to 2393 A 2d 542, 620 N.W.2d 438, 99–0120.

The consideration by a separate city council committee, without notice, of a duplicate file of matters then under consideration by the city’s zoning committee was not void. Oliveira v. City of Milwaukee, 2001 WI 27, 242 Wis. 2d 61, 624 N.W.2d 117, 97–1339.

Financial investment is a factor to consider when determining whether a zoning violation must be abated, but it does not outweigh all other equitable factors to be considered. Lake Bluff Housing Partners v. City of South Milwaukee, 2001 WI App 150, 246 Wis. 2d 785, 632 N.W.2d 485, 00–1958.

Statutory certiorari review exists to test the validity of decisions by agency decisions by reviewing the record, and the court has jurisdiction only for that limited purpose. An action to enforce a variance is an entirely different matter. It is coercive, and personal jurisdiction must be established by serving a summons and complaint or original writ separate from any related certiorari action. Winkelman v. Town of Delafield, 2001 WI App 150, 239 Wis. 2d 542, 620 N.W.2d 438, 99–0120.

The DNR has the authority to regulate the operation of game farms, its authority does not negate the power to enforce zoning ordinances against game farms. Both are applicable. Willow Creek Ranch v. Town of Shelby, 2000 WI 56, 235 Wis. 2d 619, 611 N.W.2d 693, 97–2077.

The state, in administering the Fair Housing Act, may not order a zoning board to issue a variance on characteristics based on the race. State v. Town of Grand Chute v. v. Paper Converters, Inc. 229 Wis. 2d 674, 600 N.W.2d 33 (Ct. App. 1999), 98–2797.

The state may not be used outside the permitted uses. A court cannot compel a political body to adhere to an agreement regarding zoning that it has legitimate reasons for breaching. Eternalist Foundation v. City of Cedarburg, 225 Wis. 2d 14, 597 N.W.2d 443 (App. Ct. 1999), 00–3592.

A certiorari action is limited to determining: 1) whether the board kept within its jurisdiction; 2) whether the board proceeded on a correct theory of law; 3) whether the board’s action was arbitrary, oppressive, or unreasonable; and 4) whether the evidence was such that the board might reasonably make its order. Kapisičke v. County of Walworth, 226 Wis. 2d 320, 595 N.W.2d 42 (Ct. App. 1999), 98–0976.

A variance may not be legislated or granted by governmental bodies to constitute a pervasive regulation of, or prohibition on, the use of land is zoning. Heitman v. City of Mauston, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999), 97–1339.

A city court’s decision in an agreement regarding zoning was not a violation. A court cannot compel a political body to adhere to an agreement regarding zoning that it has legitimate reasons for breaching. Eternalist Foundation v. City of Cedarburg, 225 Wis. 2d 14, 597 N.W.2d 443 (App. Ct. 1999), 00–3592.

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A variance may not be legislated or granted by governmental bodies to constitute a pervasive regulation of, or prohibition on, the use of land is zoning. Heitman v. City of Mauston, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999), 97–1339.
Zoning that restricts land so that the landowner has no permitted use of right as of must bear a substantial relation to the health, safety, morals, or general welfare of the public in order to withstand constitutional scrutiny. Town of Rhine v. Bizzell, 2008 WI App 11, 211 Wis. 2d 751, 567 N.W.2d 574, 08−0534.

Zoning regulations may not be used to restrict the exercise of any interest in the undisturbed land. Zoning regulations, and the effect of a variance on the public interest. Here, the board properly considered the purpose of the zoning code, the effect on neighboring properties, and whether the variance was required to avoid unreasonable discrimination or otherwise achieve a public purpose. 2009 WI App 09, 321 Wis. 2d 829, 775 N.W.2d 500, 09−0247.

When a village eliminated the selling of cars as a conditional use in general business districts a previously granted conditional use permit (CUP) was voided, the property owner was left with a legal nonconforming use to sell cars, and the village could not enforce the restrictions of the CUP against the property owner. Therefore, the owner's vested interest in the CUP was sufficient to insulate a party filing an action under sub. (8) from the impact of the amendment. Town of Cross Plains v. Kitt’s “Field of Dreams” Korner, Inc. 2009 WI App 142, 321 Wis. 2d 283, 775 N.W.2d 205, 08−0546.

There must be reasonable reliance on the existing law in order to acquire a vested interest in a nonconforming use. Reasonable reliance on the existing law was not shown when the owners knew the zoning classification was in effect at the time the use was begun. Town of Cross Plains v. Kitt’s “Field of Dreams” Korner, Inc. 2009 WI App 142, 321 Wis. 2d 671, 775 N.W.2d 283, 08−0546.

The language of this section changes because it now conveys that the mechanism for an appeal of a board of appeals decision is an action in certiorari for review of the board’s decision. The action is against the board of appeals, not against the city. State v. Town of Cross Plains, Inc. 2012 WI App 163, 326 Wis. 2d 829, 809 N.W.2d 362, 10−0178.

Zoning ordinances are derogation of the common law and are to be construed in favor of the free use of private property. To operate in derogation of the common law must be a special provision or a special clause in the ordinance. Acevedo v. City of Kenosha, 2006 WI App 142, 269 Wis. 2d 549, 676 N.W.2d 401, 05−0077.

Nothing in s. 59.694 (10) prevented an applicant whose conditional use permit (CUP) was denied from filing a second CUP application rather than seeking certiorari review. A municipality may enact a rule prohibiting a party whose application to the zoning board has been denied from filing a new application for a variance in the same area for the same change in circumstances, but that was not done in this case. O’Connor v. Buffalo County Board of Adjustment, 2014 WI App 60, 354 Wis. 2d 231, 847 N.W.2d 881, 12−0734.

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Zoning ordinances utilizing definitions of “family” to restrict the number of unrelated persons who may live in a single family dwelling are of questionable constitutionality. 63 Att’y Gen. 34.

(5m) RESTORATION OF CERTAIN NONCONFORMING STRUCTURES.
(a) Restrictions that are applicable to damaged or destroyed nonconforming structures and that are contained in an ordinance enacted under this section may not prohibit the restoration of a nonconforming structure if the structure will be restored to the size, subject to par. (b), location, and use that it had immediately before the damage or destruction occurred, or impose any limits on the costs of the repair, reconstruction, or improvement if all of the following apply:
1. The nonconforming structure was damaged or destroyed on or after March 2, 2006.
2. The damage or destruction was caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation.
(b) An ordinance enacted under this section to which par. (a) applies shall allow for the size of a structure to be larger than the size it was immediately before the damage or destruction if necessary for the structure to comply with applicable state or federal requirements.

(6) FAILURE TO ADOPT ORDI NANCE. If any city does not adopt an ordinance required under sub. (3) within 6 months after receipt of final wetland inventory maps prepared by the department of natural resources for the city under s. 23.32, or if the department of natural resources, after notice and hearing, determines that a city adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreline protection objectives of s. 281.31 (1), the department of natural resources shall adopt an ordinance for the city. As far as applicable, the procedures set forth in s. 87.30 apply to this subsection.

(6m) CERTAIN AMENDMENTS TO ORDINANCES. For an amendment to an ordinance enacted under this section that affects an activity that meets all of the requirements under s. 281.165 (2), (3) (a), or (4) (a), the department of natural resources may not proceed under sub. (6), or otherwise review the amendment, to determine whether the ordinance, as amended, fails to meet reasonable minimum standards.


Cross-reference: See also ch. NR 117, Wis. admn. code.

The legal standard of unnecessary hardship requires that the property owner demon strate that without a variance there is no reasonable use for the property. When the property owner has a reasonable use for the property, the statute takes precedence and the variance should be denied. State v. Kenosha County Board of Adjustment, 218 Wis. 2d 396, 577 N.W.2d 813 (1998), 96−1255. See also State v. Outagamie, 2001 WI 78, 243 Wis. 2d 613, 628 N.W.2d 376, 98−1046.

The burden is on the applicant for a variance to demonstrate through evidence that without the variance he or she is prevented from enjoying any reasonable use of the property. State ex rel. Spinner v. Kenosha County Board of Adjustment, 223 Wis. 2d 99, 588 N.W.2d 662 (Ct. App. 1998), 97−2094.

62.234 Construction site erosion control and storm water management zoning. (1) Definition. As used in this section, “department” means the department of natural resources.

(2) Authority to enact ordinance. To effect the purposes of s. 281.33 and to promote the public health, safety, and general welfare, a city may enact a zoning ordinance, that is applicable to all of its incorporated area, for construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 62.23. An ordinance enacted under this subsection is subject to the strict conformity requirements under s. 281.33 (3m).

(4) Applicability of city zoning provisions. (a) Except as otherwise specified in this section, s. 62.23 applies to any ordinance or amendment to an ordinance enacted under this section.

(b) Variances and appeals regarding construction site erosion control or storm water management regulations under this section are to be determined by the board of appeals for that city. Procedures under s. 62.23 (7) (c) apply to these determinations.

(c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 62.23 that relate to construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. or to storm water management regulation.

(5) Applicability of comprehensive zoning plan or general zoning ordinance. Ordinances enacted under this section shall accord and be consistent with any comprehensive zoning plan or general zoning ordinance applicable to the enacting cities, so far as practicable.

(6) Applicability of local subdivision regulation. All powers granted to a city under s. 236.45 may be exercised by it with respect to construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. or with respect to storm water management regulation, if the city has or provides a planning commission or agency.

(7) Applicability to local governments and agencies. An ordinance enacted under this section is applicable to activities conducted by a unit of local government and an agency of that unit of government. An ordinance enacted under this section is not applicable to activities conducted by an agency, as defined under s. 227.01 (1) but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2).

(8) Intergovernmental cooperation. (a) Except as provided in par. (c), s. 66.0301 applies to this section, but for the purposes of this section any agreement under s. 66.0301 shall be effective by ordinance.

(b) If a city is served by a regional planning commission under s. 66.0309 and if the commission consents, the city may empower the commission by ordinance to administer the ordinance enacted under this section throughout the city, whether or not the area otherwise served by the commission includes all of that city. Section 66.0301 does not apply to this paragraph.


This section contains no prohibition against imposing municipal fees for services in connection with erosion control projects. It does not mandate that fees be listed “within the four corners” of the ordinance. The statute does not mention fees. Sub. (4) (c) states that an ordinance adopted under s. 62.23 that relates to construction site erosion control at sites where the construction activities do not include the construction of a building or to storm water management regulation is superseded by an ordinance adopted under s. 62.234. A fee schedule adopted via resolution was not an ordinance enacted under s. 62.234.

Municipal mortgage housing assistance. (1) Definitions. In this section:

62.237 Municipal mortgage housing assistance. (1) Definitions. In this section:
(a) “Debt service” means the amount due of principal, interest and premium for mortgage revenue bonds or revenue bonds issued under this section.

(b) “Dwelling” means any structure used or intended to be used for habitation with up to 2 separate units certified for occupancy by the city. “Dwelling” also means any housing cooperative incorporated under ch. 185 or 193.

(c) “Lending institution” means any private business issuing home mortgages.

(d) “Municipality” means any city with a population greater than 75,000.

(e) “Owner-occupied dwelling” means a dwelling in which the owner occupies or will occupy any unit.

(2) Issuing Loans. (a) The legislative body of any municipality may adopt a resolution, authorizing the municipality to:

1. Issue mortgage loans with an interest rate less than the lowest rate available at lending institutions within the municipality, for the purchase or construction of any owner-occupied dwelling located within an area described in sub. (3). Financing for rehabilitation or home improvements may be made available as part of these loans.

2. Issue loans to any lending institution within the municipality that agrees to loan the money at designated terms for the purchase, purchase and rehabilitation or construction of any owner-occupied dwelling located within an area described in sub. (3). (b) The resolution shall designate each area in which dwellings are eligible for loans.

(c) No loan may be issued to purchase, purchase and rehabilitate or construct a dwelling that violates applicable provisions of the one- and two-family dwelling code under ss. 101.60 to 101.66, or that violates any ordinance the municipality adopts regulating the dwelling. If the dwelling is found to be violating the dwelling code or any ordinance after issuance of the loan, the loan shall default. The municipality may require the full loan to become due or may increase the interest rate to the maximum allowable. The municipality may defer imposing a penalty for up to one year after the violation is found to exist.

(3) Eligible Areas. Owner-occupied dwellings in any area of the municipality are eligible for loans under this section if any 2 of the following conditions exist:

(a) The median assessed property value of one- and two-family dwellings in the area is less than or equal to 80 percent of the median assessed property value of one- and two-family dwellings in the municipality.

(b) The median family income of the area is less than or equal to 80 percent of the median family income of the municipality.

(c) The proportion of owner-occupied dwellings in the area is less than or equal to 80 percent of the proportion of owner-occupied dwellings in the municipality.

(d) The vacancy rate of dwellings in the area is greater than or equal to 120 percent of the vacancy rate of dwellings in the municipality.

(4) Revenue Bonding. (a) The governing body of any municipality may issue revenue bonds by resolution, to finance low-interest mortgage loans under this section. The resolution shall state the maximum dollar amount of authorized bonds and the purpose for which the municipality may issue the bonds. The resolution shall state the terms, form and content of the bonds. These bonds may be registered under s. 67.09.

(b) Debt service is payable solely from revenues received from the loans issued under this section. No mortgage revenue bond or revenue bond issued under this section is a debt of the municipality or a charge against the city’s general credit or taxing powers. The municipality shall plainly state the provisions of this paragraph on the face of each mortgage revenue bond or revenue bond.
(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 with the secretary of administration.


SUBCHAPTER II

FIRST CLASS CITIES

### 62.50 Police and fire departments in 1st class cities.

(1e) DEFINITION. In this section, “offense” means any felony or Class A or Class B misdemeanor violation of any of the following:

(a) Chapters 940 and 941.
(b) Section 942.08.
(c) Section 942.09.
(d) Chapters 943 to 948.

(1h) ORGANIZATION. In all 1st class cities, however incorporated, there shall be a board of fire and police commissioners, consisting of either 7 or 9 citizens, not more than 3, if the board has 7 members, or 4, if the board has 9 members, of whom shall at any time belong to the same political party. The staff and members of the board shall receive the salary or other compensation for their services fixed by the common council. The salary shall be fixed at the same time and in the same manner as the salary of other city officials and employees. Except as otherwise provided in this subsection, a majority of the members—elect, as that term is used in s. 59.001 (2m), of the board shall constitute a quorum necessary for the transaction of business. A 3-member panel of the board may conduct, and decide by majority vote, a trial described under sub. (12) or may hear and decide, by majority vote, charges filed by an aggrieved person under sub. (19). It shall be the duty of the mayor of the city, on or before the 2nd Monday in July, to appoint 7, or 9, members of the board, designating the term of office of each, one to hold one year, 2 to hold 2 years, 2 to hold 3 years, one to hold 4 years if the board has 7 members, and 2 to hold 4 years if the board has 9 members, and one to hold 5 years if the board has 7 members, and 2 to hold 5 years if the board has 9 members, and until their respective successors shall be appointed and qualified. Thereafter the terms of office shall be 5 years from the 2nd Monday in July, and until a successor is appointed and qualified. The mayor may reduce the size of the board from 9 to 7 members by failing to appoint 2 successors for individuals whose terms expire at the same time. Every person appointed a member of the board shall be subject to confirmation by the common council and every appointed member shall, before entering upon the duties of the office take and subscribe the oath of office prescribed by article IV, section 28, of the constitution, and file the same duly certified by the officer administering it, with the clerk of the city. Not later than the first day of the 7th month beginning after a member appointed by the mayor is confirmed by the common council, the member shall enroll in a training class that is related to the mission of the board and, not later than the first day of the 13th month beginning after a member appointed by the mayor is confirmed by the common council, the member shall complete the class. The training class shall be conducted by the city. Appointments made prior to the time this subchapter first applies to a 1st class city shall not be subject to confirmation by the common council.

(1m) POLICY REVIEW. The board shall conduct at least once each year a policy review of all aspects of the operations of the police and fire departments of the city. The board may prescribe general policies and standards for the departments. The board may inspect any property of the departments, including but not limited to books and records, required for a review under this section.

(2) CONTROL OF APPOINTMENTS. No person may be appointed to any position either on the police force or in the fire department of the city, except with the approval of the board.

(3) RULES. (a) The board may prescribe rules for the government of the members of each department and may delegate its rule-making authority to the chief of each department. The board shall prescribe a procedure for review, modification and suspension of any rule which is prescribed by the chief, including, but not limited to, any rule which is in effect on March 28, 1984.

(b) The board shall adopt rules to govern the selection and appointment of persons employed in the police and fire departments of the city. The rules shall be designed to secure the best service for the public in each department. The rules shall provide for ascertaining, as far as possible, physical qualifications, standing and experience of all applicants for positions, and may provide for the competitive examination of some or all applicants in such subjects as are deemed proper for the purpose of best determining the applicants’ qualifications for the position sought. The rules may provide for the classification of positions in the department, and for a special course of inquiry and examination for candidates for each class.

(c) The rules of each department shall be available to the public at a cost not to exceed the actual copying costs.

(4) PRINTING AND DISTRIBUTION OF REGULATIONS. The board shall cause the rules and regulations prepared and adopted under this section, and all changes therein, to be printed and distributed as the board deems necessary, and the expense thereof shall be certified by the board to the city comptroller and shall be paid by the city. The rules and regulations shall specify the date when they take effect, and thereafter all selections of persons for employment, appointment or promotion, either in the police force or the fire department of such cities except of the chief of police, the inspector of police, the chief engineer and the first assistant of the fire department, shall be made in accordance with such rules and regulations.

(5) EXAMINATIONS. The examinations which the rules and regulations provide for shall be public and free to all U.S. citizens with proper limitations as to age, health and, subject to ss. 111.321, 111.322 and 111.335, arrest and conviction record. The examinations shall be practical in their character and shall relate to those matters which fairly test the relative capacity of the candidates to discharge the duties of the positions in which they seek employment or to which they seek to be appointed and may include tests of manual skill and physical strength. The board shall control all examinations and may designate suitable persons, either in the official service of the city or not, to conduct such examinations and may change such examiners at any time, as seems best.

(6) APPOINTMENT OF CHIEFS. If a vacancy exists in the office of chief of police or in the office of chief engineer of the fire department, the board by a majority vote shall appoint proper persons to fill such offices respectively. When filling a vacancy in the office of chief of police or in the office of chief engineer of the fire department occurring after June 15, 1977, the board shall appoint the person to a term of office the number of years and commencement date of which shall be set by the city of the 1st class by ordinance and which may not exceed 10 years, or for the remainder of an unexpired term.

(7) ASSISTANT CHIEFS, INSPECTORS AND CAPTAINS; VACANCIES. (a) If a vacancy exists in the office of assistant chief, the chief of police shall nominate and, with the approval of the board, shall appoint a person to a term of office coinciding with the term of the chief making the appointment, subject thereafter to reinstatement
to a previously held position on the force in accordance with rules prescribed by the board. Removal of the assistant chief shall be pursuant to s. 17.12 (1) (c). The chief may summarily suspend the assistant chief whose removal is sought by the chief.

(b) If a vacancy exists in the office of inspector of police or captain of police, the chief of police shall nominate and, with the approval of the board, shall appoint a person to the office subject to suspension and removal under this section.

(8) FIRST ASSISTANT ENGINEER, VACANCY. If a vacancy exists in the office of the first assistant engineer of the fire department, the chief engineer shall nominate and with the approval of the board shall appoint a suitable person to the office, subject to suspension and removal under this section.

(9) MEMBERS OF FORCE, VACANCIES. All of the members of the force in either department named, at the time when the rules and regulations go into effect, shall continue to hold their respective positions at the pleasure of their respective chiefs, subject to trial under this section, and all persons subsequently appointed shall so hold. All vacancies in either department shall be filled and all new appointments shall be made by the respective chiefs with the approval of the board. Where vacancies in old offices or newly created offices exist, with safety to the department, be filled by the promotion of officers or persons already in the service and who have proved their fitness for the promotion, the vacancies in newly created offices shall be so filled by promotion by the respective chiefs with the approval of the board.

(10) SALARIES, PENSIONS. Provision may be made by the common council of a city by general ordinance that the salaries of the members of the force in the police and fire department of the city shall increase with the length of term of service. The salary and compensation of all members of the force in such departments shall be at all times subject to change by the common council, but the salary or compensation of the members of the force in the service of either department may not be decreased, except upon the previous recommendations of such change made in writing by the board to the common council. The common council may provide for an annual pension for life for such members of either service as are honorably discharged from same.

(10m) REST DAYS. The council of every city of the 1st class, however organized, may provide for, and when such provision is made, the chief of the police department shall assign to each police officer in the service of the 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 as will not impair the efficiency of the department.

(11) DISCHARGE OR SUSPENSION. No member of the police force or fire department may be discharged or suspended for a term exceeding 30 days by the chief of either of the departments except for cause and after trial under this section.

(12) TRIAL TO BE ORDERED. Whenever complaint against any member of the force of either department is made, the chief of the police department shall assign to each police officer in the service of the 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 as will not impair the efficiency of the department.

(13) NOTICE OF DISCHARGE OR SUSPENSION; APPEALS. The chief discharging or suspending for a period exceeding 5 days any member of the force shall give written notice of the discharge or suspension to the member and, at the same time that the notice is given, shall also give the member any exculpatory evidence in the chief’s possession related to the discharge or suspension. The chief shall also immediately report the notice of the discharge or suspension to the secretary of the board of fire and police commissioners together with a complaint setting forth the reasons for the discharge or suspension and the name of the complainant if other than the chief. Within 10 days after the date of service of the notice of a discharge or suspension order the members so discharged or suspended may appeal from the order of discharge or suspension or discipline to the board of fire and police commissioners, by filing with the board a notice of appeal in the following or similar form:

To the honorable board of fire and police commissioners:

Please take notice that I appeal from the order or decision of the chief of the ... department, discharging (or suspending) me from service, which order of discharge (or suspension) was made on the ... day of ..., .... (year).

(14) COMPLAINT. The board, after receiving the notice of appeal shall, within 5 days, serve the appellant with a copy of the complaint and a notice fixing the time and place of trial, which time of trial may not be less than 60 days nor more than 120 days after service of the notice and a copy of the complaint.

(15) NOTICE OF TRIAL. Notice of the time and place of the trial, together with a copy of the charges preferred shall be served upon the accused in the same manner that a summons is served in this state.

(16) TRIAL; ADJOURNMENT. The board may grant the accused or the chief an adjournment of the trial or investigation of the charges, for cause, not to exceed 15 days. In the course of any trial or investigation under this section each member of the fire and police commission may administer oaths, secure by its subpoenas both the attendance of witnesses and the production of records relevant to the trial and investigation, and compel witnesses to answer and may punish for contempt in the same manner provided by law in trials before municipal judges for failure to answer or to produce records necessary for the trial. The trial shall be public and all witnesses shall be under oath. The accused shall have full opportunity to be heard in defense and shall be entitled to secure the attendance of all witnesses necessary for the defense at the expense of the city. The accused may appear in person and by attorney. The city in which the department is located may be represented by the city attorney. All evidence shall be taken by a stenographic reporter who first shall be sworn to perform the duties of a stenographic reporter in taking evidence in the matter fully and fairly to the best of his or her ability.

(17) DECISION, STANDARD TO APPLY. (a) Within 3 days after hearing the matter the board, or a 3−member panel of the board, shall, by a majority vote of its members and subject to par. (b), determine whether by a preponderance of the evidence the charges are sustained. If the board or panel determines that the charges are sustained, the board shall at once determine whether the good of the service requires that the accused be permanently discharged or be suspended without pay for a period not exceeding 60 days or reduced in rank. If the charges are not sustained the accused shall be immediately reinstated in his or her former position, without prejudice. The decision and findings of the board, or panel, shall be in writing and shall be filed, together with a transcript of the evidence, with the secretary of the board.

(b) No police officer may be suspended, reduced in rank, suspended and reduced in rank, or discharged by the board under sub. (11), (13) or (19), or under par. (a), based on charges filed by the board, members of the board, an aggrieved person or the chief under sub. (11), (13) or (19), or under par. (a), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.

2017–18 Wisconsin Statutes updated through 2019 Wis. Act 102 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on February 19, 2020. Published and certified under s. 35.18. Changes effective after February 19, 2020, are designated by NOTES. (Published 2–19–20)
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate’s record of service with the chief’s department.

(18) SALARY DURING SUSPENSION. No chief officer of either department or member of the fire department may be deprived of his or her salary or wages for the period of time suspended preceding an investigation or trial, unless the charge is sustained. No member of the police force may be suspended under sub. (11) or (13) without pay or benefits until the matter that is the subject of the suspension is disposed of by the board or the time for appeal under sub. (13) passes without an appeal being made.

(19) CHARGES BY AGGRAVED PERSON. In cases where duly verified charges are filed by any aggrieved person with the board of fire and police commissioners, setting forth sufficient cause for the removal of any member of either of the departments, including the chief or officers, the board or chief may suspend such member or officer pending disposition of such charges. The board shall cause notice of the filing of the charges with a copy to be served upon the accused and shall set a date for the trial and investigation of the charges, following the procedure under this section. The board, or a 3-member panel of the board, shall decide by a majority vote and subject to the just cause standard described in sub. (17) (b) whether the charges are sustained. If sustained, the board shall immediately determine whether the good of the service requires that the accused be removed, suspended from office without pay for a period not exceeding 60 days or reduced in rank. If the charges are not sustained, the accused shall be immediately reinstated without prejudice. The secretary of the board shall make the decision public.

(20) CIRCUIT COURT REVIEW; NOTICE. Any officer or member of either department discharged, suspended or reduced, may, within 10 days after the decision and findings under this section are filed with the secretary of the board, bring an action in the circuit court of the county in which the city is located to review the order. Such action shall begin by the serving of a notice on the secretary of the board making such order and on the city attorney of such city, which notice may be in the following or similar form:

In Circuit Court, .... County.
To .... Board of Fire and Police Commissioners.
To .... City Attorney:

Please take notice that I hereby demand that the circuit court of .... County review the order made by the Board of Fire and Police Commissioners on the ... day of ... A.D. .... discharging, (suspension) .... from the .... department.

(Signed) ....

(21) CERTIFICATION AND RETURN OF RECORD. HEARING. Upon the service of the demand under sub. (20), the board upon which the service is made shall within 5 days thereafter certify to the clerk of the circuit court of the county all charges, testimony, and everything relative to the trial and discharge, suspension or reduction in rank of the member. Upon the filing of the return with the circuit court, actions for review shall be given preference. Upon application of the discharged member or the board, the court shall fix a date for the trial which shall be no later than 15 days after the date of the application except upon agreement between the board and the discharged or suspended member. The action shall be tried by the court without a jury and shall be tried upon the return made by the board. In determining the question of fact presented, the court shall be limited in the review thereof to the question:

“Under the evidence is there just cause, as described in sub. (17) (b), to sustain the charges against the accused?” The court may require additional return to be made by the board, and may also require the board to take additional testimony and make return thereof.

(22) COSTS; REINSTATEMENT. No costs may be allowed in the action to either party and the clerks’ fees shall be paid by the city in which the department is located. If the decision of the board is reversed, the discharged or suspended member shall forthwith be reinstated in his or her former position in the department and shall be entitled to pay the same as if not discharged or suspended. If the decision of the board is sustained, the order of discharge, suspension or reduction shall be final and conclusive in all cases.

(23) DUTIES OF CHIEF. The chief engineer of the fire department and the chief of police of a 1st class city, shall be the head of their respective departments. The chief of police shall preserve the public peace and enforce all laws and ordinances of the city. The chiefs shall be responsible for the efficiency and general good conduct of the department under their control. The board may review the efficiency and general good conduct of the departments. A chief shall act as an adviser to the board when the board reviews his or her department. The board may issue written directives to a chief based on a review of the chief’s department. The chief receiving a directive shall implement the directive unless the directive is overruled in writing by the mayor. Each of the chiefs shall maintain and have custody of all property of their respective departments, including but not limited to, all books and records, which shall be available and subject to inspection by the board.

(24) SIGNAL SERVICE DEPARTMENT. All apparatus and all mechanical appliances requiring the use of telegraph or telephone wire or other wire for signaling purposes, with the consequent use of the public highways, together with such wire and all appurtenances to such apparatus and the constructional work therefor, may be placed under the management and control of a separate department. Such department shall be established and the compensation of the superintendent and all employees of such department shall be fixed by ordinance of the city council. The superintendent of the department shall be appointed by the board, and all other employees of the department shall be appointed in the same manner, and shall be subject to removal upon the same conditions as the members of the fire and police departments, and wherever applicable this section shall apply to such department the same as to the fire and police departments.

(25) CHIEF EXAMINER. The board may appoint a chief examiner. The board shall prescribe the chief examiner’s duties and compensation, which shall be paid by the city on the certificate of the board. Such examiner is subject to removal at any time by a majority of the board, and the board may change such duties and compensation at any time as it deems proper. The board may fix and alter compensation for any other examiners appointed by the board, and such compensation shall be paid by the city on certificate of the board.

(26) RESERVATION OF EXISTING TERMS. Nothing contained in this section may be construed to affect the term of office of any person who is a member of any police or fire commission in any city of the 1st class nor to affect the term of office of any member appointed to fill out the unexpired term of any person who is a member of such commission at the time this section first applies to such city.

(27) MAYOR TO APPOINT ADDITIONAL MEMBERS. A mayor of a city of the 1st class, whether acting under a general or special charter, shall appoint a sufficient number of members for the police and fire commission of such city so that the commission shall conform with this section, and such additional members and their successors shall be appointed for a term of 5 years.

(28) ENGAGING IN POLITICAL ACTIVITY. Subject to the requirements of ch. 164, the common council of any 1st class city may enact an ordinance which regulates the political activities of its law enforcement officers, as defined in s. 165.85 (2) (c), including, but not limited to, providing for leaves of absence for members who are candidates for or who are elected to public office.
OFFICERS’ RIGHTS. In case of a conflict with ch. 164, the provisions of ch. 164 supersede the provisions of this section.


Court circuit review of a decision of the Milwaukee Board of Fire and Police Commissioners by a writ of certiorari was proper. Edmons v. Board of Fire & Police Comm’rs, 232 Wis. 2d 337, 224 N.W.2d 575 (1975).

The finding of the City of Milwaukee Board of Fire and Police Commissioners was insufficient in failing to specify what particular wrongful acts the officers performed or in which capacity the officers acted unbecoming an officer under the circumstances, and in failing to make separate findings as to each officer, because in making its determination the board is required to state specific findings of fact and conclusions of law based on the evidence of record admitted under this section. See also Hefferman v. Board, 247 Wis. 77, 220 N.W. 2d 575 (1974).

The 60−day period in sub. (17) refers to working days. Balcerzak v. Board of Fire & Police Comm’rs, 232 Wis. 2d 337, 569 N.W.2d 740 (Cl. App. 1997), 96−1347.

Multiple disciplinary charges and suspensions arise from a single transaction, the length of the suspension for purposes of sub. (13) must be measured by aggregating the suspensions. Parker v. Jones, 226 Wis. 2d 310, 595 N.W.2d 92 (Cl. App. 1999), 98−9518.

It is unconstitutional to condition continued public employment upon a waiver of the privilege against self−incrimination. An employee may be required to answer questions in a disciplinary hearing when granted immunity from criminal prosecution. The authority to reconvene the board for the purpose of determining the legitimacy of a discharge is not “disposed of by the board” under sub. (18) until the board provides such a trial. Milwaukee Police Association v. Flynn, 213 F. Supp. 2d 3113 (2016).

The authority to replace suspended rules. See also Parker v. Jones, 2015 WI App 95, 801 N.W.2d 466 (2015).

Subsections (11) to (19) require a just cause due process hearing only when a police officer or firefighter has been discharged. There is nothing in the statute’s language or context that suggests that this section applies to an officer placed on unpaid Family Medical Leave. Milwaukee Police Association v. Flynn, 2011 WI App 112, 335 Wis. 2d 495, 801 N.W.2d 466, 10−2254.

Correcting a mistake of law is neither specifically authorized nor specifically prohibited by law. Where the board has discretion and is required to exercise that discretion, a mistake of law is to be the basis for the board’s decision. Under sub. (17), the board shall provide such a trial. Milwaukee Police Association v. Board of Fire & Police Commissioners, 2002 WI 33, 166 Wis. 2d 15, 292 N.W.2d 641 (1980).

20−335 Wis. 2d 495 07−2433 595 N.W.2d 113 (1999).


If the court finds that officers discharged by the chief but who await trial before the Board of police and fire commissioners are not to receive pay during that period. Milwaukee Police Association v. Flynn, 213 F. Supp. 2d 3113 (2016).

62.51 Mayoral appointments in 1st class cities. (1) In this section:

(a) “Public office” means the following positions or their equivalent: city engineer; city purchasing agent; commissioner of building inspection, of city development, of health or of public works; director of administration, of budget and management, of community development agency, of employee relations, of office of telecommunications, or of safety; emergency management coordinator; employee benefits administrator; executive director of the commission on community relations; municipal port director; commissioner of assessments; director of liaison; city person−point−of−correction coordinator; executive director of the city board of election commissioners; city librarian; city labor negotiator; executive secretary of the board of fire and police commissioners; and supervisor of the central electronics board.

(b) “Public official” means a person appointed to a public office under this section.

(2) In any 1st class city, the mayor shall appoint, subject to confirmation of the common council, a person to serve in the unclassified service in each public office. A public official serves at the pleasure of the mayor until the end of the mayor’s term of office or until the public official is appointed unless reappointed and confirmed or until a successor is appointed and confirmed, whichever is later. The mayor shall make appointments under this subsection within 90 days after taking office or within 90 days after a vacancy in the public office occurs, whichever is later. The common council shall vote on confirmation of any appointment made under this subsection within 45 days after that appointment.

(3) If a 1st class city authorizes the position of deputy for a public office, the public official in that office shall appoint a person to serve in that office or the successor of such person. Such person shall serve at the pleasure of the public official, or not longer than the public official’s term of office unless reappointed.

(4) This section does not affect the authority of a 1st class city to abolish, consolidate or create a public office or other position.


62.53 Real property used for school purposes; 1st class cities. Beginning on July 14, 2015, the lessor of any lease entered into between a 1st class city and a school district operating under subch. I of ch. 119 and involving the use of city−owned real property for school purposes shall do the following:

(1) Provide for the superintendent of schools, on behalf of the superintendent of schools of the opportunity schools and partnership program under s. 119.33, to be an agent of the board of school directors in charge of the public schools under ch. 119 upon transfer under s. 119.33 (2) (c) of the school using the land, buildings, and facilities to the superintendent of schools opportunity schools and partnership program under s. 119.33.

(2) Provide for the commissioner of the opportunity schools and partnership program under subch. II of ch. 119 to be an agent of the board of school directors in charge of the public schools under ch. 119 upon transfer under s. 119.9002 (3) of the school using the land, buildings, and facilities to the opportunity schools and partnership program under subch. II of ch. 119.

History: 2015 a. 35.

62.55 Requirements for surety bonds of officers and employees in 1st class cities. If an office or position in the service of a 1st class city involves fiduciary responsibility or the handling of money, the appointing officer may require the appointee to furnish a bond or other security to the officer and the city for the faithful performance of the appointee’s duty.
amount of the bond or security shall be fixed by the appointing officer, with the approval of the mayor. Notice of the mayor’s approval shall be given to the city clerk by the mayor. Each bond shall be approved by the city attorney as to form and execution and by the common council as to sufficiency of sureties. Any surety company, the bonds of which are accepted by the judge of any court of record in this state, or which is approved by the comptroller of the city, is sufficient security on the bond. The premium on a bond under this section, within the limits fixed by law, shall be paid out of the city treasury. The appointing officer shall immediately after the execution of the bond file the bond with the city clerk. The city clerk shall require compliance with the terms of this section requiring the filing of bonds with the city clerk by officers and employees. Bonds of city officers and employees under this section, duly witnessed and acknowledged, after being approved by the common council, shall be delivered to the city comptroller, who shall have them recorded in the office of the register of deeds. After the bonds are recorded, the bonds shall be returned to the city clerk, who shall keep them on file in the city clerk’s office; except that after the recording of the bond of the city clerk by the city comptroller, that bond shall remain on file in the office of the city comptroller. Each bond filed by any surety company shall be accompanied by a duplicate of the bond. The duplicate shall be filed with the city comptroller.

History: 1991 a. 136; 1999 a. 150 s. 301; Stats. 1999 s. 62.55.

62.57 Uniform salaries in 1st class cities. The common council of a 1st class city may at any regular or special meeting adopt a uniform and comprehensive salary or wage ordinance, or both, based on a classification of officers, employments and positions in the city service, whether previously so classified or not, to finance insurance under this section, by investment or other means. The council of a 1st class city may, at any regular or special meeting, adopt a uniform and comprehensive salary or wage ordinance, or both, based on a classification of officers, employments and positions in the city service, whether previously so classified or not, to finance insurance under this section, by investment or other means. The city council shall be filed by the clerk with the city comptroller.


62.59 Police authority to alderpersons in 1st class cities repealed. No common council in a 1st class city by ordinance may give alderpersons the powers of city police officers.


62.61 Health insurance; 1st class cities. The common council of a 1st class city may, by ordinance or resolution, provide for, including the payment of premiums of, general hospital, surgical and group insurance for both active and retired city officers and city employees and their respective dependents in private companies, or may, by ordinance or resolution, elect to offer to all of its employees a health care coverage plan through a program offered by the group insurance board under ch. 40. Municipalities which elect to participate under s. 40.51 (7) are subject to the applicable sections of ch. 40 instead of this section. Contracts for insurance under this section may be entered into for active officers and employees separately from contracts for retired officers and employees. Appropriations may be made for the purpose of financing insurance under this section. Moneys accruing to a fund to finance insurance under this section, by investment or otherwise, may not be diverted for any other purpose than those for which the fund was set up or to defray management expenses of the fund or to partially pay premiums to reduce costs to the city or to persons covered by the insurance, or both.

History: 1985 a. 29; 1999 a. 150 s. 307; Stats. 1999 s. 62.61.

62.62 Appropriation bonds for payment of employee retirement system liability in 1st class cities. (1) DEFINITIONS. In this section:

(a) “Appropriation bond” means a bond issued by a city to evidence its obligation to repay a certain amount of borrowed money that is payable from all of the following:

1. Moneys annually appropriated by law for debt service due with respect to such appropriation bond in that year.

2. Proceeds of the sale of such appropriation bonds.

3. Payments received for that purpose under agreements and ancillary arrangements described in s. 62.621.

4. Investment earnings on amounts in subs. 1. to 3.

(b) “Bond” means any bond, note, or other obligation of a city issued under this section.

(c) “City” means a 1st class city.

(d) “Common Council” means the common council of a city.

(e) “Refunding bond” means an appropriation bond issued to fund or refund all or any part of one or more outstanding pension-related bonds.

(1m) LEGISLATIVE FINDING AND DETERMINATION. Recognizing that a city, by prepaying part or all of the city’s unfunded prior service liability with respect to an employee retirement system of the city, may reduce its costs and better ensure the timely and full payment of retirement benefits to participants and their beneficiaries under the employee retirement system, the legislature finds and determines that it is in the public interest for the city to issue appropriation bonds to obtain proceeds to pay its unfunded prior service liability.

(2) AUTHORIZATION OF APPROPRIATION BONDS. (a) A common council shall have all powers necessary and convenient to carry out its duties, and to exercise its authority, under this section.

(b) Subject to pars. (c) and (d), a common council may issue appropriation bonds under this section to pay all or any part of the city’s unfunded prior service liability with respect to an employee retirement system of the city, or to fund or refund outstanding appropriation bonds issued under this section. A city may use proceeds of appropriation bonds to pay issuance or administrative expenses, to make deposits to reserve funds, to pay accrued or funded interest, to pay the costs of credit enhancement, to make payments under other agreements entered into under s. 62.621, or to make deposits to stabilization funds established under s. 62.621.

(c) Other than refunding bonds issued under sub. (6), all bonds must be issued simultaneously.

(d) 1. Before a city may issue appropriation bonds under par. (b), its common council shall enact an ordinance that establishes a 5-year strategic and financial plan related to the payment of all or any part of the city’s unfunded prior service liability with respect to an employee retirement system of the city. The strategic and financial plan shall provide that future annual pension liabilities are funded on a current basis. The strategic and financial plan shall contain quantifiable benchmarks to measure compliance with the plan. The common council shall make a determination that the ordinance meets the requirements of this subdivision and, absent manifest error, the common council’s determination shall be conclusive. The common council shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a copy of the strategic and financial plan.

2. Annually, the city shall submit to the governor, the department of revenue, and the department of administration, and to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report that includes all of the following:

a. The city’s progress in meeting the benchmarks in the strategic and financial plan.

b. Any proposed modifications to the plan.

c. The status of any stabilization fund that is established under s. 62.622 (3).

d. The most current actuarial report related to the city’s employee retirement system.

2017–18 Wisconsin Statutes updated through 2019 Wis. Act 102 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on February 19, 2020. Published and certified under s. 35.18. Changes effective after February 19, 2020, are designated by NOTES. (Published 2–19–20)
c. The amount, if any, by which the city’s contributions to the employee retirement system for the prior year is less than the normal cost contribution for that year as specified in the initial actuarial report for the city’s employee retirement system for that year.

f. The amount that the actuary determines is the city’s required contribution to the employee retirement system for that year.

(2m) PENALTY FOR INADEQUATE CONTRIBUTION. If the city’s contributions to the employee retirement system for the prior year is less than the lower of the required contribution for that year, as described in sub. (2) (d) 2. f., or the normal cost for that year, the department of revenue shall reduce and withhold the amount of the shared revenue payments to the city under subch. I of ch. 79, in the following year, by an amount equal to the difference between the required cost contribution for that prior year and the city’s actual contribution in that prior year. The department of revenue shall deposit the amount of the reduced and withheld shared revenue payment into the city’s employee retirement system.

(3) TERMS. (a) A city may borrow moneys and issue appropriation bonds in evidence of the borrowing pursuant to one or more written authorizing resolutions under sub. (4). Unless otherwise provided in an authorizing resolution, the city may issue appropriation bonds at any time, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions that the common council considers necessary or desirable. Appropriation bonds may bear interest at variable or fixed rates, bear no interest, or bear interest payable only at maturity or upon redemption prior to maturity.

(b) The common council may authorize appropriation bonds having any provisions for prepayment the common council considers necessary or desirable, including the payment of any premium.

(c) Interest shall cease to accrue on an appropriation bond on the date that the appropriation bond becomes due for payment if payment is made or duly provided for.

(d) All moneys borrowed by a city that is evidenced by appropriation bonds issued under this section shall be lawful money of the United States, and all appropriation bonds shall be payable in such money.

(e) All appropriation bonds owned or held by a fund of the city are outstanding in all respects, and the common council or other governing body controlling the fund shall have the same rights with respect to an appropriation bond as a private party, but if any sinking fund acquires appropriation bonds that gave rise to such fund, the appropriation bonds are considered paid for all purposes and no longer outstanding and shall be canceled as provided in sub. (7) (d).

(f) A city shall not be generally liable on appropriation bonds, and appropriation bonds shall not be a debt of the city for any purpose whatsoever. Appropriation bonds, including the principal thereof and interest thereon, shall be payable only from amounts that the common council may, from year to year, appropriate for the payment thereof.

(4) PROCEDURES. (a) No appropriation bonds may be issued by a city unless the issuance is pursuant to a written authorizing resolution adopted by a majority of the quorum of the common council. The resolution may be in the form of a resolution or trust indenture, and shall set forth the aggregate principal amount of appropriation bonds authorized thereby, the manner of their sale, and the form and terms thereof. The resolution or trust indenture may establish such funds and accounts, including a reserve fund, as the common council determines.

(b) Appropriation bonds may be sold at either public or private sale and may be sold at any price or percentage of par value. All appropriation bonds sold at public sale shall be noticed as provided in the authorizing resolution. Any bid received at public sale may be rejected.

(5) FORM. (a) As determined by the common council, appropriation bonds may be issued in book-entry form or in certificated form. Notwithstanding s. 403.104 (1), every evidence of appropriation bond is a negotiable instrument.

(b) Every appropriation bond shall be executed in the name of and for the city by the president of the common council and city clerk, and shall be sealed with the seal of the city, if any. Facsimile signatures of either officer may be imprinted in lieu of manual signatures, but the signature of at least one such officer shall be manual. An appropriation bond bearing the manual or facsimile signature of a person in office at the same time the signature was signed or imprinted shall be fully valid notwithstanding that before or after the delivery of such appropriation bond the person ceased to hold such office.

(c) Every appropriation bond shall be dated not later than the date it is issued, shall contain a reference by date to the appropriate authorizing resolution, shall state the limitation established in sub. (3) (f), and shall be in accordance with the appropriate authorizing resolution in all respects.

(d) An appropriation bond shall be substantially in such form and contain such statements or terms as determined by the common council, and may not conflict with law or with the appropriate authorizing resolution.

(6) REFUNDING BONDS. (a) 1. A common council may authorize the issuance of refunding appropriation bonds. Refunding appropriation bonds may be issued, subject to any contract rights vested in owners of the appropriation bonds being refunded, to refund all or any part of one or more issues of appropriation bonds notwithstanding that the appropriation bonds may have been issued at different times or issues of general obligation promissory notes under s. 67.12 (12) were issued to pay unfunded prior service liability with respect to an employee retirement system. The principal amount of the refunding appropriation bonds may not exceed the sum of: the principal amount of the appropriation bonds or general obligation promissory notes being refunded; applicable redemption premiums; unpaid interest on the refunded appropriation bonds or general obligation promissory notes to the date of delivery or exchange of the refunding appropriation bonds; in the event the proceeds are to be deposited in trust as provided in par. (c), interest to accrue on the appropriation bonds or general obligation promissory notes to the date of delivery or exchange of the refunding appropriation bonds; the shared revenue payments to the city under subch. I of ch. 79 in the following year, by an amount equal to the difference in the following year, by an amount equal to the difference between the required contribution for that year, as described in sub. (2) (d) 2. f., or the normal cost for that year, the department of revenue shall reduce and withhold the amount of the shared revenue payments to the city under subch. I of ch. 79, in the following year, by an amount equal to the difference between the required cost contribution for that prior year and the city’s actual contribution in that prior year. The department of revenue shall deposit the amount of the reduced and withheld shared revenue payment into the city’s employee retirement system.

2. A common council may authorize the issuance of general obligation promissory notes under s. 67.12 (12) (a) to refund appropriation bonds, notwithstanding s. 67.01 (9) (intro.).

(b) If a common council determines to exchange refunding appropriation bonds, they may be exchanged privately for, and in payment and discharge of, any of the outstanding appropriation bonds being refunded. Refunding appropriation bonds may be exchanged for such principal amount of the appropriation bonds being exchanged therefor as may be determined by the common council to be necessary or desirable. The owners of the appropriation bonds being refunded who elect to exchange need not pay accrued interest on the refunding appropriation bonds if and to the extent that interest is accrued and unpaid on the appropriation bonds being refunded and to be surrendered. If any of the appropriation bonds to be refunded are to be called for redemption, the common council shall determine which redemption dates are to be used, if more than one date is applicable and shall, prior to the issuance of the refunding appropriation bonds, provide for notice of redemption to be given in the manner and at the times required by the resolution authorizing the appropriation bonds to be refunded.
The principal proceeds from the sale of any refunding appropriation bonds shall be applied either to the immediate payment and retirement of the appropriation bonds or general obligation promissory notes being refunded or, if the bonds or general obligation promissory notes have not matured and are not presently redeemable, to the creation of a trust for, and shall be pledged to the payment of, the appropriation bonds or general obligation promissory notes being refunded.

2. If a trust is created, a separate deposit shall be made for each issue of appropriation bonds or general obligation promissory notes being refunded. Each deposit shall be with a bank or trust company authorized by the laws of the United States or of a state in which it is located to conduct banking or trust company business. If the total amount of any deposit, including money other than sale proceeds but legally available for such purpose, is less than the principal amount of the appropriation bonds or general obligation promissory notes being refunded and for the payment of which the deposit has been created and pledged, together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption, then the application of the sale proceeds shall be legally sufficient only if the monies deposited are invested in securities issued by the United States or one of its agencies, or securities fully guaranteed by the United States, and only if the principal amount of the securities at maturity and the income therefrom to maturity will be sufficient and available, without the need for any further investment or reinvestment, to pay at maturity or upon redemption the principal amount of the appropriation bonds or general obligation promissory notes being refunded together with applicable redemption premiums and interest accrued and to accrue to maturity or to the date of redemption. The income from the principal proceeds of the securities shall be applied solely to the payment of the principal of and interest and redemption premiums on the appropriation bonds or general obligation promissory notes being refunded, but provision may be made for the pledging and disposition of any surplus.

3. Nothing in this paragraph may be construed as a limitation on the duration of any deposit in trust for the retirement of appropriation bonds or general obligation promissory notes being refunded that have not matured and that are not presently redeemable. Nothing in this paragraph may be construed to prohibit reinvestment of the income of a trust if the reinvestments will mature at such times that sufficient moneys will be available to pay interest, applicable premiums, and principal on the appropriation bonds or general obligation promissory notes being refunded.

(7) Fiscal Regulations. (a) All appropriation bonds shall be registered by the city clerk or city treasurer of the city issuing the appropriation bonds, or such other officers or agents, including fiscal agents, as the common council may determine. After registration, no transfer of an appropriation bond is valid unless made by the registered owner’s duly authorized attorney, on the records of the city and similarly noted on the appropriation bond. The city may treat the registered owner as the owner of the appropriation bond for all purposes. Payments of principal and interest shall be by electronic funds transfer, check, share draft, or other draft to the registered owner at the owner’s address as it appears on the register, unless the common council has otherwise provided. Information of which the owner is not available for inspection or copying under s. 19.35 (1). The common council may make any other provision respecting registration as it considers necessary or desirable.

(b) The common council may appoint one or more trustees or fiscal agents for each issue of appropriation bonds. The city treasurer may be designated as the trustee and the sole fiscal agent or as cofiscal agent for any issue of appropriation bonds. Every other fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States of or of the state in which it is located to conduct banking or trust company business. There may be deposited with a trustee, in a special account, moneys to be used only for the purposes expressly provided in the resolution authorizing the issuance of appropriation bonds or an agreement between the city and the trustee. The common council may make other provisions respecting trustees and fiscal agents as the common council considers necessary or desirable and may enter into contracts with any trustee or fiscal agent containing such terms, including compensation, and conditions in regard to the trustee or fiscal agent as the common council considers necessary or desirable.

(c) If any appropriation bond is destroyed, lost, or stolen, the city shall execute and deliver a new appropriation bond, upon filing with the common council evidence satisfactory to the common council that the appropriation bond has been destroyed, lost, or stolen, upon providing proof of ownership thereof, and upon furnishing the common council with indemnity satisfactory to it and complying with such other rules of the city and paying any expenses that the city may incur. The common council shall cancel the appropriation bond surrendered to the city.

(d) Unless otherwise directed by the common council, every appropriation bond paid or otherwise retired shall be marked “canceled” and delivered to the city treasurer, or to such other fiscal agent as applicable with respect to the appropriation bond, who shall destroy them and deliver a certificate to that effect to the city clerk.

(8) Appropriation Bonds as Legal Investments. Any of the following may legally invest any sinking funds, moneys, or other funds belonging to them or under their control in any appropriation bonds issued under this section:

(a) The state, the investment board, public officers, municipal corporations, political subdivisions, and public bodies.

(b) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.

(c) Personal representatives, guardians, trustees, and other fiduciaries.

(9) Moral Obligation Pledge. If the common council considers it necessary or desirable to do so, it may express in a resolution authorizing appropriation bonds its expectation and aspiration to make timely appropriations sufficient to pay the principal and interest due with respect to such appropriation bonds, to make deposits into a reserve fund created under sub. (4) (a) with respect to such appropriation bonds, to make payments under any agreement or ancillary arrangement entered into under s. 62.621 with respect to such appropriation bonds, to make deposits into any stabilization fund established or continued under s. 62.622 with respect to such appropriation bonds, or to pay related issuance or administrative expenses.

(10) Applicability. This section does not apply if a city does not issue appropriation bonds as authorized under sub. (2).

History: 2009 a. 28.

62.621 Agreements and ancillary arrangements for certain notes and appropriation bonds. At the time of issuance or in anticipation of the issuance of appropriation bonds under s. 62.62, or general obligation promissory notes under s. 67.12 (12), to pay unfunded prior service liability with respect to an employee retirement system, or at any time thereafter so long as the appropriation bonds or general obligation promissory notes are outstanding, a 1st class city may enter into agreements or ancillary arrangements relating to the appropriation bonds or general obligation promissory notes, including trust indentures, liquidity facilities, remarketing or dealer agreements, letters of credit, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, and interest exchange agreements. Any payments made or amounts received with respect to any such agreement or ancillary arrangement shall be made from or deposited as provided in the agreement or ancillary arrangement.

History: 2009 a. 28.
62.622 Employee retirement system liability financing in 1st class cities; additional powers. (1) Definitions. In this section:
   (a) “City” means a 1st class city.
   (b) “Common council” means the common council of a city.
   (c) “Pension funding plan” means a strategic and financial plan related to the payment of all or part of a city’s unfunded prior service liability with respect to an employee retirement system.
   (d) “Trust” means a common law trust organized under the laws of this state, by the city, as settlor, pursuant to a formal, written, declaration of trust.

(2) Special funding entities, funds, and accounts. (a) To facilitate a pension funding plan and in furtherance thereof, a common council may create one or more of the following:
   1. A trust.
   2. A nonstock corporation under ch. 181.
   3. A limited liability company under ch. 183.
   4. A special fund or account of the city.
   (b) An entity described under par. (a) has all of the powers provided to it under applicable law and the documents pursuant to which it is created and established. The powers shall be construed broadly in favor of effectuating the purposes for which the entity is created. A city may appropriate funds to such entities and to such funds and accounts, under terms and conditions established by the common council, consistent with the purposes for which they are created and established.

(3) Stabilization funds. (a) To facilitate a pension funding plan a common council may establish a stabilization fund. Any such fund may be created as a trust, a special fund or account of the city established by a separate resolution or ordinance, or a fund or account created under an authorizing resolution or trust indenture in connection with the authorization and issuance of appropriation bonds under s. 62.62 or general obligation promissory notes under s. 67.12 (12). A city may appropriate funds for deposit to a stabilization fund established under this subsection.
   (b) Moneys in a stabilization fund established under this subsection may be subject, to annual appropriation by the common council, solely to pay principal or interest on appropriation bonds issued under s. 62.62 and general obligation promissory notes issued under s. 67.12 (12) issued in connection with a pension funding plan, for the redemption or repurchase of such appropriation bonds or general obligation promissory notes, to make payments under any agreement or ancillary arrangement entered into under s. 62.621 with respect to such appropriation bonds or general obligation promissory notes, or to pay annual pension costs other than normal costs. Moneys on deposit in a stabilization fund may not be subject to any claims, demands, or actions by, or transfers or assignments to, any creditor of the city, any beneficiary of the city’s employee retirement system, or any other person, on terms other than as may be established in the resolution or ordinance creating the stabilization fund. Moneys on deposit in a stabilization fund established under this subsection may be invested and reinvested in the manner directed by the common council or pursuant to delegation by the common council as provided under s. 66.0603 (5).

History: 2009 a. 28.

62.623 Payment of contributions in an employee retirement system of a 1st class city. (1) Beginning on July 1, 2011, in any employee retirement system of a 1st class city, except as otherwise provided in a collective bargaining agreement entered into under subch. IV of ch. 111 and except as provided in sub. (2), employees shall pay all employee required contributions for funding benefits under the retirement system. The employer may not pay on behalf of an employee any of the employee’s share of the required contributions.
   (2) (a) An employer shall pay, on behalf of a nonrepresented law enforcement or fire fighting managerial employee, who was initially employed by the employer before July 1, 2011, the contributions required by sub. (1) that are paid by the employer for represented law enforcement or fire fighting personnel who were initially employed by the employer before July 1, 2011.
   (b) An employer shall pay, on behalf of a represented law enforcement or fire fighting employee, who was initially employed by the employer before July 1, 2011, and who on or after July 1, 2011, became employed in a nonrepresented law enforcement or fire fighting managerial position with the employer, or a successor employer in the event of a combined department that is created on or after July 1, 2011, the same contributions required by sub. (1) that are paid by the employer for represented law enforcement or fire fighting personnel who were initially employed by the employer before July 1, 2011.

History: 2011 a. 10, 32.

This section concerns a matter of primarily statewide concern, and, accordingly, surmounts the plaintiffs’ home rule challenge under Article XI, section 3 (1) of the Wisconsin Constitution. Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337, 12–2067.

This section does not violate Article I, section 12, the Contract Clause of the Wisconsin Constitution. Nothing in 2011 Wis. Act 10 purports to reduce, impair, or affect in any way benefits that have already accrued to plan members. This section modifies only the method by which the Milwaukee ERS is funded; the pension, disability, and death benefits that accrue to plan members pursuant to the terms and conditions in the Milwaukee Retirement System ordinance remain unaffected. Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337, 12–2067.

62.624 Employee retirement system of a 1st class city; duty disability benefits for a mental injury. (1) If an employee retirement system of a 1st class city offers a duty disability benefit, the employee retirement system may only provide the duty disability benefit for a mental injury if all of the following apply:
   (a) The mental injury resulted from a situation of greater dimensions than the day-to-day mental stresses and tensions and post-traumatic stress that all similarly situated employees must experience as part of the employment.
   (b) The employer certifies that the mental injury is a duty-related injury.

(2) If an employee retirement system of a 1st class city determines that an applicant is not eligible for duty disability benefits for a mental injury, the applicant may appeal the employee retirement system’s determination to the department of workforce development. In hearing an appeal under this subsection, the department of workforce development shall follow the procedures under ss. 102.16 to 102.26.

(3) This section applies to participants in an employee retirement system of a 1st class city who first apply for duty disability benefits for a mental injury on or after July 14, 2015.

History: 2015 a. 55.

62.63 Benefit funds for officers and employees of 1st class cities. (1) Establishment of funds. By a majority vote of the members—elect, the common council of a 1st class city may create, establish, maintain and administer annuity and benefit funds for city officers and employees, including officers and employees of boards, agencies, departments and divisions of the city government and of a housing authority established under s. 66.1201.

(2) Retirement board. By a majority vote of its members, the common council of a 1st class city may create a retirement board to administer an annuity and benefit fund under this section. The retirement board may make rules and regulations under which all participants contribute to and receive benefits from the fund. Members of the board shall serve without compensation. Three members of the board shall be city employees elected by the members of the retirement system and shall serve 4–year terms and 5 members shall be appointed under s. 62.51 and shall serve 3–year terms. The common council may provide for contribution by the city to the annuity and benefit fund. The executive director of the retirement board shall be appointed under s. 62.51.

(3) Investment of retirement funds. The board of a retirement system of a 1st class city, whose funds are independent of control by the investment board, may invest funds from the sys-
41  Updated 17–18 Wis. Stats.

American Family Insurance Co. v. Milwaukee, 148 Wis. 2d 280, 435 N.W.2d 280 (App. 1988). This section puts the city in the position of an insurer subject to the subrogation rights of its officer’s personal insurers. 

62.69 First class city utilities. (1) APPLICATION. This section applies to 1st class cities.

(2) WATER SYSTEMS. (a) In this subsection, “commissioner of public works” includes any board of public works, or commissioner of public works, or other officer of the city having control of the city’s public works.

(b) In this subsection, all acts authorized to be done by the commissioner of public works, except enforcement of regulations approved by the common council, shall be approved by the common council before the acts may take effect.

(c) Water rates shall be collected in the manner and by whom the common council determines, and shall be accounted for and paid to the other officials in the manner and at the times that the council prescribes. Persons collecting water rates shall give a bond to cover all the duties in an amount prescribed by the council. Final accounting shall be made to the comptroller and final disposition of money shall be made to the city treasurer.

(d) When the city owns its water system, the commissioner of public works may make and enforce bylaws, rules and regulations in relation to the water system, and, before the actual introduction of water, the commissioner shall make bylaws, rules and regulations, fixing uniform water rates to be paid for the use of water furnished by the water system, and fixing the manner of distributing and supplying water for use or consumption, and for withholding or turning off water for cause. The commissioner may alter, modify or repeal the bylaws, rules and regulations.

(e) Water rates are due as the common council provides. To all water rates remaining unpaid 20 days after the due date, there shall be added a penalty of 5 percent of the amount due, and if the rates remain unpaid for 10 additional days, water may be turned off the premises. If the supply of water is turned off, water may not be turned on to the premises until all delinquent rates and penalties, and a sum not exceeding $2 for turning the water off and on, are paid. The penalty and charge may be made when payment is made to a collector sent to the premises. On or before the date on which rates become due, a written or printed notice or bill shall be mailed or personally delivered to the occupant or, upon written request, to the owner at the location the owner states, of all premises subject to the payment of water rates, stating the amount due, the time when and the place where the rates can be paid and the penalty for neglect of payment.

(f) All water rates for water furnished to any building or premises, all payments owing on loans provided as financial assistance under s. 196.372 (2) to the owner of any building or premises, and the cost of repairing meters, service pipes, stops or stop boxes, are a lien on the lot, part of lot or parcel of land on which the building or premises is located. If any water rates, those loan payments, or bills for the repairing of meters, service pipes, stops or stop boxes remain unpaid on October 1, the unpaid rates, loan payments, or bills shall be certified to the city comptroller on or before November 1, and shall be placed by the comptroller upon the tax roll and collected in the same manner as other taxes on real estate are collected in the city. The charge for water supplied by the city in all premises where meters are attached and connected shall be at rates fixed by the commissioner of public works and for the quantity indicated by the meter. If the commissioner of public works determines that the quantity indicated by the meter is materially incorrect or if a meter has been off temporarily due to repairs, the commissioner shall estimate the quantity used, and the determination is conclusive. No water rate or rates duly
assessed against any property may be remitted or changed except by the common council. Under this paragraph, if an unpaid charge or bill is for utility service furnished and metered by the waterworks directly to a mobile home unit in a licensed mobile home park, the delinquent amount is a lien on the mobile home unit rather than a lien on the parcel of real estate on which the mobile home unit is located. A lien on a mobile home unit may be enforced using the procedures under s. 779.48 (2).

(h) The city commissioner of public works may issue a permit to the county in which the city is located, to any national home for disabled soldiers, or to any other applicant to obtain water from the city’s water system for use outside of the limits of the city and for that purpose to connect any pipe that is laid outside of the city limits with water pipe in the city. No permit may be issued until the applicant files with the commissioner of public works a bond in the sum and with the surety that the commissioner approves on the condition: that the applicant will comply with and obey the rules and regulations prescribed by the commissioner for the use of the water; that the applicant will pay all charges fixed by the commissioner for the use of the water as measured by a meter to be approved by the commissioner, including the proportionate cost of fluoridating the water and, except as to water furnished directly to county or other municipal properties, which may not be less than one-quarter more than those charged to the inhabitants of the city for like use of water; that the applicant will pay to the city a water pipe assessment if the property to be supplied with water has frontage on any thoroughfare forming the city boundary line in which a water main has been or shall be laid, and at the rate prescribed by the commissioner; if the property to be supplied with water does not front on a city boundary but is distant from a boundary, that a main pipe of the same size, class and standard as terminates at the city boundary shall be extended, and the entire cost shall be paid by the applicant for the extension; that the water main shall be laid according to city specifications and under city inspection; that the water main and appliances shall become the property of the city, without any compensation for the main or appliances, if the property supplied with water by the extension or any part of the property is annexed to or in any manner becomes a part of the city; and that the applicant will pay to the city all damages that it sustains, arising out of the manner in which the connection is made or water supply is used. In granting a permit to a county or to a national home for disabled soldiers, the commissioner of public works may waive the giving of a bond. Every permit shall be issued upon the understanding that the city is not liable for any damage in case of failure to supply water by reason of any condition beyond its control.

(i) The commissioner of public works shall prescribe and regulate the kind of water meters to be used in the city and the manner of attaching and connecting the water meters, and may make other rules and regulations concerning the use and control of water meters as are necessary to secure reliable and just measurement of the quantity of water used; and may alter and amend the rules as necessary for the purposes named. If the owner or occupant of any premises, where the attaching and connection of a water meter may lawfully be required, neglects or fails to attach and connect a water meter, as is required according to the rules established by the commissioner of public works, for 30 days after the expiration of the time within which the owner or occupant is notified by the commissioner of public works to attach and connect a water meter, the commissioner of public works may cause the water supplied by the city to be cut off from the premises, and it shall not be restored except upon the terms and conditions prescribed by the commissioner of public works.

(j) The commissioner of public works may prescribe and regulate the size of connections made with the distribution mains for supplying automatic sprinkler systems and fix an annual charge for such service.

(k) The commissioner of public works may make rules and regulations for the proper ventilating and trapping of all drains, soil pipes and fixtures constructed to connect with or be used in connection with the sewerage or water supply of the city. The common council may provide by ordinance for the enforcement of the rules and regulations, including penalties. The commissioner may make rules to regulate the use of vent, soil, drain, sewer or water pipes in all buildings in the city proposed to be connected with the city water supply or sewerage, specifying the dimensions, strength and material. The commissioner may prohibit the introduction into any building of any style of water fixture, tap or connection determined to be dangerous to health or unfit to be used. The commissioner shall require a rigid inspection by a skilled and competent inspector under the direction of the commissioner of all plumbing and draining work and water and sewer connections in any building in the city, and unless the work and connections are done or made according to rules of and approved by the commissioner, no connection of the premises with the city sewerage or water supply may be made.

(L) The commissioner of public works shall make an annual report to the council of the commissioner’s doings under this section, the state of the water fund and the general condition of the water system. The report, after being submitted to the council, shall be filed in the office of the comptroller.

(3) Utility directors. (a) In this subsection, “electric plant” means a plant for the production, transmission, delivery and furnishing of electric light, heat or power directly to the public.

(b) If the city decides to acquire an electric plant or any other public utility in accordance with the provisions of this section, the mayor, prior to the city taking possession of the property, shall appoint, subject to the confirmation of the council, 7 persons of recognized business experience and standing to act as the board of directors for the utility. Two persons shall be appointed for a term of 2 years, 2 for a term of 4 years, 2 for a term of 6 years, and one for a term of 8 years. Successors shall be appointed for terms of 10 years each. A director may be removed by the mayor with the approval of the council for misconduct in office or for unreasonable absence from meetings of the directors.

(c) Utility directors may: employ a manager experienced in the management of electric plants or other public utilities, fix his or her compensation and the other terms and conditions of employment and remove him or her at pleasure, subject to the terms and conditions of his or her employment; advise and consult with the manager and other employees as to any matter pertaining to maintenance, operation or extension of the utility; and perform other duties as ordinarily devolve upon a board of directors of a corporation organized under ch. 180 not inconsistent with this section and the laws governing 1st class cities. No money may be raised or authorized to be raised by the board of directors other than from revenues derived from the operation of the utility, except by action of the council.

(d) The manager appointed by the board of directors may manage and control the utility, subject to the powers conferred upon the board of directors and the council under this subsection and may appoint assistants and all other employees which the manager considers necessary and fix their compensation and other terms and conditions of employment, except that the board of directors may prescribe rules for determining the fitness of persons for positions and employment.

(e) The council shall fix the compensation, if any, of members of the board of directors and has other powers it possesses with reference to electric plants and other public utilities.


62.71 Pedestrian malls in 1st class cities. (1) Purpose. The purpose of this section is to authorize a 1st class city to undertake, develop, finance, construct and operate pedestrian malls as local improvements.

(2) Definitions. In this section:

(a) “Annual pedestrian mall improvement” includes any reconstruction, replacement or repair of trees, plantings, furniture, shelters or other pedestrian mall facilities.
of--way for inclusion in a pedestrian mall district or for use in connection with pedestrian mall purposes. The council may make improvements on mall intersections, intersecting streets or upon facilities acquired for parking and other related purposes, if the improvements are necessary or convenient to the operation of the mall.

(b) In establishing or improving a pedestrian mall, the council may narrow any street designated a part of a pedestrian mall, reconstruct or remove any street vaults or hollow sidewalks existing by virtue of a permit issued by the city, construct crosswalks at any point on the pedestrian mall, or cause the roadway to curve and meander within the limits of the street without regard to the uniformity of width of the street or curve or absence of curve in the center line of the street.

(c) 1. Subject to subd. 2., the council may authorize the payment of the entire cost of any pedestrian mall improvement established under this section by appropriation from the general fund, by taxation or special assessments, and by the issuance of municipal bonds, general or particular special improvement bonds, revenue bonds, mortgages or certificates, or by any combination of these financing methods.

2. If a pedestrian mall improvement is financed by special assessments and spool improvement bonds are not issued, the special assessments, when collected, shall be applied to the payment of the principal and interest on any general obligation bonds issued or to the reduction of general taxes if general obligation bonds or the general tax levy is used to finance the improvement.

(d) The council may exercise the powers granted by this subsection only if it makes the findings required under sub. (4) and complies with the procedures and requirements under subs. (5), (6) and (8).

(4) PRELIMINARY FINDINGS. No pedestrian mall may be established under sub. (3) unless the council finds all of the following:

(a) That the proposed pedestrian mall will be located primarily in or adjacent to a business district.

(b) That there exist reasonably convenient alternate routes for private vehicles to other parts of the city and state.

(c) That the continued unlimited use by private vehicles of all or part of the streets in the proposed mall district endangers pedestrian safety.

(d) That properties abutting the proposed mall can be reasonably and adequately provided with emergency vehicle services and delivery and receiving of merchandise or materials either from other streets or alleys or by the limited use of the pedestrian mall for these purposes.

(e) That it is in the public interest to use all or part of the street in the proposed mall district primarily for pedestrian purposes.

(5) PROCEDURES. (a) Before establishing a pedestrian mall or undertaking any pedestrian mall improvement, the council shall by resolution authorize the commissioner of public works and the local planning agency to make studies and prepare preliminary plans for the proposed project. The local planning agency shall hold a public hearing on these studies and preliminary plans.

(b) Upon receiving the authority under par. (a) and upon completion of the public hearing, the commissioner of public works shall prepare a report which shall include all of the following:

1. A plat and survey showing the character, course and extent of the proposed pedestrian mall.

2. A description of any proposed alterations of any street and of any public or private utilities running under or over any public way.

3. A description of the methods to be used in completing the project, including information on grading, drainage, planting, street lighting, paving, curbing, sidewalks, the types of construction materials and the proposed initial distribution and location of any movable furniture, sculptures, pedestrian or vehicle traffic control devices, flowers and plantings and any other structures or facilities.
4. A description of the property necessary to be acquired or interfered with and the identity of the owner of each parcel if the owner can be readily ascertained by the commissioner.

5. An estimate of the cost of each item in the proposed project, described separately or in reasonable classifications detailed to the council’s satisfaction.

(c) In preparing the report under par. (b), the commissioner of public works shall consult with any community development advisory body which has been organized in the proposed pedestrian mall district.

(d) After referring the report described in par. (b) to the city plan commission for review and recommendations, the commissioner of public works shall submit the report, with the city plan commission’s recommendations, if any, to the council and shall file a copy in the office of the city clerk. The council may refer the report and recommendations, with any necessary modifications, to the board of assessment for action pursuant to subch. II of ch. 32.

(e) Notwithstanding any other provision of this section, if a petition protesting the establishment of a pedestrian mall or a pedestrian mall improvement, duly signed and acknowledged by the owners of 51 percent or more of the front footage of lands abutting all or part of a street proposed as a pedestrian mall, is filed with the city clerk at any time prior to the conclusion of all proceedings required under this section, the council shall terminate its proceedings, and no proposal for the establishment of the pedestrian mall or substantially the same pedestrian mall may be introduced or adopted within one year after termination of proceedings under this paragraph.

(f) Proceedings governing the establishment of a pedestrian mall or the undertaking of a pedestrian mall improvement are governed by subch. II of ch. 32.

(6) ORDNANCES: REQUIRED PROVISIONS. An ordinance establishing a pedestrian mall shall accomplish all of the following:

(a) Contain the findings required under sub. (4).

(b) Designate the streets, including intersecting streets, or parts of streets to be used as a pedestrian mall.

(c) Limit the use of the surface of all or part of a street used as a pedestrian mall to pedestrian users and to emergency, public works, maintenance and utility transportation vehicles during times that the council determines appropriate to enhance the purposes and function of the pedestrian mall.

(7) USE BY PUBLIC CARRIERS. If the council finds that all or part of a street which is designated as a pedestrian mall is served by a common carrier engaged in mass transportation of persons within the city and that continued use of all or part of the street by the common carrier will benefit the city, the public and adjacent property, the council may permit the carrier to use all or part of the street for these purposes to the same extent and subject to the same obligations and restrictions that are applicable to the carrier in the use of other streets of the city. Upon like findings, the council may permit use of all or part of the street by taxicabs or other public passenger carriers.

(8) FOR AMENDMENT. (a) If, at the time an ordinance establishing a pedestrian mall is enacted, any property abutting all or part of the pedestrian mall does not have access to some other street or alley for the delivery or receiving of merchandise or materials, the ordinance shall provide for one of the following:

1. The issuance of special access permits to the affected owners for these purposes.

2. The designation of the hours or days on which the pedestrian mall may be used for these purposes without unreasonable interference with the use of all or part of the mall by pedestrians and other authorized vehicles.

(b) The council may issue temporary permits for closing all or part of a pedestrian mall to all vehicular traffic for the promotion and conduct of sidewalk art fairs, sidewalk sales, craft shows, entertainment programs, special promotions and for other special activities consistent with the ordinary purposes and functions of the pedestrian mall.

(9) EXCESS ESTIMATED COST, ASSESSMENT ADJUSTMENTS. (a) If, after the completion of any pedestrian mall improvement, the commissioner of public works certifies that the actual cost is less than the estimated cost upon which any aggregate assessment is based, the aggregate assessment shall be reduced, subject to par. (c), by a percentage amount of the excess estimated cost which is equal to the percentage of the estimated cost financed by the aggregate assessment. The city comptroller shall certify to the city treasurer the amount that is refundable under this subsection.

(b) If the aggregate assessment described in par. (a) has been fully collected, the city treasurer shall refund the excess assessment to the affected property owners on a proportional basis.

(c) If the aggregate assessment described in par. (a) has not been fully collected the amount of the refundable assessment shall be reduced by a sum determined by the council to be sufficient to cover anticipated assessment collection deficiencies and the balance, if any, shall be refunded to the affected owners on a proportional basis. The treasurer shall deduct the appropriate amount from installments due after the receipt of the certificate from the city comptroller.

(10) ANNUAL COSTS: SPECIAL ACCOUNT. (a) Concurrently with the submission of the plan, and annually thereafter by June 15 of each year, the city comptroller and the commissioner of public works, with the assistance of a community development advisory body, if any, shall furnish the council with a report estimating the cost of improving, operating and maintaining any pedestrian mall district for the next fiscal year. Under the plan in effect, the report shall include itemized cost estimates of any proposed changes in the plan under consideration by the council and also a detailed summary of the estimated costs chargeable to all of the following categories:

1. The amount of the annual costs chargeable to the general fund. The amount may not exceed that amount which the city normally allocates from the general fund for maintenance and operation of a street of similar size and location not improved as a pedestrian mall.

2. The amount of the annual costs chargeable to owners of property in the district who are benefited by annual mall improvements. The aggregate amount assessed against the owners may not exceed the aggregate benefits accruing to all assessable property.

3. The amount of the annual costs, if any, to be specially taxed against taxable property in the district. The amount shall be determined by deducting from the estimated annual costs the amounts under subs. 1. and 2. and the amount of anticipated rentals received from vendors using pedestrian mall facilities.

(b) Moneys appropriated and collected for annual pedestrian mall improvement costs shall be credited to a special account. The council may incur necessary annual costs, whether or not they have been included in the budget for that fiscal year, except that such nonbudgeted expenditures shall be included in the estimate required under par. (a) for the next following fiscal year. Any unexpended balances in the special account remaining at the end of a fiscal year shall be carried over to the appropriate category of the estimate required under par. (a) for the following fiscal year.

(11) NUISANCES: LIMITATION OF LIABILITY. (a) The installation of any furniture, structure or facility or the permitting of any use in a pedestrian mall district under a final plan adopted under this section is not a nuisance or unlawful obstruction or condition by reason of the location of the installation or use.

(b) The city or any person acting under permit is not liable for injury to persons or property in the absence of negligence in the construction, maintenance, operation or conduct of the installation or use under par. (a).

(12) INTERPRETATION: AMENDMENT AND REPEAL. No action by the council establishing a pedestrian mall or undertaking a pedestrian mall improvement under this section may be construed as a...

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vacation, abandonment or discontinuance of any street or public way. This section may not be construed to prevent the city from abandoning the establishment or operation of a pedestrian mall, changing the extent of a pedestrian mall, amending the description of the district to be assessed or taxed for annual improvement costs, or changing or repealing any limitations on the use of a pedestrian mall by private vehicles or any plan, rule or regulation adopted for the operation of a pedestrian mall.

(13) **SUBSTANTIAL COMPLIANCE; VALIDITY.** Substantial compliance with the requirements of this section is sufficient to give effect to any proceedings conducted under this section and any error, irregularity or informality not affecting substantial justice does not affect the validity of the proceedings.

**History:** 1975 c. 255; 1979 c. 110 s. 60 (11); 1983 a. 189; 1983 a. 207 s. 93 (3); 1983 a. 236 ss. 8, 13; 1999 a. 150 s. 541; Stats. 1999 s. 62.71.

**NOTE:** Chapter 255, laws of 1975, which created this section, contains a statement of legislative findings and public policy.

### 62.73 Discontinuance of public grounds.

(1) The common council of a 1st class city may vacate in whole or in part highways, streets, alleys, grounds, waterways, public walks and other public grounds within the corporate limits of the city that it determines the public interest requires to be vacated or are of no public utility, subject to s. 66.1005 (2). Proceedings under this section shall be commenced either by a petition presented to the common council signed by the owners of all property which abuts the portion of the public facilities proposed to be vacated, or by a resolution adopted by the common council. The requirements of s. 840.11 apply to proceedings under this section.

(1m) Upon receiving a petition under this section or upon introduction of a resolution under this section, the common council shall deliver a copy of the petition or resolution to the commissioner of railroads if there is a railroad highway crossing within the public facilities proposed to be vacated.

(2) All petitions or resolutions shall be referred to a committee of the common council for a public hearing on the proposed discontinuance and at least 7 days shall elapse between the date of the last service and the date of the hearing. A notice of hearing shall be served on the owners of record of all property which abuts the portion of the public facilities proposed to be vacated, in the manner provided for service of a summons.

(3) If the common council initiates a discontinuance proceeding by resolution without a petition signed by all of the owners of the property which abuts the public facility proposed to be discontinued, any owner of property abutting the public facility whose property is damaged by the discontinuance may recover damages as provided in ch. 32.

(4) The common council may order that an assessment of benefits be made and when so ordered the assessment shall be made as provided in s. 66.0703.

**History:** 1973 c. 189 s. 20; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1999 a. 150 s. 344; Stats. 1999 s. 62.73; 2003 a. 214; 2009 a. 107, 223.

**NOTE:** 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.