

REMOVAL OF
ELECTED OFFICIALS, OFFICERS AND OTHERS
IN CITY GOVERNMENT

A GENERAL OVERVIEW OF THE
AUTHORITY, PROCEDURE AND PROCESS

INTRODUCTION

City government is comprised of individuals occupying a variety of positions. How an individual occupies a position within city government, and how that individual is involuntarily removed, varies depending on the position. Occupancy of, and removal from, a position is primarily addressed by either the Wisconsin Statutes, City of Appleton Municipal Code or collective bargaining agreement. The following is intended to provide a broad overview of some of these positions including how an individual occupies the position and how the individual would be involuntarily removed from that position.

ELECTED OFFICIALS

MAYOR - ALDERPERSONS – CITY ATTORNEY

These officials are elected and occupy the position for the specified term of that position. To continue serving, the official must again be elected for subsequent terms. An elected official may be involuntarily removed from the position through the recall process set forth in Wisconsin Statutes § 9.10. The process, very broadly, first requires filing of a recall petition with valid signatures totaling at least 25% of the number of votes cast (within the City) in the last election for governor. If the petition is sufficient, a recall election is held. Alternatively, pursuant to the process set forth in Wisconsin Statutes §17.16(3), these elected officials may be removed “for cause”¹ by a $\frac{3}{4}$ vote of council². This removal process requires a filing of charges by a resident taxpayer outlining the allegations to establish the “for cause” criteria. Wisconsin Statutes §17.001 defines “cause” as “inefficiency, neglect of duty, official misconduct or malfeasance in office.” The charges are presented in a quasi-judicial hearing typically with the Mayor or Council President presiding. The hearing functions similar to a trial and, upon conclusion, if at least $\frac{3}{4}$ of the Common Council concludes that cause for removal has been established, the elected official is removed from office.³

¹ Wis. Stat. §17.12(1)(a)

² Wis. Stat. §17.12(1)(d)

³ In the event the mayor is removed, the council president becomes “acting mayor” for the balance of the term unless a special election is ordered. If an alderperson is removed, the common council appoints a successor who shall serve until a special election is held (the timing of that special election will depend on the date the position becomes vacant). Sec. 17.23(1)(a), Stats. A vacancy resulting in other elective offices, including city attorney, is filled by appointment by the mayor subject to common council approval. The appointee serves the balance of the term unless an earlier special election is ordered. 17.23(1)(c), Stats.

NON-ELECTED OFFICIALS

POLICE CHIEF – FIRE CHIEF

The Police Chief and Fire Chief are appointed by the Police and Fire Commission under Wisconsin Statutes § 62.13(3) and hold that office during good behavior subject to suspension or removal by the Commission for cause. Cause is defined in §2-218(d) of the Municipal Code as inefficiency, neglect of duty, official misconduct or malfeasance in office, or moral turpitude.

LIBRARY DIRECTOR

The Library Director is appointed by and falls under the supervision of the Library Board pursuant to Wis. Stats. § 43.58(4) and Municipal Code § 2-340. The Library Director's term is indefinite subject to removal for cause by the Library Board. Cause is defined as inefficiency, neglect of duty, official misconduct or malfeasance in office, or moral turpitude. Code, §2-218(d).

CITY ENGINEER

The City Engineer is recognized as an officer of the city pursuant to Wis. Stats. § 62.09(1). The City Engineer is appointed by the Director of Public Works, without further confirmation. Accordingly, pursuant to Wis. Stat. § 17.12(1)(c) because the City Engineer is appointed by another officer without confirmation, the City Engineer may be removed at the pleasure of the Public Works Director. In other words, this position essentially functions as an "at will" position and cause for removal does not necessarily need to be established.

FINANCE DIRECTOR -- HEALTH OFFICER -- CITY ASSESSOR CITY CLERK – HUMAN RESOURCES DIRECTOR

The Finance Director, Assessor and Clerk are specifically identified officers of the city pursuant to Wis. Stats. § 62.09(1)(a). The Health Officer is a recognized city officer pursuant to Wis. Stats. §§ 251.05 and 251.06. The Human Resources Director is an officer with that position created pursuant to council authority under § 62.09(1)(a) and Municipal Code § 2-231.

Occupants of these positions are appointed by the Mayor and subject to confirmation by the Common Council. Individuals holding these positions serve for an indefinite term subject to

removal, for cause, by a ¾ vote of Council⁴. Cause is defined as inefficiency, neglect of duty, official misconduct or malfeasance in office, or moral turpitude. Code, §2-218(d). The removal process will be discussed in a later section. (See Municipal Code §§ 2-242, 2-252, 2-350 and 2-370 and Wis. Stat. §62.09(3)(b)2.)

OTHER DIRECTORS:

PUBLIC WORKS – UTILITIES PARKS, RECREATION AND FACILITIES MANAGEMENT COMMUNITY AND ECONOMIC DEVELOPMENT INFORMATION TECHNOLOGY– GENERAL MANAGER OF VALLEY TRANSIT

Occupants of these positions are appointed by the Mayor and subject to confirmation by the Common Council. Municipal Code § 2-218(a). Individuals holding these positions serve for an indefinite term subject to removal for cause by a majority vote of Council. Cause is defined as inefficiency, neglect of duty, official misconduct or malfeasance in office, or moral turpitude. Code, §2-218(d). The removal process will be discussed in a later section.

EMPLOYEES SUBJECT TO A COLLECTIVE BARGAINING AGREEMENT

Police officers and fire fighters are protected and their discipline and removal is governed by terms of a collective bargaining agreement and Wis. Stat. 62.13(5). Unless a police officer or fire fighter voluntarily resigns, charges are filed and a hearing is conducted before the Police and Fire Commission. The Commission determines the appropriate measure of discipline which can include termination. Certain Valley Transit employees are also covered by a collective bargaining agreement. Progressive discipline for just cause that may lead to discharge is administered and the agreement sets forth certain requirements that must be followed. The employee has certain appeal rights during the process including review by the Wisconsin Employment Relations Commission (WERC).

GENERAL EMPLOYEES

All other employees are general employees and essentially are considered “at will” employees. This means either party may terminate the employment relationship at any time without cause. As a result of the Act 10/32 changes, the City was required to adopt a Grievance

⁴ See Wis. Stat. §17.12(1)(d) and various Municipal Code sections that specifically address removal of a director.

Procedure Policy for general employees who wish to address employee workplace safety, discipline⁵ or termination⁶. This is a multi-step review process that can lead to a hearing before an impartial hearing examiner. (The City Attorney's office has entered an intermunicipal agreement with other local municipal attorneys to serve as an independent examiner.) The examiner's decision is final, but an employee may petition for review of the decision by the Common Council (or Library Board if a library employee). Public participation is permitted, but the Council does not "re-try" the matter, but rather reviews the findings and decision of the independent examiner. The Council's decision on the appeal is final and is determined by a majority vote.

THE REMOVAL PROCESS: THE COUNCIL'S ROLE

As indicated by the previous sections, the Common Council has a specific role regarding the removal of individuals from certain positions. Specifically, a hearing is conducted before the Council. The hearing process is essentially the same in each removal situation. The primary difference comes down to whether a simple majority or three-fourths vote is required for removal.

The following is a broad overview of the hearing process. The basis for removing an individual is "for cause".⁷

The removal process is a quasi-judicial process. The process begins with the filing of "verified charges by a resident taxpayer" outlining the alleged actions (or inaction) of the official that support a "for cause" removal. The City can require the person bringing the charges provide a bond of \$1000 that is conditioned for payment of costs and expenses incurred in investigating and hearing the charges. The City is responsible for paying for removal expenses but if it finds the complaint was "willful, and malicious and without probable cause, the person bringing the charges is responsible for paying the costs (which are collected against the bond provided and through an action against the person if necessary.)

The official, after being served with the charges, may file a written answer responding to the allegations. In addition to being provided a copy of the charges, the official must also be notified of the date and time of the hearing. At least 10 days must pass before the hearing can be conducted. The official may hire legal counsel to represent them at the hearing.

⁵ City policy defines discipline as "A suspension or demotion for rule violations, poor performance or other acts of misconduct."

⁶ City policy defines termination as "A discharge from employment for rule violations, poor performance or other acts of misconduct."

⁷ It should be noted that "cause" is defined by Wisconsin Statutes and also the Municipal Code. The definitions are similar, but not the same. Which one is applied depends on the position. For example, elected officials are subject to the statutory definition. Directors are subject to the definition in Sec. 2-218(d) of the Municipal Code.

The hearing itself is conducted similar to a trial. The Mayor or Council President preside over the hearing with the assistance of legal counsel either from the City Attorney or outside counsel if the City Attorney is prosecuting the charges. The party who filed the charges presents witnesses and information supporting the allegations in the complaint. The official also has an opportunity to present witnesses and information. Both sides are allowed the opportunity to cross-examine the other side's witnesses. Members of the Common Council are usually allowed to ask questions of witnesses as well.

These hearings are typically held in closed session; *however*, the official who is the subject of the charges may opt to have the hearing conducted in open session. At the conclusion of the hearing, the Council has the option to deliberate its decision in closed session. Once deliberations conclude, the Council returns to open session and its members vote. Depending on the official's position, if the Council votes affirmatively (either by majority or three-fourths as required) that cause for removal has been established, the official is then considered removed from the position.

Upon determining that an official is removed, an order is prepared and signed by the Mayor or Council President and filed with the City Clerk along with a transcript of the hearing.

For obvious reasons, this process, including the adversarial nature of a hearing, can be difficult on all involved including the parties, witnesses as well as Council members. The process tends to be costly with regard to both time (hearings span many hours, if not multiple evenings) as well as expenses (including a court reporter and outside counsel's fees). With that realization, the parties often explore a mutually agreeable resolution that typically takes the form of a separation agreement. If an agreement is reached, the hearing process is not required.

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INCAPACITY OF ELECTED OFFICERS

MAYOR

If the mayor is unable to perform the duties of the office, as provided in Municipal Code § 2-27 which adopts § 62.09(8)(e), the Council President shall serve as “acting mayor” for the interim until the mayor returns or the term expires. If the mayoral position becomes vacant, the Council President shall serve as “acting mayor” until the present term expires or until a special election is held and a successor is elected and qualified. (see §17.23(a), Stats).

ALDERPERSON

If an alderperson is temporarily incapacitated because of a physical or mental disability, §62.09(4)(d) provides, “the common council may appoint a person to discharge the alderperson’s duties until the disability is removed.” If a vacancy occurs in the office, the common council may appoint someone to fill the position until a special election determines the successor who will fill the remaining balance of the unexpired term. (see §17.23(a), Stats).

CITY ATTORNEY

If the city attorney is temporarily unable to perform the duties of the office, the deputy city attorney acts in place of the city attorney. If the city attorney position becomes vacant, the mayor may appoint a replacement to serve the balance of the unexpired term or until a special election is held unless a special election is ordered by the common council.