

CHAPTER 62

CITIES, AND SEWERAGE COMMISSION IN CITIES OF THE 1ST CLASS

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(3) Ordinances in force, so far as not inconsistent herewith, shall continue in force until altered or repealed.

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

62.02 Repeal of special charters. All special charters for cities of the 2nd, 3rd and 4th classes are hereby repealed and such cities are hereby incorporated under this subchapter.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 state, 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.

62.03 First class cities excepted. (1) This subchapter, except s. 62.071, shall not apply to cities of the 1st class 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.

Milwaukee can adopt less than a "section", i.e., a subsection or paragraph from ch. 62. State ex rel. Cortez v. Bd. of F. & P. Comm. 49 W (2d) 130, 181 NW (2d) 378.

See note to 66.01, citing 58 Atty. Gen. 59.

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

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

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

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

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

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

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

62.071 Annexations to cities of the first class.

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

(2) If the common council wishes to consider the annexation petition, it shall direct the city clerk to notify the clerk of each school district concerned and the secretary of the agency school committee that a petition for annexation, which will result in detachment of more than 20 per cent of a school district, has been filed. Such

notice shall be in writing and shall describe the territory proposed to be annexed and name the school district or districts from which it will be detached.

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

YES NO

If the referendum at the special district meeting is decided in the affirmative, such remaining school district area shall be included within the coverage of the description in the annexation proposal and the annexation petition shall thereupon, without further notice, be considered amended to include all territory of the school district and s. 66.021 shall be complied with for the entire area.

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

History: 1975 c. 200.

62.075 Detachment of farm lands from cities.

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

valuation, of the bonded indebtedness of the city at the time of detachment.

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

(3) HEARING; NOTICE. When the owner or owners of all of the said lands of any such area file a verified petition in the office of the clerk of said court, setting forth the facts in accordance with subs. (1) and (2), the court shall make an order fixing the time of hearing thereof, which shall not be less than 60 nor more than 90 days thereafter, and at least 40 days prior to said time fixed, notice of hearing of such petition shall be served on such city, town or towns and all owners found in this state of any land in such area, in the manner prescribed in s. 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, 19, at M., or as soon thereafter as counsel can be heard. That said petition prays for the detachment of the following area of land from the city of and annexation to the town of, in accordance with section 62.075 of the Wisconsin statutes, which area of land is described as follows:

Dated

..... (Petitioner's attorney)

P.O. Address

(4) OBJECTIONS; DECISIONS; APPEAL. 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 granting 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 in accordance with 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. Any person aggrieved by the final judgment may appeal to the court of appeals from the judgment within 6 months after service of notice of entry thereof in the manner provided by chs. 808 and 809.

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

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

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

History: Sup. Ct. Order, 67 W (2d) 774; 1977 c. 29 s. 1654 (8) (c); 1977 c. 187.

62.08 Alteration of aldermanic districts.

(1) Within 90 days after the wards have been readjusted under s. 5.15 (intro.) to (2) the common council of any city may change the numbers and 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 two-thirds vote of all the members of the council; but no further change shall be made in any such aldermanic district for 2 years except by adding thereto territory newly attached to the city.

(2) Aldermanic districts shall be as compact in area as possible and contain as nearly as practicable an equal number of inhabitants according to the most recent city-wide federal

census of population. If new area is subsequently annexed to any city, the limitations of s. 5.15 relating to population or area shall not apply to the creation of new wards in the area annexed, or to the addition of the area to an existing ward.

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

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

History: 1971 c. 304, 336; 1973 c. 12.

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 health commissioner or board of health, street commissioner, a board of police and fire commissioners, except in cities where not applicable, chief of police, chief of the fire department, a board of public works, a board of education or of school commissioners, except in cities where not applicable, 2 aldermen from each aldermanic district, and such other officers or boards as are created by law or by the council. If one alderman from each aldermanic district is provided pursuant to s. 66.018 (1), the council may, by ordinance adopted by a two-thirds vote of all its members and approved by the electors at the general or special election, provide that there shall be 2 aldermen from each aldermanic district.

(b) The council by a two-thirds vote, may dispense with the offices of street commissioner, engineer, comptroller, constable and board of public works, and provide that the duties thereof be performed by other officers or board, by the council or a committee thereof. The council may, by charter ordinance, adopted pursuant to

s. 66.01, provide that there shall be one alderman from each 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 may be appointed as the city assessor. The corporation 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 unless he has been granted the appropriate certification under s. 73.03 (2).

(d) Commencing with the 1977 elections and appointments made on and after January 1, 1977, no person may assume the office of city assessor unless certified by the department of revenue under s. 73.03 (2) (b) 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.

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

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

1. Appointment by the mayor.
2. Appointment by the mayor subject to confirmation by the council.
3. Appointment by the council.
4. Election by the voters.
5. Selection under any of the above methods, the selection to be made from an eligible list established pursuant to section 66.19.
6. Such other officers shall continue to be selected in the manner prevailing on April 15, 1939, provided one of the above plans was in force on that date. Such method shall be continued until changed in the manner provided by section 66.01.

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

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

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

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

(b) The treasurer, comptroller, chief of police and such others as the statutes or the council may direct, shall execute and file an official bond in such sum as the council may determine, with 2 or more sureties or such bond may be furnished by a surety company as provided by s. 632.17 (2). 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.

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

(5) TERMS; SUBSTITUTES. (a) The regular term of office of mayor and alderman shall commence on the 3rd Tuesday of April in the year of their election. The regular terms of other officers shall commence on May 1 succeeding their election unless otherwise provided by ordinance or statute.

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

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

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

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

the council. Salaries heretofore established shall so remain until changed by ordinance.

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

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

(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.

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

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

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

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

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

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

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

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

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

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

(e) He shall deposit immediately upon receipt thereof the funds of the city in the name of

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

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

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

(h) He shall make partial apportionment, not exceeding 90%, of levies by vocational, technical and adult education districts out of funds available from such levies and in the city treasury prior to the tax apportionment provided by s. 74.03 (5) upon the filing of a written request by the vocational, technical and adult education district board stating that such advances are needed to continue operating.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) He may in writing filed in his office appoint a deputy, who shall act under his direction, and in his absence or disability or in case of

a vacancy shall perform his duties, and shall have power to administer oaths and affirmations. The deputy shall receive such compensation as the council shall provide. The clerk and his sureties shall be liable on his official bond for the acts of such deputy.

(12) ATTORNEY. (a) Except as provided in s. 120.49 (12), the attorney shall conduct all the law business in which the city is interested.

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

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

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

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

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

(13) POLICE. (a) The chief of police shall have command of the police force of the city under the direction of the mayor. It is the duty of the chief to obey all lawful written orders of the mayor or common council. The chief and each policeman shall possess the powers, enjoy the privileges and be subject to the liabilities conferred and imposed by law upon constables, and be taken as included in all writs and papers addressed to constables; shall arrest with or without process and with reasonable diligence take before the municipal 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 such city and may command all persons present in such case to assist, and if any person, being so commanded, refuses or neglects to render such assistance the person shall forfeit not exceeding \$10. They shall collect the same fees allowed to constables for similar services.

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

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

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

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

History: 1971 c. 154, 175; 1971 c. 304 s. 29 (1); 1973 c. 90, 243; 1975 c. 21, 39, 41, 199, 258; 1975 c. 375 s. 44; 1975 c. 421; 1977 c. 29, 151; 1977 c. 305 s. 64.

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

See 174.07 (3) for provision that the city treasurer may retain 10 cents for each dog license issued and need not pay it into the treasury.

For an alternative system of approving claims, see 66.044.

Discussion of conflicts arising from election of a school principal to the office of alderman. 60 Atty. Gen. 367.

Alderman and police officer husband could continue to hold offices as long as alderman does not violate 946.13 (1) with respect to police officer's contract. 63 Atty. Gen. 43

Police accountability in Wisconsin. 1974 WLR 1131.

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

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

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

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

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

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

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

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

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

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

(5) POWERS. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.

Cross Reference: See 118.105 for control of traffic on school premises.

See note to 66.30, citing *Village of McFarland v. Town of Dunn*, 82 W (2d) 469, 263 NW (2d) 167

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

State statutory enabling legislation is required to authorize enactment of typical rent control ordinances. 62 Atty. Gen. 276.

See note to 144.025, citing 63 Atty. Gen. 260.

Conflicts between state statute and local ordinance in Wisconsin. 1975 WLR 840.

62.115 Defense of officers by city attorney. (1) The common council of any city,

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

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

62.12 Finance. (1) FISCAL YEAR. The calendar year shall be the fiscal year except that the school year as defined in s. 115.01 (6) shall be the fiscal year for school districts operating under ch. 119 or subch. II of ch. 120.

(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 such officer or department during the preceding fiscal year, and a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer or department during such year, and of the condition and management of such fund; also detailed estimates of the same matters for the current fiscal year and for the ensuing fiscal year; except that such statements and estimates shall be reported to the city clerk on or before the 4th Monday in July of each year by the board of school directors of the public schools operating under ch. 119, and on or before the 4th Monday in July of each year by the school board of school districts operating under subch. II of ch. 120.

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

(4) **TAX LIMITATION.** The tax levied by the council for any one year for municipal purposes, together with all other taxes to be levied for any city purpose except as provided in section

67.035, shall not exceed 3 1/2 per cent of the assessed value of the real and personal property in the city in that year, except that in addition a special tax for school purposes not exceeding 8 mills on the dollar of such assessed value may be levied.

(4m) **LIMITATION ON LEVIES.** (a) Tax levies of cities in 1975, payable in 1976, and in subsequent years, for city purposes, shall not exceed the levy of the prior year by a greater percentage than the percentage of the increase, if any, of the equalized value of all general property assessed in the entire state in 1975 and subsequent years over the equalized value of all general property assessed in the entire state in 1974 and subsequent years, respectively, except as provided in pars. (b), (e), (h), (i) and (j) and except that levies for the payment of principal and interest on general obligation bonds and notes issued for an original term of more than one year shall not be affected by this subsection. In determining the levies to be limited by this subsection, an amount equal to principal and interest on general obligation bonds and notes issued for an original term of more than one year included in the prior year's levy shall be excluded from the prior year's levy. In determining levies of 1976 and in subsequent years there shall be an additional exclusion from the prior year's levy of all nonlevy receipts for the retirement of general obligation bonds and notes issued for an original term of more than one year. After the 1977 levy, payable in 1978, and for subsequent years "equalized value of all general property assessed in the entire state" shall not include property eligible for relief under s. 79.17.

(ae) Tax incremental finance tax increments paid by any city under s. 66.46 are excluded from city levies for purposes of determining maximum allowable levies under par. (a) unless the tax increments, in whole or in part, revert to the city upon termination of a tax incremental district.

(am) If the amount of levy increase determined under sub. (1) is zero, the city may increase its levy by an amount equal to the levy increase it would have been certified if it had had a levy resulting from a tax rate of .25 of a mill.

(b) In addition to the increase allowed under par. (a), a city may increase its levy for city purposes in the amount that estimated shared revenues distributable to it in the year of the levy under subch. I of ch. 79 exceed the estimated shared revenues distributable to it in the subsequent year.

(d) The department of revenue shall make the estimates of 1976, 1977 and 1978 shared taxes referred to in par. (b). It shall notify each city of its 1976 estimate for the city on or before

October 24, 1975, of its 1977 estimate for the city on or before October 22, 1976, and of its 1978 estimate for the city on or before October 21, 1977. The estimates of the department shall be final.

(dm) The amount of increase allowed under this subsection may be further increased by an amount representing the difference between the amount of surplus funds used to reduce the prior year's levy and the amount of surplus funds available to reduce the current year's levy, if the latter is the lesser.

(e) In any city where the population has increased at a rate greater than the statewide rate of population growth, the amount of increase allowed may be further increased by an amount equal to the previous year's levy divided by the previous year's population multiplied by the difference between the actual city population increase and the amount by which the city's population would have increased if the city's population had increased at the statewide rate of population growth. Population growth shall be measured between the year of levy and the previous year. Population estimates determined under s. 16.96 (2) (c) shall be used in this paragraph.

(em) The amount of the levy allowed under this subsection may be further increased by the following amounts:

1. The amount needed for increased costs of court judgments and out-of-court settlements.

2. The amount needed for increased operating and debt service cost of compliance with written lawful orders by this state, an adjoining state, the United States, or any agency or subdivision thereof, for air and water pollution abatement, solid waste or waste treatment facilities. Copies of such orders shall be filed with the department of revenue.

3. The amount needed for repairing the effects of natural disasters.

4. An amount not to exceed the estimated amount of any decrease in federal general revenue sharing funds from the current year to the following year, if such estimates are available from the U.S. office of federal revenue sharing.

6. The amount needed to defray the unreimbursed costs incurred in assuming ownership of a service or function previously owned and administered by the private sector.

(f) If the city levies taxes in excess of the maximum allowed by this subsection without receiving approval of the electors under par. (g) the excess amount shall be subtracted from subsequent distributions of shared taxes under subch. 1 of ch. 79 until fully recovered, and the levy shall be reduced by the amount of such excess in determining the maximum allowable levy for the subsequent year.

(g) If the common council desires to increase its tax levy above the limitations specified in this subsection, it shall publish such intent in a class 1 notice under ch. 985 in the official city newspaper. The question of the proposed increase in levy above the limitations specified in this subsection shall be submitted to a referendum at a spring election, general election or special election. If the increase is approved at the referendum, the city may increase its levy above the limitations specified in this subsection and shall notify the department of revenue of such increase, on a form provided by the department.

1. The question presented to the electors shall be in substantially the following form: "Should the common council be authorized to adopt a property tax levy for this year which is in excess of the maximum levy allowed by the state?"

2. The authorization by referendum shall pertain only to the levy next following the referendum.

3. The city clerk shall notify the department of revenue of the result of any such referendum no later than 10 days thereafter.

(h) In the case of the county newly assuming functions formerly performed by the city, the levy of the city shall be reduced by the amount of unreimbursed expenses that the city formerly incurred in performing those functions. In the case of the city newly assuming functions formerly performed by the county, the levy of the city shall be increased by the amount of the unreimbursed expenses that will be incurred in performing those functions.

(i) The amount allowed under this subsection shall not be applied to cause the general property tax rate to exceed the maximum rate otherwise provided by statute.

(j) If the amount of an assessment is lowered pursuant to s. 70.995 (8) (a) so as to require a refund of property taxes, an amount not to exceed the amount of refund may be added to the next levy. Any such amount added to the next levy under this paragraph shall be excluded from the base in determining the following levy. If, pursuant to s. 70.995 (8) (d), the city receives property taxes in excess of the levy amount allowed under this subsection, an equivalent amount shall be subtracted from the next levy. Any such amount subtracted from the next levy under this paragraph may be added to the following levy.

(k) The department of revenue may promulgate rules to ensure the implementation of this subsection.

(1) For levies of cities in 1979, the percentage increase provided for under par. (a) shall be the same as that for levies in 1978.

(5) LICENSE MONEYS. Moneys received for licenses may be used for such purpose as the

council shall direct in the absence of specific appropriation by law.

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

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

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

(7) CITY DEPOSITORIES. 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 (6). The interest arising therefrom shall be paid into the city treasury.

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

(b) Payment of regular wages or salary pursuant to the budget and salary schedule adopted by the council may be by 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 accordingly and give its note therefor. No such loan shall be made to extend beyond August 30 next following the making thereof or in an amount exceeding one-half of the estimated receipts for such district as certified by the state superintendent of 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; 1977 c. 203 s. 101; 1977 c. 272, 418.

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

For an alternative system of approving claims, see 66.044. See note to 60.18, citing 62 Atty. Gen. 49. See note to art. XI, sec. 3, citing 63 Atty. Gen. 465.

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

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

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

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

(b) Any person who, on June 23, 1943 has served and acted as a full-time city police patrolman, patrolwoman 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, habits, reputation, and experience, and may provide such competitive examinations as the board shall determine, and for the classification of positions with special examination for each class. The board shall print and distribute the rules and all changes in them, at city expense.

(d) The examination shall be free for all U.S. citizens over 18 and under 55 years of age, with proper limitations as to residence, health, habits

and character. 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 may designate and change examiners, who may or may not be otherwise in the official service of the city, and whose compensation shall be fixed by the board and paid by the city. Veterans shall be given preference points in accordance with s. 230.16 (7).

(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. He may also be suspended by the commission pending the disposition of charges filed against him.

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

(d) Following the filing of charges in any case, a copy thereof shall be served upon the person charged. The board shall set date for hearing not less than 10 days nor more than 30 days following service of charges. The hearing on the charges shall be public, and both the accused and the complainant may be represented by an attorney and may compel the attendance of witnesses by subpoenas which shall be issued by the president of the board on request and be served as are subpoenas under ch. 885.

(e) If the board determines that the charges are not sustained, the accused, if he has been suspended, shall be immediately reinstated and all lost pay restored. If the board determines

that the charges are sustained, the accused, by order of the board, may be suspended or reduced in rank, or suspended and reduced in rank, or removed, as the good of the service may require.

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

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

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

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

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

(5m) DISMISSALS AND 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 his efficiency and length of service in the department.

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

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

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

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

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

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

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

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

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

(8) FIRE DEPARTMENT. The council may provide by ordinance for either a paid or a volunteer fire department and for the management and equipment of either insofar as not otherwise provided for by law. 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 \$100 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.

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

(11) FIREMEN, REST DAY. The common council of every city of the fourth class, having a

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

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

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

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

History: 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 s. 1654 (8) (c); 1977 c. 151, 182, 196

An amnesty agreement by a city not to prosecute a fireman for striking, made as part of the settlement of the strike, does not bar a complaint by a citizen alleging violation because of the strike. *Durkin v. Board of Police & Fire Comm.* 48 W (2d) 112, 180 NW (2d) 1.

A written charge of conduct unbecoming an officer filed by the chief is sufficiently specific where the officer does not object at the hearing. The fact that one member of the board prejudged the case is immaterial where the decision was unanimous. *State ex rel. Richey v. Neenah Police & F Comm.* 48 W (2d) 575, 180 NW (2d) 743

In 2nd and 3rd class cities, monthly compensation for purposes of computing a pension do not include employer contributions to the pension fund and health and life insurance.

These items cannot be included by a collective bargaining agreement. *State ex rel. Manitowoc v. Police Pension Bd.* 56 W (2d) 602, 203 NW (2d) 74

Standby time required of municipal police by the issuance of a "yellow alert" under which officers were required to leave their names, phone numbers and locations with the station house, were forbidden to leave the city without permission, did not constitute work or overtime under (7n), since the officers were not confined at the police station and, although restricted in some senses, were basically free to spend the standby time for their own purposes. *Theune v. Sheboygan.* 67 W (2d) 33, 226 NW (2d) 396

Legislatively created agencies or boards such as city police and fire commissions have the capacity to sue or be sued where such authority is necessary to carry out an express power or to perform an express duty, or where the action arises out of the performance of statutory powers or obligations. *Racine Fire and Police Comm v. Stanfield.* 70 W (2d) 395, 234 NW (2d) 307.

Review of determinations of fire and police commission may be had only by writ of certiorari or by appeal procedure provided by legislature since such procedure under (5) (i) is exclusive and conclusive. Party failing to commence certiorari proceeding within 6 months of decision is guilty of laches. *State ex rel. Enk v. Mentkowski.* 76 W (2d) 565, 252 NW (2d) 28.

Sections 62.13 (4) (d) and 66.11 (1), making citizenship a prerequisite to becoming a police officer or deputy sheriff, violate the 14th amendment when applied to resident aliens. 65 Atty. Gen. 273.

Police accountability in Wisconsin. 1974 WLR 1131

62.14 Board of public works. (1) How CONSTITUTED; TERMS. There shall be a department known as the "Board of Public Works" to consist of 3 commissioners. In cities of the 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. The members of the first board shall hold their offices, 1, 2 and 3 years, respectively, and thereafter for 3 years or until their successors are qualified. In all other cities the board shall consist of the city attorney, city comptroller and city engineer. The council, by a two-thirds vote, may determine that the board of public works shall consist of other public officers or persons and provide for the election or appointment of the members thereof, or it may, by a like vote, dispense with such board, in which case its duties and powers shall be exercised by the council or a committee thereof, or by such officer, officers or boards as the council 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.

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

(3) COMPENSATION. The commissioners of public works in cities of the second class shall receive a salary, but in all other cities the

salaries of the attorney, comptroller and engineer respectively shall be in full for their services as members of such board.

(4) RULES FOR, BY COUNCIL. The council may make such rules 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 his office, in the office of the city clerk, a record of all his official acts and doings and also a copy of all plats of lots, blocks and sewers embraced within the city limits, all profiles of streets, alleys and sewers and of the grades thereof, and of all drafts and plans relating to bridges and harbors and of any buildings belonging to the city; and shall at the same place keep a record of the location of all bench marks and permanent corner stakes from which subsequent surveys shall be started; which said records and documents shall be the property of the city and open to the inspection of

parties interested, and shall be delivered over by said engineer to his successor or to the board of public works. Whenever requested, the engineer shall make a report of all doings of his department to the board of public works.

History: 1977 c. 151.

62.15 Public works. (1) CONTRACTS; HOW LET. All public construction, the estimated cost of which exceeds \$5,000, shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public construction or any part thereof may be done directly by the city without submitting the same for bids.

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

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

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

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

a form of contract and bond with sureties required, and furnish a copy of the same to all persons desiring to bid on the work.

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

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

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

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

(6) INCOMPETENT BIDDERS. Whenever any bidder shall be, in the judgment of said board,

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

(7) PATENTED MATERIAL OR PROCESS. Any public work, whether chargeable in whole or in part to the city, or to any lot or lots or parcels of land therein, may be done by the use of a patented article, materials or process, in whole or in part, or in combination with articles, materials, or processes not patented, when the city shall have obtained from the owner of the patented article, materials or process, before advertising for bids for such work, an agreement to furnish to any contractor, desiring to bid upon such work as a whole, the right to use the patented article, materials and processes in the construction of said work, and also to furnish to any contractor the patented article itself upon the payment of what the authorities of said city charged with the duty of letting a contract for such public work shall determine to be a reasonable price therefor, which price shall be publicly stated and furnished upon application to any contractor desiring to bid on said work.

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

(9) GUARANTY. Any contract for doing public work may contain a provision requiring the

contractor to keep the work done under such contract in good order or repair for not to exceed five years. The inclusion in the contract of any such provision shall not invalidate any special assessment or certificate thereof or tax sale certificate based thereon.

(10) ESTIMATES; DEPOSIT; DEFAULT; COMPLETION. As the work progresses under any contract for the performance of which a surety bond has been furnished, s. 66.29 (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 no case shall the 5% deposit described in sub. (4) be returned to a successful bidder until the contract is performed; but it, together with the retained amounts, shall be used in whole or in part to complete the work. Any amount remaining from the deposit or from retained estimates after the completion of a contract shall be paid to the contractor.

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

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

(14) REPORT TO COUNCIL OF NONBID CONTRACTS. Whenever the council of any city shall have provided by ordinance that any class of public work or any part thereof may be done directly by the city without submitting the same for bids as provided in subsection (1), and any such public work shall be done in accordance with such ordinance, the board of public works shall keep an accurate account of the cost

thereof, including the necessary overhead expense. Upon the completion of such work said board shall make a complete report thereof to the council, stating in detail the items of cost and the total cost of doing such work, and the city clerk shall publish such report as a part of the proceedings of the council. Any member of the board of public works who fails to comply with the provisions of this subsection shall be liable to a forfeiture of fifty dollars to be recovered as in case of other penalties.

History: 1975 c. 244, 390, 421.

When work has been performed for a municipality under a contract which is *malum prohibitum* and not *malum in se*, which contract is entered into in good faith and is devoid of any bad faith, fraud, or collusion, and where the statute imposes no penalty, a cause of action based upon the equitable doctrine of unjust enrichment can be maintained. The measure of damages should be limited by at least 2 factors: (1) Recovery should be limited to an amount which represents the actual cost to the plaintiff, without allowing profits including overhead expense, and (2) in no event should it exceed the unit cost of the original contract; and subject to these limitations, any recovery would be limited to the value of the actual benefit conferred, as distinguished from the reasonable value of the work performed and materials furnished by the contractor or vendor, as the case may be. *Blum v. Hillsboro*, 49 W (2d) 667, 183 NW (2d) 47.

Where a contract establishes a "unit price" for work done, with only an estimate of the total, excess work may be paid for without regard to the 15% limitation in (1c). *Gottschalk Bros., Inc. v. Wausau*, 56 W (2d) 848, 203 NW (2d) 140.

Recovery for value of services furnished without compliance with statutory bidding requirements. *Redmond*, 55 MLR 397.

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 any person thereby sustaining damages to his property on such street may have such damages set off against any special assessment levied against his property for any public improvement made in conjunction with such grade change or may maintain an action to recover such damages.

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

(2) SERVICE PIPE. (a) *Expense.* Whenever the council, 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 fronting therein, except as herein provided, from the sewer, water, heat and gas mains in such street to the curb line on either or both sides thereof, at

such intervals as the council shall direct along that part of said street to be improved, except at street and alley crossings. Such work may be done by contract or by the city directly without the intervention of a contractor, under the supervision of the board of public works, or in the case of service pipes of a municipal owned utility under the supervision of the board or officers charged with the management of such utility. The board or officers under whose supervision such service pipes shall be laid shall keep an accurate account of the expenses of putting in the same in front of each lot or parcel of land, whether the work be done by contract or otherwise, and report the same to the comptroller who shall annually prepare a statement of the expenses so incurred in front of each lot or parcel of land, and report the same to the city clerk, and the amount therein charged to each lot or parcel of land shall be by such clerk entered in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate.

(b) *Public service corporation.* Whenever the council, department of transportation or county board shall declare its intention to improve any street in which water or gas mains of any privately owned public utility shall have been previously laid or are about to be laid the council shall by resolution require, subject to review as provided in s. 196.58, water and gas service pipes to be first laid in such street, at the cost of such utility, unless the franchise of such utility otherwise provides as to the cost, from the main to the curb line on each side thereof, at such intervals as the council shall direct, along that part of said street so to be improved, except at street or alley crossings, and may, subject to such review, fix a reasonable time within which such work shall be done by the utility. Notice of such requirement shall thereupon be given to such utility by delivering a copy thereof to the superintendent, or agent in charge thereof, requiring such utility to do such work opposite the lots indicated according to plans and specifications, to be theretofore prepared and filed in the office of the city clerk, showing the location and size and the kind and quality of material of such water and gas service pipes; and if such utility shall refuse or neglect to do the same before the expiration of the time fixed for the improvement of said street so ordered the board of public works may procure the same to be done, in which event said board shall keep accurate account of the expense of constructing such gas or water service pipes, as the case may be, and report the same to the city clerk who shall annually enter in the tax roll as special taxes against such utilities, the total of the amounts so certified to him for such charges, and the same shall be collected in all respects

like other city taxes against said utilities, and the city shall have a legal and valid claim for the amount of such special taxes against such utilities. No application for such review shall be effective unless the same be made and notice thereof filed in the office of the clerk of the city making such requirement within 30 days after service of the notice of such requirement as above provided; and on such review the public service commission shall make such order as to extension of time for the doing of such work and as to all other conditions affecting such requirement as the commission shall deem reasonable or expedient.

(c) *When laid.* No street shall be improved by order of the council, 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.

History: 1977 c. 29 s. 1654 (8) (c).

Cross Reference: See 840.11, requiring applicant for change in streets to file lis pendens.

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 maintain with the register of deeds a current listing of such owner's address and the name and address of any person empowered to receive service of process for such owner. Any changes of names or address in such listing shall be reported within 10 days of such change. This subsection does not apply to owner-occupied one- and 2-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 listed with the register of deeds as that of the owner or agent of the owner, thereafter sends such notice by certified mail to the address noted and in addition posts a copy of the notice in a conspicuous place in or about the building where such violation exists. If the owner has not filed 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 of a notice of violation on the premises and certified mailing such notice to the last-known address of the owner as well as to the address of the premises in violation shall be deemed sufficient notice to such 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

62.18 Sewers. (1) CITIES MAY CONSTRUCT. Cities shall have power to construct systems of sewerage, including a sewage disposal plant and all other appurtenances thereto, to make additions, alterations and repairs to such systems and plants, and when necessary abandon any existing system and build a new system, and to provide for the payment of the same by the city, by sewerage districts or by abutting property owners or by any combination of these methods. Whenever the council shall determine to lay sewers or provide sewerage in any portion of the city it shall so order by resolution which shall describe with reasonable particularity the district to be sewerred. Whenever the territory of any city of this state shall be adjacent to or border on the territory of any other state, such city shall have power to build or construct a sewage disposal plant in such adjacent state, either alone for its sole use or jointly with some city or municipality in such adjacent state for their joint use on terms to be agreed upon by such municipalities. And if either city or municipality shall build or construct a sewage disposal plant, the city in this state may contract with the other city or municipality for its joint use on terms to be agreed upon.

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

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

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

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

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

defrayed by the city at large, or by the abutting property as the council determines.

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

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

62.211 Limitation on use of sections

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

62.22 Acquiring property; opening or

changing streets. (1) PURPOSES. The governing body of any city may by gift, purchase or condemnation acquire property, real or personal, within or without the city, for parks, recreation, waterworks, sewage or waste disposal, airports or approaches thereto, cemeteries, vehicle parking areas, and for any other public purpose; may acquire real property within or contiguous to the city, by means other than condemnation, for industrial sites; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for public purposes; and may sell and convey such property. The power of condemnation for any such purpose shall be as provided by ch. 32.

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

(2) DONATION OF PROPERTY TO NONPROFIT PRIVATE CORPORATIONS. The governing body of

any city may donate, convey, sell or lease property owned by such city to any nonprofit private corporation for public purposes and may acquire property for the purpose of donating, conveying, selling or leasing the same to nonprofit private corporations for public purposes.

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

(4) PROCEDURE. (a) Petition to open streets. As to streets it shall be competent for any 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. Such petition shall be addressed to the council and shall designate in general terms the location, extent of the proposed laying out, widening, extension or change, but need not contain a particular description of the land proposed to be taken. For the purposes of such petition a person in possession of land under a contract of purchase and sale or a bond for a deed shall be deemed a freeholder.

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

(c) Action on. When the petition shall be presented to the council it shall be referred to the board of public works, and said board shall make a report to the council stating whether or not such petition is sufficiently signed, and if so, giving a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed alley or street, widening, extension or change. Upon the coming in of such report the council may, if the petition be reported sufficiently signed, by a vote of a majority of its members adopt a resolution declaring

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

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

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

History: 1971 c. 304 s. 29 (1).

Cross Reference: See 840 11 for requirement of filing notice of lis pendens and map prior to filing application for laying out, widening, vacating or extending streets, alleys, etc.

62.23 City planning. (1) COMMISSION. (a) The council of any city may by ordinance create a "City Plan Commission," to consist of the mayor, who shall be its presiding officer, the city engineer, the president of the park board, an alderman, and 3 citizens. In case the city has no

engineer or no park board, an additional citizen member shall be appointed so that the board has at all times 7 members. Citizen members shall be persons of recognized experience and qualifications. The council may by ordinance provide that the membership of the commission shall be as provided thereunder.

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

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

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

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

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

(2) FUNCTIONS. It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment bear relation to the development of the municipality provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a municipality may not be included in the master plan without the consent of the county board of supervisors. The master plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the commission's recommendations for such physical development, and may include, among other things without limitation because of enumeration, the general location, character and extent of streets, highways, freeways, street grades,

roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways, playgrounds, sites for public buildings and structures, airports, pierhead and bulkhead lines, waterways, routes for railroads, street railways and busses, and the general location and extent of sewers, water conduits and other public utilities whether privately or publicly owned, the acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, routes or terminals, the general location, character and extent of community centers and neighborhood units, the general character, extent and layout of the replanning of blighted districts and slum areas, and a comprehensive zoning plan. The commission may from time to time amend, extend or add to the master plan or carry any part or subject matter into greater detail. The commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

(3) THE MASTER PLAN. (a) The master plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

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

(4) MISCELLANEOUS POWERS OF THE COMMISSION. The commission may make reports and

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

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

(6) OFFICIAL MAP. (a) The council of every city may by ordinance or resolution establish an official map of the city or any part thereof showing the streets, highways, parkways, parks and playgrounds theretofore laid out, adopted and established by law, and such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways and parkways, and the location and extent of parks and playgrounds shown thereon. Such official map is declared to be established to conserve and promote the public health, safety, convenience or general welfare. Said ordinance or resolution shall make it the duty of the city clerk at once to

file with the register of deeds of the county or counties in which such city is situated a certificate showing that the city has established such official map. An ordinance or resolution establishing any part of an official map enacted prior to June 16, 1965 which would be valid under this paragraph is hereby validated.

(b) Such city council is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to establish the exterior lines of planned new streets, highways, parkways, parks or playgrounds, or to widen, narrow, extend or close existing streets, highways, parkways, parks or playgrounds. No such change shall become effective until after a public hearing in relation thereto before the city council or a committee appointed by the city council from its members, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the public hearing shall be published as a class 2 notice, under ch. 985. Before making such addition or change, the council shall refer the matter to the city plan commission for report thereon, but if the city plan commission shall not make its report within 60 days of such reference, it shall forfeit the right to further suspend action. Such additions and changes when adopted shall become a part of the official map of the municipality, and shall be deemed to be final and conclusive with respect to the location and width of the streets, highways and parkways and the location and extent of parks and playgrounds shown thereon. The placing of any street, highway, parkway, park or playground line or lines upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street, parkway, park or playground, or the taking or acceptance of any land for such purposes.

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

(d) For the purpose of preserving the integrity of such official map, no permit shall hereafter be issued for any building in the bed of any street, highway or parkway, shown or laid out on such map except as provided in this section. The street, highway or parkway system shown on the official map may be shown on the official map as

extending beyond the boundaries of a city or village a distance equal to that within which the approval of land subdivision plats by the city council or village board is required as provided by s. 236.10 (1) (b) 2. Any person desiring to construct a building in the bed of a street, highway or parkway so shown as extended may apply to the authorized official of the city or village for a building permit. Unless such application is made, and the permit granted or not denied within 30 days, such person shall not be entitled to compensation for damage to such building in the course of construction of the street, highway or parkway. If the land within such mapped street, highway or parkway is not yielding a fair return, the board of appeals in any municipality which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case, by the vote of a majority of its members, to grant a permit for a building in such street, highway or parkway, which will as little as practicable increase the cost of opening such street, highway or parkway, or tend to cause a change of such official map; and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall be designated to promote the health, convenience, safety or general welfare of the community. Such board shall refuse a permit where the applicant will not be substantially damaged by placing his building outside the mapped street, highway or parkway.

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

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

(g) In any city which has established an official map as herein authorized no public sewer or other municipal street utility or improvement shall be constructed in any street, highway or parkway until such street, highway or parkway is duly placed on the official map. No permit for the erection of any building shall

be issued unless a street, highway or parkway giving access to such proposed structure has been duly placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways or parkways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to such appeals and to such boards as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway or parkway layout. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations. In any city in which there is no such board of appeals the city council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For such purpose such council is authorized to act as a discretionary administrative or quasi-judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.

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

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

deemed limitation of any power elsewhere granted.

(b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts. 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, economic 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 such 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; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

(d) *Method of procedure.* 1. 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. At least 10 days' prior written notice of any such hearings shall be given to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed plan and regulations but failure to give such notice shall not invalidate such district plan or regulations. Publication of a class 2 notice, under ch. 985, of the tentative recommendations and hearings thereon must be made once during each of the 2 weeks prior to such hearing.

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 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.

2. The council may adopt amendments to an existing zoning ordinance after first submitting the proposed amendments to the city plan commission, board of public land commissioners or plan committee for recommendation and report and after providing the notices as required in subd. 1. b of the proposed amendments and hearings thereon. 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. 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. In case of a protest against such amendment, duly signed and acknowledged by the owners of 20% or more either of the areas of the land included in such proposed amendment, or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council voting on the proposed change.

3. The council may repeal or repeal and reenact the entire district plan and all zoning regulations in accordance with subd. 1. The council may repeal or repeal and reenact a part or parts of the district plan and regulations in accordance with subd. 2.

(da) *Interim zoning.* The common council of any city which has not adopted a zoning ordinance may, without referring the matter to the plan commission, enact an interim zoning ordinance to preserve existing uses while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than 2 years after its enactment.

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

attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

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

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

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

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

permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

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

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

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

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

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

13. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper

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

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

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

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

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

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

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

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

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

(i) *Community living arrangements.* For purposes of this section, the location of a community living arrangement as defined in s. 46.03 (22) 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 family home which is the primary domicile of a foster parent, which is for 4 or fewer children and which is licensed under s. 48.62 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.

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 and social services, 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 and social services, that facility is entitled to locate in any residential area except 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 and social services, 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 and social services shall designate a single subunit within the department to maintain appropriate records indicating the location and number of persons served by each community living arrangement, 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 and social services, to enforce compliance with this paragraph.

9. Not less than 11 months nor more than 13 months after the first licensure of a community living arrangement and every year thereafter, the common council of a city in which a community living arrangement is located may make a determination as to the effect of the 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 a community living arrangement's existence in the city poses a threat to the health, safety or welfare of the residents of the city, the common council may order the community living arrangement to cease operation unless 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 community living arrangement. The 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 the denial of special zoning permission, whichever is later.

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 community living arrangement that such a hearing will be held. At the hearing, 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 community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to 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 sub. (7) (a), (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. 66.32 shall apply and any subsequent alteration of the corporate limits of the city by annexation, detachment or consolidation proceedings shall not affect the dividing line as initially determined under s. 66.32. The governing body of the city shall specify by resolution the description of the area to be zoned within its extraterritorial zoning jurisdiction sufficiently accurate to determine its location and such area shall be contiguous to the city. The boundary line of such area shall follow government lot or survey section or fractional section lines or public roads, but need not extend to the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution the governing body shall declare its intention to prepare a comprehensive zoning ordinance for all or part of its extraterritorial zoning jurisdiction by the publication of the resolution in a newspaper having general circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy of the resolution and a scale map reasonably showing the boundaries of the extraterritorial jurisdiction to the clerk of the county in which the extraterritorial jurisdiction area is located and to the town clerk of each town, any part of which is included in such area.

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

until 2 years after the date of the expiration of the interim zoning ordinance or the one year extension thereof. While the interim zoning ordinance is in effect, the governing body of the city may amend the districts and regulations of the ordinance according to the procedure set forth in par. (f).

(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 section 27.11.

(10) WIDENING STREETS. (a) When the council by resolution declares it necessary for

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

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

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

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

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

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

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

(c) Whenever to carry out any ordinance under this subsection it is necessary to take

property for public use, the procedure of chapter 32 of the statutes shall be followed.

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

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

(14) ASSESSMENTS. The expense of acquiring, establishing, laying out, widening, enlarging, extending, paving, repaving and improving streets, arterial highways, parkways, boulevards, memorial grounds, squares, parks and playgrounds, and erecting bridges under any plan adopted by the common council pursuant to this section or s. 27.11, including the cost of all lands and improvements thereon which it is necessary to acquire to carry out such plan, whether acquired by direct purchase or lease, or through condemnation, and also including the cost of constructing any bridge, viaduct or other improvement which is a part of the plan adopted by the common council, may be assessed, in whole or in part, to the real estate benefited thereby, in the same manner in which under existing law in such city benefits and damages are assessable for improvements of streets. Whenever plans are adopted which are supplementary to each other the common council may by ordinance combine such plans into a single plan within the meaning of this section. Section 66.54 shall apply to all assessments made under this subsection.

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

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

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

1. To relieve congested sections by providing housing facilities suitable to the needs of such city;

2. To provide garden suburbs at reasonable cost to the residents of such city;

3. To establish city owned vacation camps for school children and minors up to twenty years of age, such camps to be equipped to give academic and vocational opportunities, including physical training

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

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

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

History: 1973 c. 60; 1975 c. 281; 1977 c. 205

A contract made by a zoning authority to zone or rezone or not to zone is illegal and an ordinance made pursuant thereto is void because a municipality may not surrender 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 is motivated to zone by agreements as to use of the land made by others or by voluntary restrictions running with the land although suggested by the authority, the zoning ordinance is valid and not considered to be contract or conditional zoning. *State ex rel. Zupancic v. Schimenz*, 46 W (2d) 22, 174 NW (2d) 533.

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

Spot rezoning from residential to industrial is arbitrary and unreasonable, where 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 amendment. *Heaney v. Oshkosh*, 47 W (2d) 303, 177 NW (2d) 74.

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. Gerovac*, 55 W (2d) 51, 197 NW (2d) 772.

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 protest. Rezoning of a 42 acre parcel cannot be considered spot zoning. *Rodgers v. Menomonie Falls*, 55 W (2d) 563, 201 NW (2d) 29.

A zoning ordinance adopted by a new city which changed the zoning of the former town did not expire in 2 years under (7) (da) even though labeled an interim ordinance. *New Berlin v. Stein*, 58 W (2d) 417, 206 NW (2d) 207.

A long-standing interpretation of a zoning ordinance by zoning officials is to be given great weight by the court. *State*

ex rel. B'nai B'rith F. v. Walworth County, 59 W (2d) 296, 208 NW (2d) 113.

A challenge to a refusal by the board of appeals to hear an appeal where the grounds alleged are a constitutional lack of due process in the proceedings can only be heard in a statutory certiorari proceeding, not in an action for declaratory judgment. *Master Disposal v. Vil. of Menomonie Falls*, 60 W (2d) 653, 211 NW (2d) 477.

Sub. (9) (a) is not a direct grant of power to the building inspector. *Racine v. J-T Enterprises of America, Inc* 64 W (2d) 691, 221 NW (2d) 869.

A municipal ordinance rezoning property upon the occurrence of specified conditions and providing that "the property shall revert back to its present zoning" if the conditions are not met is not invalid as effecting a rezoning of the realty immediately upon the failure to satisfy the conditions because the rezoning, rather than becoming effective immediately and reverting to the previous classification upon noncompliance with the conditions, never becomes effective until such conditions are met in the first instance. *Konkel v. Delafield Common Council*, 68 W (2d) 574, 229 NW (2d) 606.

Minimum requirements of (7) (a) do not include publication of a map. Proof of nonconforming use discussed. *City of Lake Geneva v. Smuda*, 75 W (2d) 532, 249 NW (2d) 783.

Where zoning board of appeals had power under (7) (e) 1 and 7 to invalidate conditions imposed by plan commission and afford relief to affected property owners without invalidating disputed ordinance, owners' failure to challenge conditions before board precluded owners from challenging in court as unconstitutional commission's implementation of ordinance. *Nodell Inv. Corp. v. Glendale*, 78 W (2d) 416, 254 NW (2d) 310.

Zoning ordinances may be applied to land held by the U.S. for an Indian tribe so long as they do not conflict with a federal treaty, agreement or statute and the land use proscribed is not a federal governmental function. 58 Atty. Gen. 91.

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 Atty. Gen. 34.

See note to 59.971, citing 63 Atty. Gen. 69 as to (7a).

Plaintiffs were not required to exhaust administrative remedies under (7) (e) before bringing civil rights act suit challenging definition of word "family" as used in that portion of village zoning ordinance creating single-family residential zones, since plaintiffs' claim was based on federal law. *Timberlake v. Kenkel*, 369 F Supp 456.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. *Whipple*, 57 MLR 25.

62.25 Claims and actions. (1) CLAIMS. No action may be brought or maintained against a city upon a claim or cause of action unless the claimant complies with s. 895.43.

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

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

(d) No person shall be ineligible to sit as judge, justice or juror in an action to which the

city is a party, by reason of being an inhabitant of the city.

History: 1977 c 285.

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

For an alternative system of approving claims, see 66.044.

An action against a municipality based on a filed "claim" which did not state a dollar amount must be dismissed. The fact that the city council denied the claim did not bar the defense. By purchasing liability insurance the city did not waive the protection of the statute. The plaintiff can start a new action under 893.35. *Samb's v. Nowak*, 47 W (2d) 158, 177 NW (2d) 144.

Sub (1) is applicable to counterclaim for money damages in lawsuit commenced by city. *Milwaukee v. Milwaukee Civic Developments*, 71 W (2d) 647, 239 NW (2d) 44.

See note to Art. I, sec 1, citing *Binder v. Madison*, 7 W (2d) 613, 241 NW (2d) 613.

Nothing in either ch. 62 or ch. 120 precludes school board from qualifying as a proper "claimant" under 62.25. *Joint School Dist. No. 1 v. City of Chilton*, 78 W (2d) 52, 253 NW (2d) 879.

Plaintiff was not required to present claim to city council under (1) (a) as a prerequisite to maintenance of action under civil rights act. *Mathias v. City of Milwaukee Dept. of City Develop.* 377 F Supp. 497.

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

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

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

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

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

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

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

(7) CHANGE OF CITY NAME. The name of any city of the fourth class shall be changed if a

majority of the electors shall address a written petition therefor to the council designating the new name, and the council shall by a two-thirds vote of all the members adopt an ordinance changing to such new name. The change shall be in effect upon publication of the ordinance in the official paper, and the filing of a copy thereof in the office of the secretary of state.

History: 1977 c 151

SUBCHAPTER II

POLICE AND FIRE DEPARTMENTS IN CITIES OF THE FIRST CLASS

62.50 Police and fire departments in 1st class cities. (1) ORGANIZATION.

In all cities of the 1st class, however incorporated, there shall be a board of fire and police commissioners, consisting of 5 citizens, not more than 2 of whom shall at any time belong to the same political party. The 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 employes. Three members of the board shall constitute a quorum necessary for the transaction of business. It shall be the duty of the mayor of the city on or before the 2nd Monday in July, to appoint 5 members of the board, designating the term of office of each, one to hold one year, one to hold 2 years, one to hold 3 years, one to hold 4 years and one to hold 5 years, 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. Every person appointed a member of the board shall be subject to confirmation by the common council and shall, before entering upon the duties of the office take and subscribe the oath of office prescribed by the constitution, and file the same duly certified by the officer administering it, with the clerk of the city. Appointments made prior to the time this subchapter first applies to a city of the 1st class 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 shall consider but not limit its review to procedures relating to discipline, promotion, work rules and any other procedure relating to the conduct of employes of the police and fire department.

(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 AND REGULATIONS. As soon as possible after the first members of the board enter their offices, the board shall prepare and adopt rules and regulations to govern the selection and appointment of persons to be thereafter employed on either the police force or the fire department of the city, as in the judgment of the board shall be adapted to secure the best service for the public in each department. The rules and regulations shall provide for ascertaining, as far as possible, physical qualifications, habits, reputation, standing and experience of all applicants for positions, and the rules and regulations may provide for the competitive examination of some or all in such subjects as are deemed proper for the purpose of best determining the applicants' qualifications for the position sought. The rules and regulations may provide for the classification of positions in the service and for a special course of inquiry and examination for candidates for each class. All rules and regulations adopted shall be subject to modification or repeal by the board at any time.

(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 residence, age, health, habits and moral character. 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, subject to suspension and removal as provided in this section. 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) INSPECTORS AND CAPTAINS, VACANCIES. 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 suitable 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 can, 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 to the chief thereof, the chief shall immediately communicate the same to the board of fire and police commissioners and a trial shall be ordered by the board under this section.

(13) TEMPORARY SUSPENSION; APPEAL. The chief discharging or suspending for a period exceeding 5 days any member of the force shall immediately report the same 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 discharge or suspension 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 ..., 19...

(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 5 days nor more than 15 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 accused and the chief shall have the right to an adjournment of the trial or investigation of the charges, 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 justices 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 his or her own defense and shall be entitled to secure the attendance of all witnesses necessary for such defense at the expense of the city, and may appear in person and by attorney; and the city in which the department is located may be represented by the city attorney thereof. 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. Within 3 days after hearing the matter the board shall, by a majority vote of its members, determine whether by a preponderance of the evidence the charges are sustained. If the board 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 shall be in writing and shall be filed, together with a transcript of the evidence, with the secretary of the board.

(18) SALARY DURING SUSPENSION. No chief officer or member of either department may be deprived of any salary or wages for the period of time suspended preceding an investigation or trial, unless the charge is sustained.

(19) CHARGES BY AGGRIEVED 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 chiefs or their assistants, 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 shall decide by a majority vote 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, (or suspending) from the department.

(Signed)

(21) CERTIFICATION AND RETURN OF RECORD; HEARING. Upon the service of the demand under sub. (20), the board upon which such 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 clerk of court, actions for review shall be deemed at issue and shall have precedence over any other cause of a different nature pending in such court, and such court shall be considered always open for the trial thereof. 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 such application except upon agreement between the board and the discharged or suspended member. Such 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 was the decision of the board reasonable?" 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 said cities, shall be the head of their respective departments. The chief of police shall cause the public peace to be preserved and see that all laws and ordinances of the city are enforced. The chief shall be responsible for the efficiency and general good conduct of the department under his control. The chief of each department shall have the power to regulate his or her respective department and shall prescribe rules for the government of its members. Any rule or regulation prescribed by a chief shall be subject to review and suspension by the board. Each of the chiefs shall have the custody and control of all public property pertaining to their respective departments and everything connected therewith and belonging thereto. They shall have the custody and control of all books, records, machines, tools, implements, and apparatus of every kind whatsoever necessary for use in each of the departments.

(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 employes of such department shall be fixed by ordinance of the common council. The superintendent of the department shall be appointed by the board, and all other employes 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.

History: 1977 c. 19, 20, 53, 151; 1977 c. 272 ss. 24 to 30, 92 to 95.

SUBCHAPTER III

SEWERAGE COMMISSION OF CITIES OF THE 1ST CLASS

62.60 Sewerage commission; city of the 1st class. (1) Whenever the common council of any city of the 1st class, whether organized under a special charter or under the general laws of this state, by a resolution passed by a majority vote of the members-elect, declares that it is necessary to provide sewage disposal works for the city, if there is no existing sewage disposal works, or in like manner declares that a material enlargement, extension, improvement or addition to the existing sewage disposal works of the city is necessary, the mayor within 30 days of the passage of the resolution shall appoint 5 citizens who are residents of the city and who shall be known as the "Sewerage Commission of the City of _____". The appointments shall be confirmed by a majority of the members-elect of the common council. The commissioners first appointed by the mayor after passage of the resolution shall be designated by the mayor to serve terms of 1, 2, 3, 4 and 5 years from the date 30 days after the date of passage of the resolution. Thereafter the term of office shall be 5 years. A commissioner shall hold office until a successor has been appointed, confirmed and has qualified. No person holding any city, county or state office other than that of a notary public is

eligible to be a member of the sewerage commission. All vacancies in the office of commissioner shall be filled in the same manner as for original appointment.

(2) Each appointee, before entering upon the duties of the office, shall take and subscribe the oath of office prescribed by the constitution of this state and file the oath, duly certified by the official administering the oath, with the clerk of the city. The appointee shall furnish a bond to the city for the faithful discharge of the duties of the office in a sum to be determined upon by the common council of the city of the 1st class and with the sureties the common council of the city of the 1st class requires. The bond so taken shall be deposited with the comptroller of the city. Each commissioner shall receive actual and necessary expenses incurred while in the performance of the duties of the office and, in addition, may receive a sum not to exceed \$600 annually. The compensation shall be paid at the time and in the same manner that the salaries of employes of the sewerage commission are paid. No commissioner or person holding appointment under the commission may be interested directly or indirectly in any contract entered into under this subchapter. The removal of any commissioner from the city which established the sewerage commission shall operate as a resignation of that commissioner's office. Any commissioner may be removed for misfeasance, malfeasance or nonfeasance in the manner provided for in the removal of city officers for any of those causes under the laws applicable to the city when removal is sought. Political activity upon the part of a commissioner in taking an active part in supporting or promoting the candidacy of any candidate for office in the city or other active political work shall constitute a cause for removal, and removal shall be brought about by a resolution passed by a two-thirds vote of all the members-elect of the common council of the city. A sewage commissioner may be removed from office as provided in s. 9.10 as if the office of commissioner were an elective city office. For the purpose of s. 9.10 a petition may be filed one year after the date on which the commissioner takes office. The petition shall be filed with the city clerk.

(3) A majority of the sewerage commissioners shall be a lawful quorum for the transaction of business. As soon as the commissioners first appointed under this subchapter enter upon the duties of their office, they shall elect one of the members of the sewerage commission as chairperson of the commission, who shall be removable at pleasure by the commission. The chairperson shall preside over the meetings of the commission and shall perform other duties which are imposed upon the chairperson of the

sewerage commission by this subchapter or assigned by the commission. At the same time the commission shall elect a secretary, not a member of the commission, who shall be removable at pleasure by the commission and shall receive the compensation the commission determines. The salary shall be paid at the time and in the same manner that the salaries of other employes of the commission are paid. The secretary shall enter in a bound book and carefully preserve neat, legible and accurate minutes of all matters concerning the commission and perform the other duties which usually appertain to the office of secretary of a private corporation, or as are imposed upon the secretary by this subchapter or which are assigned by the commission. All records shall be subject to s. 19 21 (1) to (4) and subch. IV of ch. 19 shall govern all meetings and sessions. The commission shall, annually, furnish to the mayor and common council of the city which established the sewerage commission a detailed report of all its official transactions and expenditures.

(4) The proper officers of the city which established a sewerage commission under this section shall upon the request of the commission provide adequate space for the purposes and uses of the commission in a public building of the city, if space is available. All rentals, light, heat and other proper charges shall be paid by the commission out of the sewerage commission fund to the proper officers of the city. The commission may rent space in any other buildings or places in the city or within the county in which the city is situated for all necessary purposes and pay all proper charges arising out of the rental from the fund created under this subchapter.

History: 1977 c. 379

62.61 Duties. (1) A sewerage commission established under this subchapter shall project, plan, construct, maintain and establish a sewerage system for the collection, transmission and disposal of all sewage and drainage of the city which established it, including, either as a combined or separate feature of the system, the collection, transmission and disposal of storm and groundwater, respectively, and shall have the power necessary or proper for such purposes, including, without limitation by enumeration:

(a) To make all preliminary investigations and to do all preliminary work as should, in the commission's judgment, precede the actual projection, planning, construction and establishment of the sewerage system.

(b) To project, plan and adopt a sewerage system which the commission deems best calculated to promote the objects of this subchapter.

(c) To compel any owner or occupant of any premises located along the line of any intercepting sewer or of any of its branches, who is engaged in discharging sewage, refuse, or industrial wastes of any kind into any river or canal within the city, to so change or rebuild any drain or sewer as to discharge all the sewage, refuse, or industrial wastes into the intercepting sewer and under regulations determined by the commission.

(d) To plan, construct and establish all local, district, lateral, intercepting, outfall or other sewers, and all conduits, drains and pumping or other plants, and all buildings, structures, works, apparatus or agencies, and to lay all mains and pipes, and to create or use all such instrumentalities and means within the city which established the commission or any counties of the state, including all public highways and submerged as well as other lands, as it deems expedient or necessary for carrying the sewerage system projected, planned and adopted under this subchapter into full effect. The commission may lay, construct and maintain, without compensation to the state, any part of the sewerage system, or of its works or appurtenances, over, upon or under any part of the bed of any river or its branches flowing through the city, or of any land covered by any of the navigable waters of this state, the title to which is held by this state, and over, upon or under canals or other waterways and under rights-of-way of railroads, interurban and electric railway companies, and if the same is deemed advisable by the commission, the proper officers of this state shall, upon the application of the commission, execute, acknowledge and deliver to the proper officers of the commission any deed or other instrument as may be proper for the purpose of fully confirming this grant.

(e) To incorporate with the sewerage system, or otherwise utilize for the purposes of this subchapter, so far as it deems expedient, any or all existing public sewers or drains, including storm-water sewers and drains, in the city, and any or all of their appurtenances, either in their existing condition or with such repairs, modifications or changes as the commission makes and to condemn, close up, abolish or destroy, in its discretion, any of those public sewers and drains, or to alter their functions or to increase their burdens, as it deems necessary to carry out the purposes of this subchapter.

(f) To appoint or employ, professional or technical advisers and experts, and such other personnel as the commission requires for the proper execution of the duties devolved upon it by this subchapter, and to fix their respective compensations and to remove or discharge the employes at pleasure (except such highly

trained, experienced or skilled employes as the commission agrees to appoint or employ upon special terms, for definite and fixed periods of time), and to exact from such employes indemnity bonds for the proper performance of their respective duties, as the commission deems proper. No law respecting civil service applies to the sewerage commission established under this subchapter or to the sewerage commission employes.

(g) To make and enter in the name on behalf of the commission any and all contracts, agreements or stipulations germane to the scope of its duties and powers under this subchapter.

(h) To purchase, hire or otherwise lawfully obtain the use of all machinery, tools, implements, appliances, supplies, materials and working agencies as it needs for its purposes.

(i) To enter by themselves, their officers, agents and servants upon any land or water in the city or any county in the state for the purpose of making examinations or surveys in the performance of their duties under this subchapter.

(j) To construct, maintain and operate pumping stations and tunnels for the purpose of flushing any of the rivers flowing through the metropolitan sewerage district.

(k) To elect by a resolution approved by at least 3 of the members of the commission, notwithstanding par. (f), to be included under ss. 63.18 to 63.52, the rules adopted under those sections, and the charter ordinances applying to the city service commission as if the sewerage commission were a department of the city which established it. Election shall be effective as of the date that the resolution is filed with the city service commission. The sewerage commission may, notwithstanding ss. 63.23 and 63.40, specify in the resolution that a position shall not be included in the classified service. Any person who is the incumbent of a position placed under the classified service by election under this section shall be required to serve a period of probation determined by rule of the city service commission, except any incumbent who has been employed by the sewerage commission continuously for the year immediately prior to the effective date of election may retain his or her position without probation unless removed, discharged, reduced or suspended as provided by s. 63.44. No provision of law or charter ordinance requiring employes of the city to reside within its boundaries shall apply to a sewerage commission electing under this section.

(2) Whenever necessary in order to promote the best results from the construction, operation and maintenance of the sewerage system provided for in this subchapter and of the sewerage systems of the several towns, villages, cities, sanitary districts and metropolitan sewerage

districts which connect with or use the sewerage system, and to prevent damage to the sewerage system from misuse, injury to employes, surcharging the sewerage system or any portion thereof, or interference with the process of sewage treatment or disposal, the commission, acting on behalf of the metropolitan sewerage district created under s. 59.96 and acting jointly with the metropolitan sewerage commission created under s. 59.96 as to all matters of rule-making and issuance of special orders which in any way come within the jurisdiction of either or both of the commissions, may:

(a) Adopt rules for the supervision, protection, management and use of that sewerage system as it deems expedient. The rules may, without limitation by enumeration, prohibit discharge into the sewerage system, either directly or indirectly, of any liquid, gaseous or solid wastes deemed detrimental to the system, or to its employes, or to the process of sewage treatment or disposal, or prescribe the conditions upon which wastes may be discharged. The rules may prescribe standards of sewer design, construction, operation, alteration and maintenance applicable to any sewerage system connecting with or using the sewerage system and the conditions upon and the manner in which connections to main sewers and intercepting sewers and replacement of existing sewers shall be made. The rules shall be applicable throughout the territory served by that sewerage system, and shall have precedence over any conflicting ordinance, code, or regulations of, or permit issued by, any town, village or city within the territory served by the sewerage system.

1. A rule shall be adopted, amended or repealed by the commission, acting jointly with the metropolitan sewerage commission created under s. 59.96, only after notice and public hearing, except that if the preservation of the public health, safety or welfare necessitates putting a rule into effect prior to the time it could be put into effect if the commissions were to comply with the notice and hearing requirements of this subdivision, the commissions may adopt the rule as an emergency rule effective only for a period of 120 days. The commissions shall fix a time and place for hearing on any proposed rule, except an emergency rule, and shall cause notice by publication to be made of the proposed rule, or an informative summary thereof, or a description of the subject matter to be discussed, and of the time and place of the hearing. The publication shall be made at least once not less than 30 days prior to the hearing in a newspaper of general circulation in the county in which the city of the 1st class is located. At least 30 days' notice in writing shall be given to each city, village and town in the district, by mailing a

copy of the notice to the clerk thereof. The commissions shall take other steps as they determine are necessary to convey effective notice to persons who are likely to have an interest in the proposed rule-making. Failure of any person to receive notice of a hearing on proposed rule-making shall not be grounds for invalidating the resulting rule if notice of the hearing was published as provided in this subdivision. Insofar as applicable, s. 227.022 shall govern the conduct of the hearings. A rule adopted by the commissions shall be effective upon its publication in a newspaper of general circulation in the county in which the city of the 1st class is located.

2. Except as provided in s. 227.05 (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of the rule brought in the circuit court for the county in which the city of the 1st class is located. The summons in the action shall be served by delivering a copy to any member of the commissions or to the secretary thereof. The court shall render a declaratory judgment in the action only when it appears from the complaint and the evidence presented in support that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the commissions to pass upon the validity of the rule in question. Insofar as applicable s. 227.05 (2), (3) and (4) shall govern any declaratory judgment proceeding under this subdivision.

(b) Issue special orders directing particular users of the sewerage system to comply with the rules of the commissions within a specified time. All special orders shall be in writing and shall specifically state what action is required to comply with the order. Service and proof of service of any special order may be made in the manner provided for service of summons and proof thereof.

1. Any person aggrieved by a special order of the commissions which directly affects the legal rights, duties or privileges of the person may secure a review of the necessity for and reasonableness of the order in the following manner: Within 30 days after service of the special order, the person may file with the commissions a verified petition setting forth specifically the modification or change desired in the order. Upon receipt of the petition, the commissions shall order a public hearing on the petition and make further investigations they determine advisable. Insofar as applicable, ss. 227.07 (6), (7) and (8) and 227.08 to 227.11 shall govern the proceeding. The determination of the commissions upon any petition shall be subject to

review in a proceeding brought within 30 days after service of notice of the determination of the circuit court from the county in which the city of the 1st class is located. Insofar as applicable ss. 227.15 to 227.21 govern any proceeding for judicial review under this subdivision.

2. If a person fails to comply with a special order of the commissions within the time specified or, in case of a proceeding for review of the special order, within 20 days after the determination becomes final, or to in good faith begin to obey, the person is declared to be creating a public nuisance enjoined under s. 823.02, and shall forfeit to the metropolitan sewerage district not more than \$1,000 for each day the failure continues, to be recovered by the metropolitan sewerage district in a civil action brought by the commission in the name of the district and paid into the general funds of the commission for the benefit of the district.

3. Notwithstanding any other law, the rules and regulations, or any special orders issued under the rules and regulations, may be enforced under s. 823.02, and the violation of any rule or regulation or any special order lawfully promulgated by the commission is hereby, in the discretion of the court, declared to be a public nuisance.

(c) Acting jointly, designate representatives thereof to conduct any hearings required under this section, and may designate, except as provided in s. 227.09 (5), any member or members thereof or an appropriate administrative employe of either of the commissions for that purpose. If more than one person is designated, the commissions shall specify the presiding officer for the hearing. All testimony or other evidence taken, appearances for and against the matter involved, and a summary of the arguments on both sides, shall be reported to the commissions in the manner the commission prescribes.

(d) Issue permits for the special use of the sewerage system to private persons, firms or corporations for the transmission and disposal of any liquid, gaseous or solid wastes determined to be not detrimental to the sewerage system or to its employes or to the process of sewage treatment, upon such terms and conditions as it may provide. The commission may prescribe and collect an annual fee not to exceed \$500 for any permit for special use. The permit shall be revocable by the commission summarily for violation of the terms or conditions thereof. A holder of the permit does not acquire any vested right or privilege by reason thereof. Any private person, firm or corporation using the sewerage system provided for under this subchapter for a use for which a permit may be issued under this paragraph without a permit or continuing that

use after notice of revocation of the permit, shall forfeit to the metropolitan sewerage district not more than \$500 for each violation, to be recovered by the metropolitan sewerage district in a civil action brought by the commission in the name of the district and paid into the general funds of the commission for the benefit of the district.

(3) The enumeration of special powers in this section does not restrict the general powers conferred under this section or s. 59.96 on a sewerage commission established under this subchapter.

History: 1977 c. 379.

62.62 Acquisition. The sewerage commission established under this subchapter may acquire by gift, purchase, lease or other like methods of acquisition, or by condemnation any land or property situated wholly or partly within the city which established the commission or within any of the counties of this state, or any interest, franchise, easement, right or privilege therein, which may be required for the purpose of constructing and establishing the sewerage system, or any part thereof or that may be needed for the workings of the sewerage system when established. All property, real or personal, acquired by the sewerage commission shall be taken in the name of either that commission or the metropolitan sewerage commission created under s. 59.96 for the benefit of and belonging to the metropolitan district. Condemnation procedure shall be as provided in ch. 32 and s. 59.96 (6) (j). Notwithstanding s. 32.02 the sewerage commission may acquire by condemnation without approval by the common council.

History: 1977 c. 379.

62.63 Obstructions. All individuals and corporations lawfully having buildings, structures, works, conduits, mains, pipes, tracks or other physical obstructions, in, over or under the public lands, avenues, streets, alleys or highways of a city which shall block or impede the progress of the sewerage system when in the process of construction and establishment, shall, upon reasonable notice from the commission, promptly so shift, adjust, accommodate or remove the same, at the cost and expense of the individual and corporation, as fully to meet the exigencies occasioning the notice. If any such individual or corporation refuses, neglects or fails after reasonable notice to discharge any duty cast upon that individual or corporation by this section that individual or corporation shall, in addition to but not in substitution for any other remedy or remedies that the commission or the city may have in the premises, be fined \$100 for each offense, and also be fined an additional \$50 a

day for each day that the refusal, neglect or failure continues. The fines shall be collected as other fines in the city are collected. If the exigencies of the commission and its work in any case involve a taking, in the constitutional sense, of the franchise or right in the exercise of which the obstruction had its origin, the commission may secure the condemnation of the franchise or right in the manner provided for in s. 62.62. This section shall likewise be applicable to the same obstructions in, over or under the public highways of any county of this state into which the sewerage system extends.

History: 1977 c. 379.

62.64 Contracts. All work done or supplies or material purchased in carrying out the purpose of this subchapter when involving the expenditures of \$2,000 or more shall be by contract awarded to the lowest responsible bidder in accordance with the laws of this state and ordinances then applicable to the city which established the commission having reference to the letting of public work by and through the board or commissioner of public works or other proper department in that city except that the commission shall discharge the duties imposed by such laws upon the commissioner or board of public works or other department and all contracts and the awarding of contracts shall be subject to s. 66.29. The commissioners may purchase without public advertisement or first receiving competitive bids, or the intervention of a formal contract, any patented article, appliance, apparatus, material or process, or any article, appliance, apparatus, material or process made or manufactured by one party only. Whenever any bidder for any work to be let by the commissioners is, in the judgment of the commissioners, incompetent or otherwise unreliable for the performance of the work for which he or she bids, the commissioners may accept the bid of the person who in their judgment is the lowest competent and reliable bidder for the work, stating their reasons therefor, or relet the same. The commissioners may permit a sum of money or a certified check payable to the order of the commission to be filed with any bid or proposal in an amount which in the judgment of the commissioners will save the city from any loss if the bidder fails to execute a contract pursuant to law, in case the bid is accepted and the contract awarded to the bidder. Every contract made by the commission shall contain an agreement on the part of the contractor and his or her sureties that in case the contractor fails to fully and completely perform the contract within the time therein limited for the performance thereof, the contractor shall pay to the commission as liquidated damages for the default a certain fixed

sum to be named in the contract, which shall be a sum which in the judgment of the commissioners will save the commission from any loss on account of the default and ensure the prompt completion of the contract. In lieu of such an agreement, the contract may contain an agreement on the part of the contractor and his or her sureties that in case the contractor fails to fully and completely perform his or her part of the contract within the time therein limited for the performance thereof, the contractor shall pay to the commission as liquidated damages for the default a definite sum, to be named in the contract, for each day's delay in completing the contract after the time therein limited for its completion. The daily sum shall be an amount which in the judgment of the commissioners will save the commission from loss in case of default and ensure the prompt completion of the contract. Every contract shall also be executed by at least two sufficient sureties, or a surety company, to be approved by the commission, who shall guarantee the full performance of the contract by the contractor to the satisfaction of the commission, according to the plans and specifications of the commission. The sureties or surety company shall be liable for such performance of the contract, as sureties, in an amount equal to the estimate of the aggregate cost of the work made by the principal administrative officer of the commission. The commission, with the consent of at least 4 of its members, may do any part of any work under such conditions in every respect as it may prescribe by day labor, whenever the principal administrative officer of the commission, in writing so recommends; all bids or part of a bid for any such work, supplies or materials may be rejected by the commission. The commission may demand of the bidders and contractors that all contracts be let subject to ch. 102.

History: 1977 c. 379.

62.65 Sewerage commission fund. All moneys received for a city sewerage commission established under this subchapter shall be paid over to the city treasurer and held as a separate fund to be known as the "Sewerage Commission Fund", to be disbursed by the city treasurer on

the orders of the chairperson and secretary of the commission, countersigned by the city comptroller, except that the chairperson and secretary, instead of signing each order, may certify upon the payrolls furnished by the secretary to the comptroller to the fact that the amounts therein are correct as allowed by the commission. The commission may provide by resolution for the payment of all persons employed by the commission upon monthly payrolls and the manner in which the payrolls are certified, audited or approved and payment made thereon and the payrolls shall in all cases be certified by the chairperson and secretary of the commission and countersigned by the city comptroller of the city.

History: 1977 c. 379

62.66 City departments to assist. The commission shall have the authority whenever it deems it necessary to act or proceed in any manner whatsoever relating to its powers and duties under this subchapter by or through any department of the city which established it. If the commission makes written request of any department for the performance of any act it shall be the duty of that department to act as required, provided that the act required to be done has reference to the powers and duties of that department. If any differences shall arise between the commission and any of the departments in the city in the discharge of their powers and duties, the ruling of the commission shall be advisory and the ruling of the common council shall be supreme and final.

History: 1977 c. 379

62.67 Construction. Nothing in this subchapter in any way limits or takes away any of the powers of the city, relating to the construction of local or sanitary sewers or drains, or extensions or repairs thereof, except that all plans and specifications for the construction of any local or sanitary sewers or extensions thereof shall be submitted to and approved in writing by the sewerage commission before the sewers are constructed.

History: 1977 c. 379