CITY OF BURLINGTON

Administration Department
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 - (262) 763-3474 fax
www.burlington-wi.gov

AGENDA
COMMITTEE OF THE WHOLE
Tuesday, January 15, 2019
6:30 p.m.
Common Council Chambers, 224 East Jefferson Street

Mayor Jeannie Hefty
Susan Kott, Alderman, 1st District
Theresa Meyer, Alderman, 1st District
Bob Grandi, Alderman, 2nd District
Ryan Heft, Alderman, 2nd District
Steve Rauch, Alderman, 3rd District
Jon Schultz, Council President, Alderman, 3rd District
Thomas Preusker, Alderman, 4th District
Todd Bauman, Alderman, 4th District

Student Representatives:
Jack Schoepke, Student Representative (BHS)
Morgan Tracy, Student Representative (BHS)

1. **Call to Order - Roll Call**
Please be advised. Prior to calling the Committee of the Whole meeting to order, Chief Anderson will be swearing in Officer Scott Wasilevich as Sergeant for City of Burlington. Also, Chief Babe will be presenting a Commendation to Dick Peterson in honor of his retirement and 50 years of service with the Burlington Fire Department.

2. **Citizen Comments**

3. **Approval of Minutes** *(J. Schultz)*

A. To approve the Committee of the Whole Minutes for December 18, 2018.

4. **PRESENTATIONS:**

A. A presentation to review the results from the 2018 Employee Satisfaction Survey.

5. **DISCUSSION:**

A. A discussion to provide an overview of the Open Meetings Law compliance guide pertaining to walking quorums.

6. **RESOLUTIONS:**

A. **Resolution 4928(30)** - To consider authorizing fee assessments for Weights and Measures license holders for the period of July 1, 2016 through June 30, 2017.

B. **Resolution 4929(31)** - To consider approving a Certified Survey Map for property located at 301 W. State Street and 109-111,117 Schemmer Street.

C. **Resolution 4930(33)** - To consider Task Order Number One Hundred and Nine, with Kapur and Associates, Inc. for the 2019 Street and Sidewalk Improvement Program.

D. **Resolution 4931(33)** - To approve a Suburban Mutual Assistance Response Teams (S.M.A.R.T.) Agreement.

7. **ORDINANCES:** There are none.

8. **MOTIONS:** There are none.

9. **ADJOURNMENT** *(T. Preusker)*

***Note**: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk's Office at 262-342-1161 at least 24 hours prior to the meeting.*

COMMITTEE OF THE WHOLE **ITEM NUMBER 3A**

DATE: January 15, 2019

SUBJECT: **MEETING MINUTES** - To approve the Committee of the Whole Minutes for December 18, 2018.

SUBMITTED BY: Diahnn Halbach, City Clerk

BACKGROUND/HISTORY:

The attached minutes are from the December 18, 2018 Committee of the Whole meeting.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of the attached minutes from the December 18, 2018 Committee of the Whole meeting.

TIMING/IMPLEMENTATION:

This item is scheduled for final consideration at the January 15, 2019 Common Council meeting.

CITY OF BURLINGTON

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CITY OF BURLINGTON
Committee of the Whole Minutes
Jeannie Hefty, Mayor
Diahnn Halbach, City Clerk
Tuesday, December 18, 2018

1. **Call to Order - Roll Call**
Mayor Hefty called the Common Council meeting to order at 6:30 p.m. Roll Call - Present: Mayor Hefty, Alderman Susan Kott, Alderman Theresa Meyer, Alderman Bob Grandi, Alderman Ryan Heft, Alderman Steve Rauch, Alderman Jon Schultz, Alderman Todd Bauman. Excused: Alderman Tom Preusker.

Student Representatives - Present: Jack Schoepke (BHS). Excused: Morgan Tracy (BHS).

Staff present: Administrator Carina Walters, City Attorney John Bjelajac, Finance Director Steve DeQuaker, Assistant City Administrator/Zoning Administrator Megan Watkins, Public Works Director Peter Riggs, Fire Chief Alan Babe, Police Chief Mark Anderson, Human Resource Manager Jason Corbin, Library Director Joe Davies and Intern Nick Faust.

2. **Citizen Comments** - There were none.

3. **Minutes** - Approval of the December 4, 2018 Committee of the Whole Minutes
Motion: Alderman Grandi. Second: Alderman Bauman. With all in favor, the motion carried.

4. **RESOLUTIONS:**

A. **Resolution 4924(26)** - To grant an Easement from the City of Burlington to 492 N. Pine Street LLC for the Alley located behind 492 N. Pine Street.

Attorney Bjelajac provided an outline of the terms of the Easement Agreement stating that the duration of the agreement will last 15 years and the City can terminate the agreement for cause with a 2/3 vote of the Common Council. Bjelajac also stated the City would receive rent for use of the alley in which the Liar's Club wishes to build a deck over the City's alley.

Alderman Rauch asked why the City doesn't just sell the easement property since they plan to build a permanent structure. Bjelajac responded that it's an option but wasn't pursued. Rauch then asked about the size of the deck in comparison with size of the easement and how it might possibly affect future development of the empty lot across the alley. Bjelajac responded that the City would work with the developer when and if that happens. Rauch then stated that he felt a bar/balcony was a bad combination. Bjelajac responded that the City would intervene if any kind of misconduct occurred.

Alderman Schultz inquired about the height of the balcony and if there was enough clearance for delivery trucks, fire trucks, etc. and if there was a chance of the balcony getting clipped by said vehicles. Chief Babe responded that the fire department completed the development review process

and discussed all of the possible "what if" scenarios and feels all concerns were covered and there would be no issues with the balcony and traffic traversing back and forth. Schultz then asked if there were concerns of people falling and asked about the weight capacity. Peter Scherrer of PSG, construction administrator for the project, responded that those concerns were talked about, however felt there would be no issues, as the balcony has been designed to withstand more than the allowable capacity.

Student Representative Jack Schoepke asked what would happen with the balcony once the agreement expires in 15 years. Alderman Kott asked if the agreement could be renewed. Bjelajac responded that it could be renewed, but it could also be removed, of which would be determined at that time.

5. **ORDINANCES:** There were none.

6. **MOTIONS:**

A. **Motion 18-914** - To consider approving a Certificate of Appropriateness for property located at 492 N. Pine Street.

Building Inspector Gregory Guidry stated that according to the City's ordinance, Common Council must approve any alterations to existing buildings located in the historic district and should take into consideration the recommendation of the Historic Preservation Committee (HPC). Guidry further stated that the owners of the Liar's Club, located at 492 N. Pine Street, wishes to install a balcony and additional lighting, of which was approved by the HPC at the October 25, 2018 meeting and was also reviewed by the Plan Commission, Fire Department, and the Development Review Committee (DRC), without any issues or concerns.

B. **Motion 18-918** - To approve revisions to the City of Burlington Employee Handbook.

Human Resources Manager Jason Corbin reviewed the changes to the Employee Handbook.

Alderman Schultz questioned the change regarding a two-pay period limitation for reporting a payroll discrepancy and stated that according to the Federal Department of Labor, employees have two years to recover any wages lost through underpayment and that local ordinance can't supersede federal laws. Schultz suggested tabling this agenda item until this change could be further updated so that it didn't conflict with the two year state statute.

7. **ADJOURNMENT**
Motion: Alderman Rauch. Second: Alderman Grandi. With all in favor, the meeting adjourned at 6:58 p.m.

Minutes respectfully submitted by:

_____
Diahnn C. Halbach
City Clerk
City of Burlington

COMMITTEE OF THE WHOLE **ITEM NUMBER 4A**

DATE: January 15, 2019

SUBJECT: **PRESENTATION** - A presentation to review the results from the 2018 Employee Satisfaction Survey.

SUBMITTED BY: Nicholas Faust, Intern

BACKGROUND/HISTORY:

As apart of the City's 2016 Strategic Plan, an employee survey was identified as a strategic initiative to undertake as a part of the City's goal of maintaining and building its competitive workforce. In October of 2018, an 18-question, anonymous survey was distributed to all 74 full-time employees via city email. For employees without regular access to email, paper copies were distributed to all departments as well. Over a two-week period responses were received from 55 of the City's 74 full-time employees.

This evening I will present a summary of the results and answer any questions you may have.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

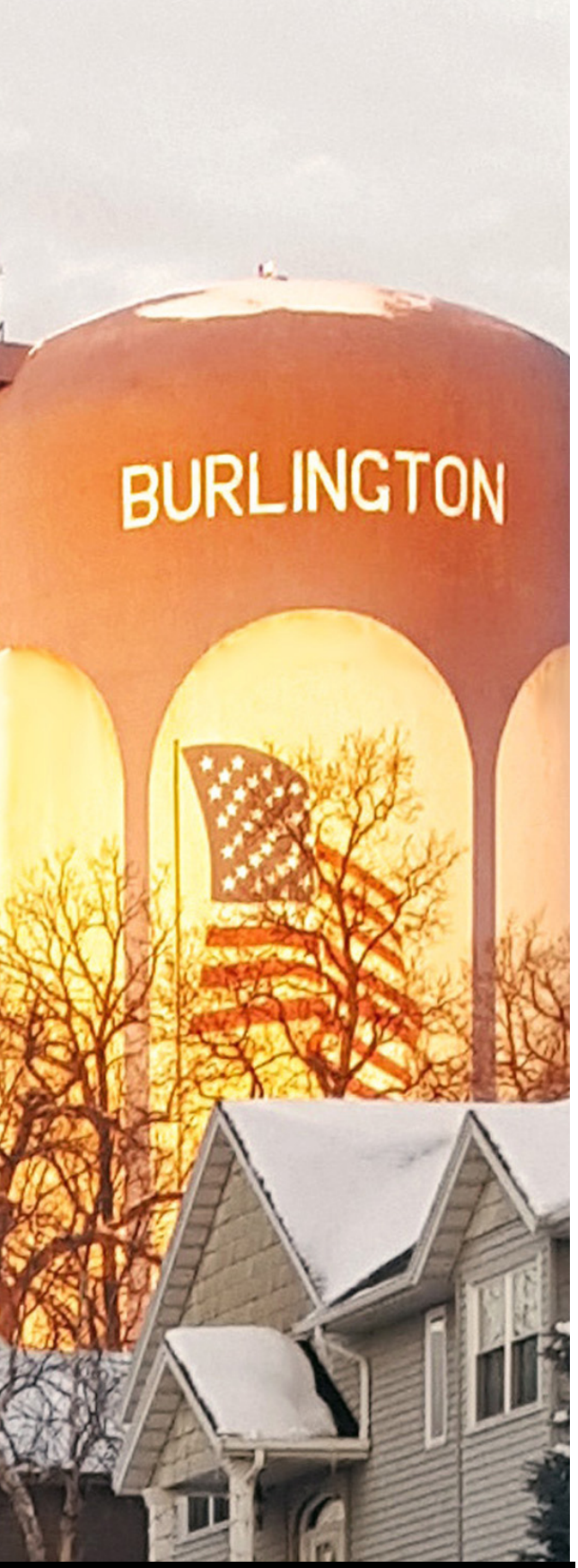
Staff recommends the continuation of efforts related to employee feedback solicitation and evaluation.

TIMING/IMPLEMENTATION:

This presentation is for discussion at the January 15, 2019 Committee of the Whole Meeting.

Attachments

Employee Satisfaction Survey Results



BUILDING A BETTER BURLINGTON, TOGETHER

City of Burlington

EMPLOYEE SATISFACTION SURVEY

As an organization, the City of Burlington recognizes that our employees are our most valuable assets. Each employee plays a vital role and the City could not accomplish our mission without their dedicated daily efforts.

The results from this employee satisfaction survey will provide the entire team with the knowledge to retain a positive work environment and positive employee relations. As an organization we are all committed to continuous improvement. This survey will help us understand if we are achieving our values of communication, teamwork, integrity, continuous learning, and a positive work environment.

SURVEY OVERVIEW

- Survey was composed of 18 questions
- It was distributed via employee email and paper copy
- Survey results were collected for two weeks in October
- Of our 74 full-time staff, 55 responded
- 74.3% response rate

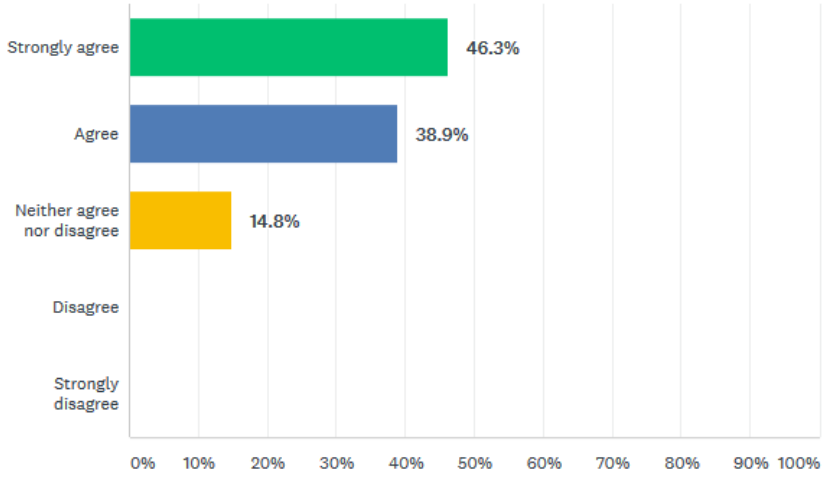
- Overwhelming majority (over 85%) indicated they find pride in their municipal employment, a sense of personal accomplishment and receive constructive feedback from supervisors
- 94.4% of employees indicated that they understand how their job contributes to the success of the City
- On all 18 questions, a majority of employees either responded strongly agree or agree to the positive statements presented

RESULTS

Q1.

I am proud to work for the City of Burlington.

Answered: 54 Skipped: 1

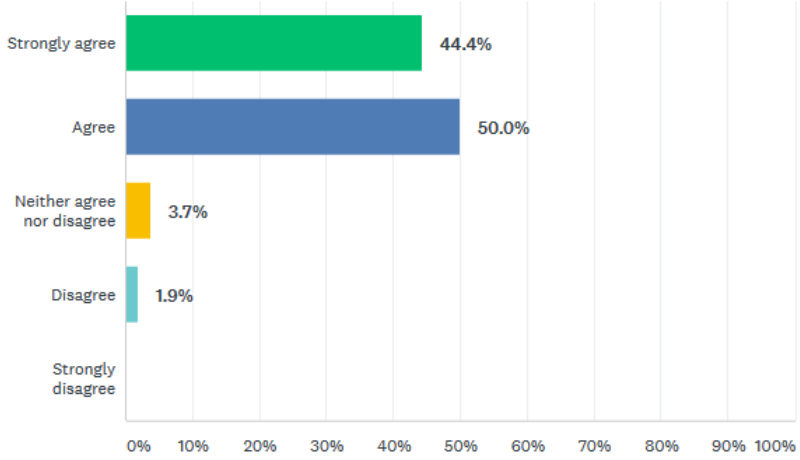


ANSWER CHOICES	RESPONSES	
Strongly agree	46.3%	25
Agree	38.9%	21
Neither agree nor disagree	14.8%	8
Disagree	0.0%	0
Strongly disagree	0.0%	0
TOTAL		54

Q2.

I understand how my job contributes to the success of the City of Burlington.

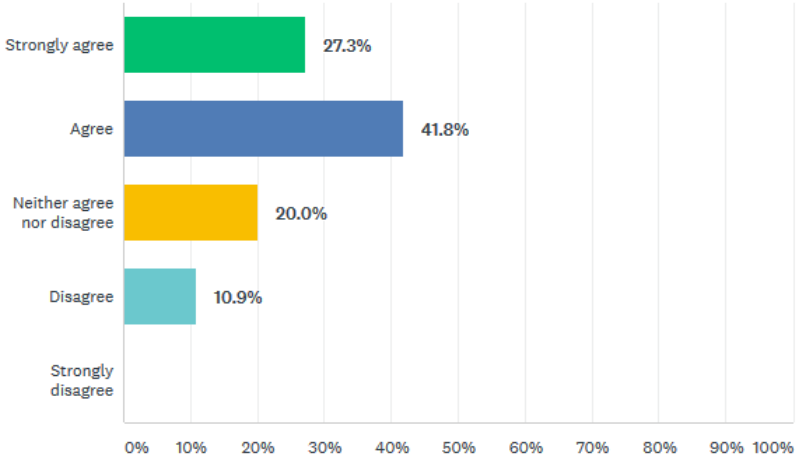
Answered: 54 Skipped: 1



ANSWER CHOICES	RESPONSES	
Strongly agree	44.4%	24
Agree	50.0%	27
Neither agree nor disagree	3.7%	2
Disagree	1.9%	1
Strongly disagree	0.0%	0
TOTAL		54

Q3. The City of Burlington finds value in my work.

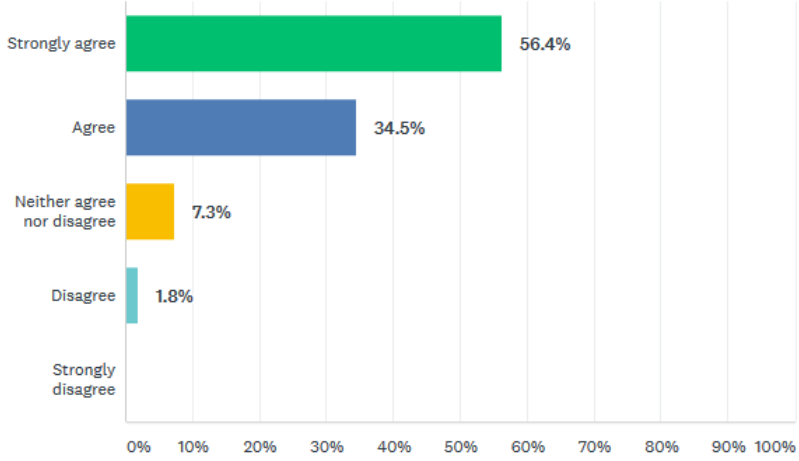
Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	27.3%	15
Agree	41.8%	23
Neither agree nor disagree	20.0%	11
Disagree	10.9%	6
Strongly disagree	0.0%	0
TOTAL		55

Q4. The work I do gives me a feeling of personal accomplishment

Answered: 55 Skipped: 0



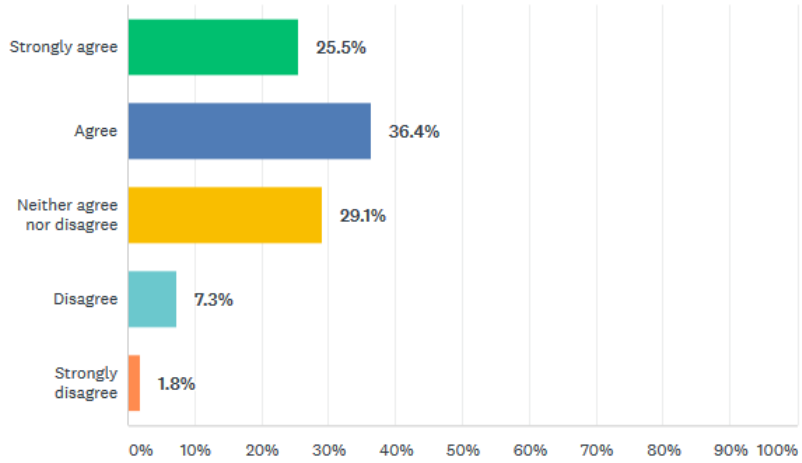
ANSWER CHOICES	RESPONSES	
Strongly agree	56.4%	31
Agree	34.5%	19
Neither agree nor disagree	7.3%	4
Disagree	1.8%	1
Strongly disagree	0.0%	0
TOTAL		55

RESULTS

Q5.

I have a clear understanding of my career or promotion path.

Answered: 55 Skipped: 0

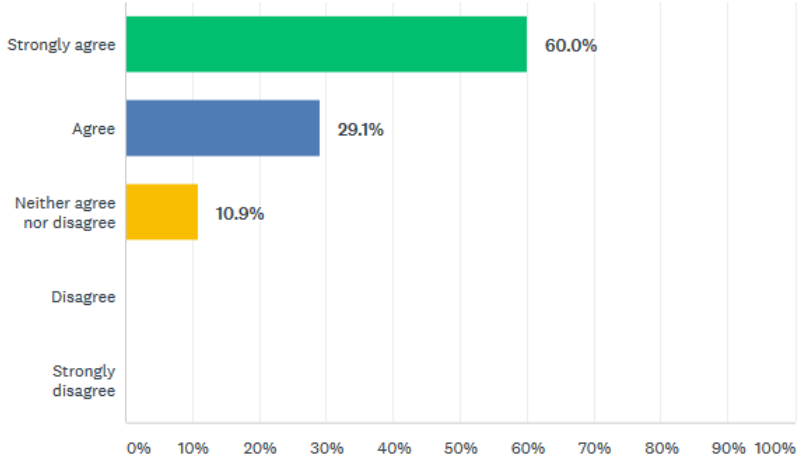


ANSWER CHOICES	RESPONSES	
Strongly agree	25.5%	14
Agree	36.4%	20
Neither agree nor disagree	29.1%	16
Disagree	7.3%	4
Strongly disagree	1.8%	1
TOTAL		55

Q6.

I intend to stay with the City of Burlington for at least another 12 months.

Answered: 55 Skipped: 0

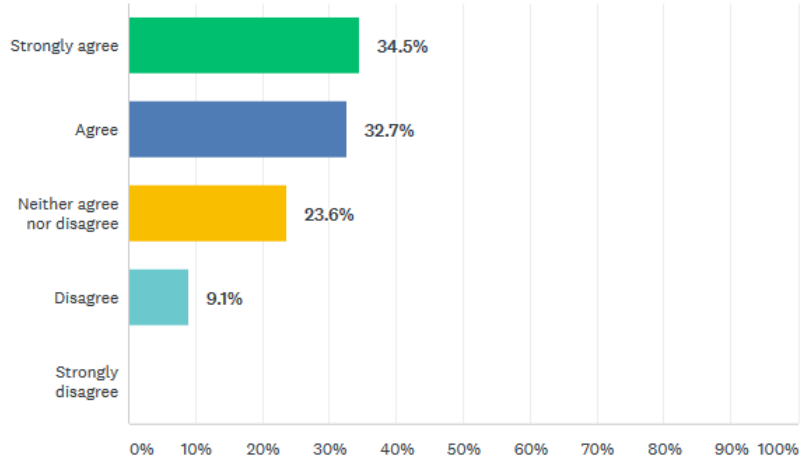


ANSWER CHOICES	RESPONSES	
Strongly agree	60.0%	33
Agree	29.1%	16
Neither agree nor disagree	10.9%	6
Disagree	0.0%	0
Strongly disagree	0.0%	0
TOTAL		55

Q7.

I would recommend the City of Burlington to friends and family as a great place to work.

Answered: 55 Skipped: 0

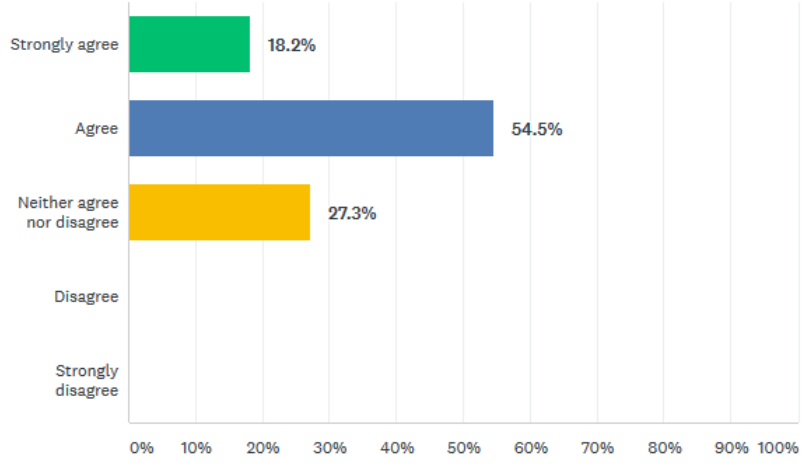


ANSWER CHOICES	RESPONSES	
Strongly agree	34.5%	19
Agree	32.7%	18
Neither agree nor disagree	23.6%	13
Disagree	9.1%	5
Strongly disagree	0.0%	0
TOTAL		55

Q8.

The City of Burlington is working to improve the safety of employees' work environment.

Answered: 55 Skipped: 0



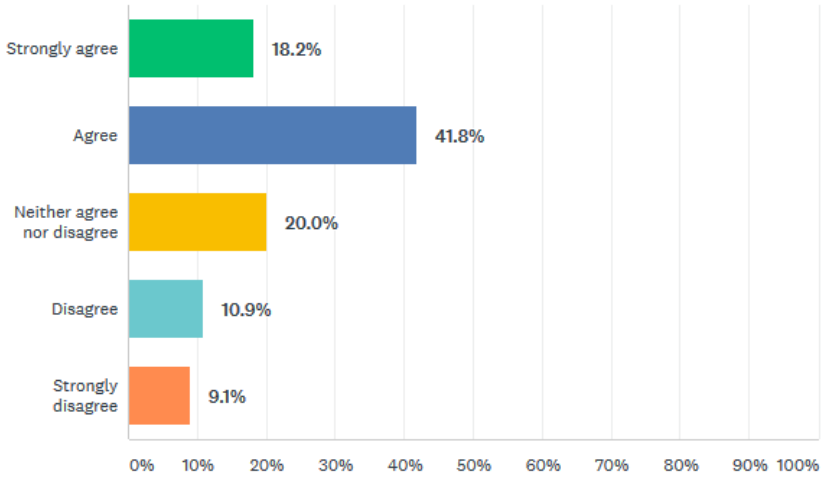
ANSWER CHOICES	RESPONSES	
Strongly agree	18.2%	10
Agree	54.5%	30
Neither agree nor disagree	27.3%	15
Disagree	0.0%	0
Strongly disagree	0.0%	0
TOTAL		55

RESULTS

Q9.

I am satisfied with the benefits and compensation I receive.

Answered: 55 Skipped: 0

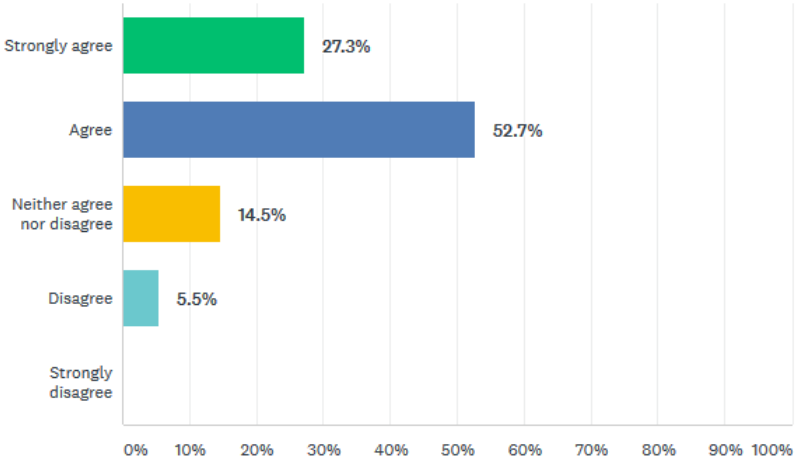


ANSWER CHOICES	RESPONSES	
Strongly agree	18.2%	10
Agree	41.8%	23
Neither agree nor disagree	20.0%	11
Disagree	10.9%	6
Strongly disagree	9.1%	5
TOTAL		55

Q10.

Coworkers give each other respect in the workplace.

Answered: 55 Skipped: 0

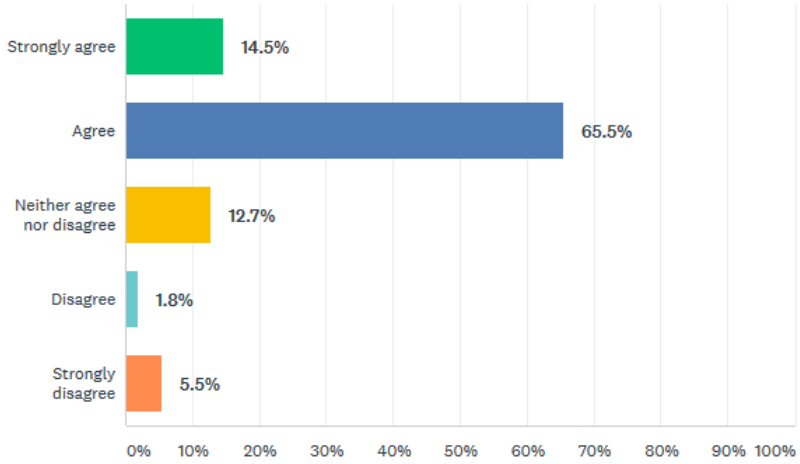


ANSWER CHOICES	RESPONSES	
Strongly agree	27.3%	15
Agree	52.7%	29
Neither agree nor disagree	14.5%	8
Disagree	5.5%	3
Strongly disagree	0.0%	0
TOTAL		55

Q11.

Work is distributed evenly across my team.

Answered: 55 Skipped: 0

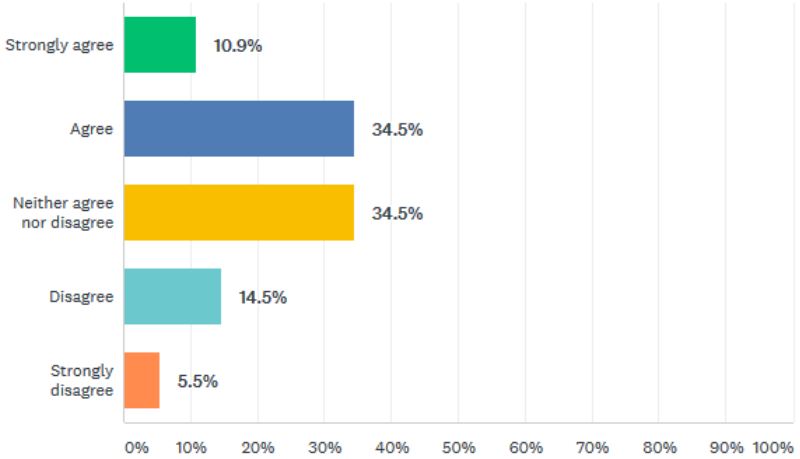


ANSWER CHOICES	RESPONSES	
Strongly agree	14.5%	8
Agree	65.5%	36
Neither agree nor disagree	12.7%	7
Disagree	1.8%	1
Strongly disagree	5.5%	3
TOTAL		55

Q12.

I believe that there is an opportunity for me to move up in the organization.

Answered: 55 Skipped: 0

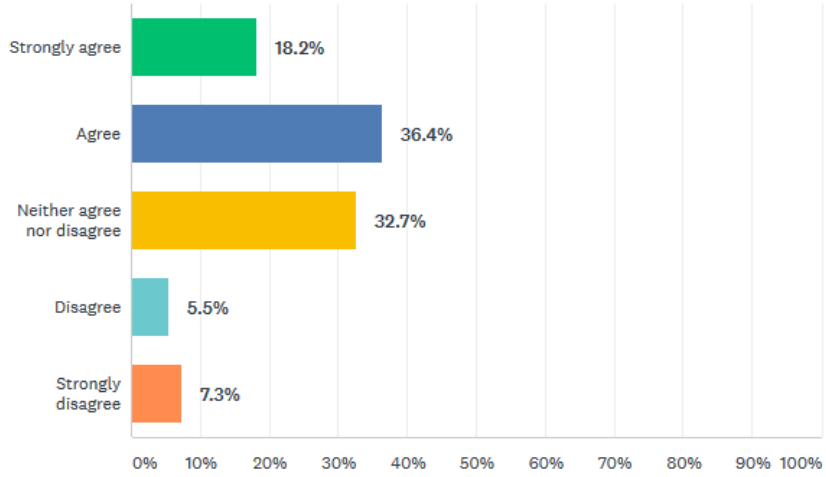


ANSWER CHOICES	RESPONSES	
Strongly agree	10.9%	6
Agree	34.5%	19
Neither agree nor disagree	34.5%	19
Disagree	14.5%	8
Strongly disagree	5.5%	3
TOTAL		55

Q13.

I feel involved with decisions that will affect me directly at work.

Answered: 55 Skipped: 0

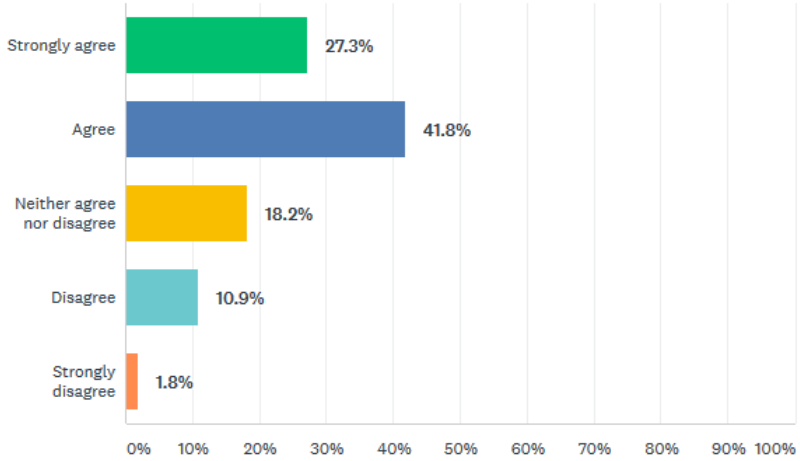


ANSWER CHOICES	RESPONSES	
Strongly agree	18.2%	10
Agree	36.4%	20
Neither agree nor disagree	32.7%	18
Disagree	5.5%	3
Strongly disagree	7.3%	4
TOTAL		55

Q14.

My opinions are heard and valued by my superior.

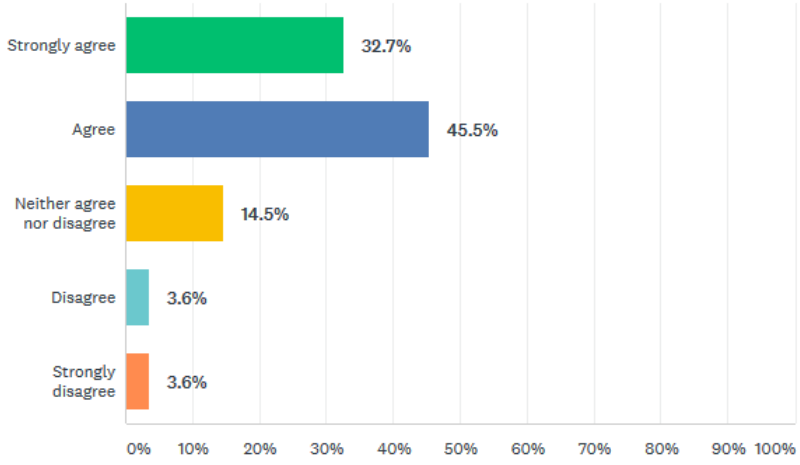
Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	27.3%	15
Agree	41.8%	23
Neither agree nor disagree	18.2%	10
Disagree	10.9%	6
Strongly disagree	1.8%	1
TOTAL		55

Q15. My manager treats all team members equally and fairly.

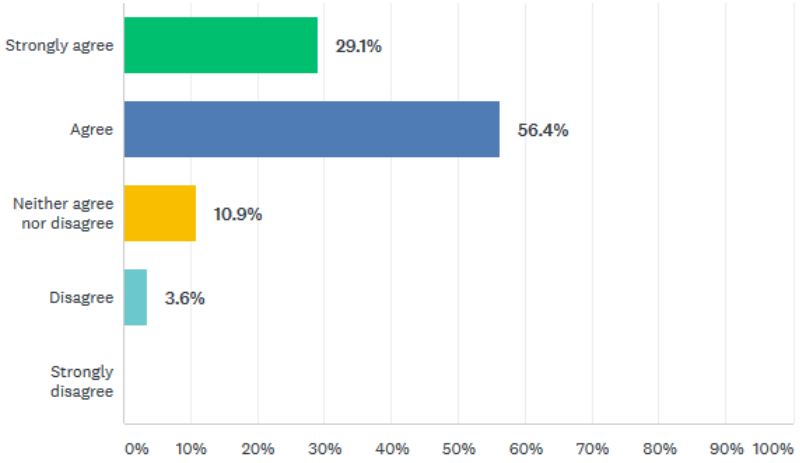
Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	32.7%	18
Agree	45.5%	25
Neither agree nor disagree	14.5%	8
Disagree	3.6%	2
Strongly disagree	3.6%	2
TOTAL		55

Q16. I receive constructive feedback from my supervisors.

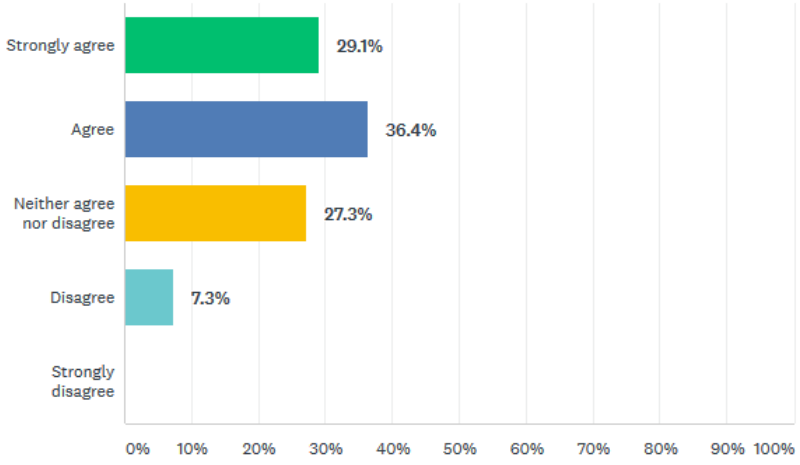
Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	29.1%	16
Agree	56.4%	31
Neither agree nor disagree	10.9%	6
Disagree	3.6%	2
Strongly disagree	0.0%	0
TOTAL		55

Q17. My superiors also serve as positive mentors within the organization.

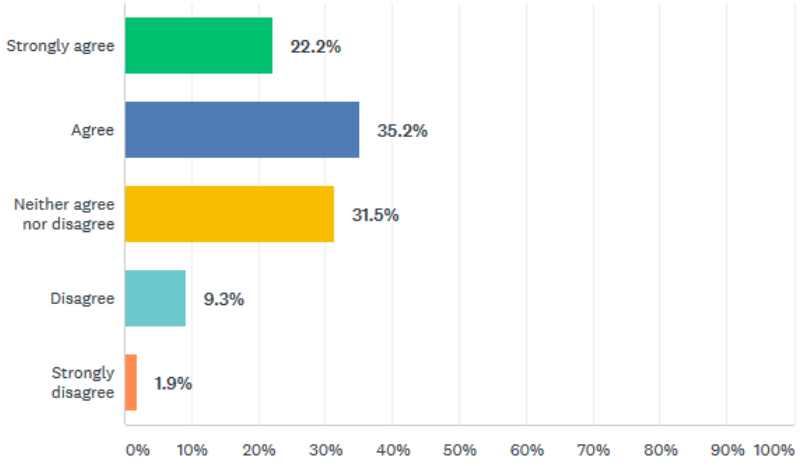
Answered: 55 Skipped: 0



ANSWER CHOICES	RESPONSES	
Strongly agree	29.1%	16
Agree	36.4%	20
Neither agree nor disagree	27.3%	15
Disagree	7.3%	4
Strongly disagree	0.0%	0
TOTAL		55

Q18. I feel rewarded by my superiors for my dedication and commitment to my work.

Answered: 54 Skipped: 1



ANSWER CHOICES	RESPONSES	
Strongly agree	22.2%	12
Agree	35.2%	19
Neither agree nor disagree	31.5%	17
Disagree	9.3%	5
Strongly disagree	1.9%	1
TOTAL		54

OPEN-ENDED COMMENTS

10 Respondents Provided Additional Comments:

"I love my job. I feel I have brought value to the library with a very positive attitude and support for the library. I am disappointed that vacation & sick pay has been eliminated for part time employees. We all contribute to the success & reputation of our city & library. I overheard a patron talking to her husband that everyone is so friendly & that there is a homey atmosphere when she walks into the library."

"I enjoy working for the City and in my position there is no advancement unless I get more schooling. I am satisfied and happy where I am at."

"Working for the City is the best opportunity I have been given."

"not happy about benefits being taken away like they are, otherwise I would be very happy here."

"Committed to making the City of Burlington better each and every day!"

"I believe the Public Library and it's staff serve a vital role in our community. Our library is likely one of the most publicly accessed of all the city facilities. It is my hope that resources are allocated with that in mind."

"I Feel under paid. Unappreciated by upper management"

"I enjoy the people I work with. I like the energy in the City as far as residents working to make it a great place to live and work. The City is on a positive move forward."

"need to know who to talk to about personnel questions- benefits, etc. how can holiday time off be more equitable among all staff? how do we know how much vacation to take when we no longer receive regular vacation days?"

"Need one on one interviews with employees "

IMPROVEMENT OPPORTUNITIES

- With the addition of a full time Human Resource Manager, the City continues to make strides in organizational climate and culture

- HR Manager Corbin has begun the design and/or implementation of several employee projects

  -Benefits Fair
  -Benefits Package Evaluation
  -Safety Procedure Improvement
  -Performance Evaluation Training
  - Developing an Online Employee Portal
    *Paperless Leave Tracking/Requests
    *Employee Feedback System
    *Employee Information Repository
    *Employee Benefits Manual

- The City will continue to explore efforts to communicate professional development opportunities for employees

- The City will continue to explore the expansion of employee recognition initiatives to communicate appreciation

COMMITTEE OF THE WHOLE **ITEM NUMBER 5A**

DATE: January 15, 2019

SUBJECT: **DISCUSSION** - To provide an overview of the Open Meetings Law compliance guide pertaining to walking quorums.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

Per the attached memo from Attorney Bjelajac, the "Wisconsin Open Meetings Law Compliance Guide," published as of March, 2018, by the Wisconsin Department of Justice, defines a "walking quorum" as follows:

- **The essential feature of a "walking quorum" is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. The signing, by members of a body, of a document asking that a subject be placed on the agenda of an upcoming meeting thus does not constitute a "walking quorum" where the signers have not engaged in substantive discussion or agreed on a uniform course of action regarding the proposed subject. In contrast, where a majority of members of a body sign a document that expressly commits them to a future course of action, a court could find a walking quorum violation.**

This evening, Attorney Bjelajac will provide an overview of this subject and answer any questions you may have.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

N/A

TIMING/IMPLEMENTATION:

This item is for discussion only.

Attachments

OML Compliance Guide

Memo

March 2018

Wisconsin Open Meetings Law Compliance Guide

Wisconsin Department of Justice
Attorney General Brad D. Schimel

Attorney General's Message

By Attorney General Brad D. Schimel

It is imperative that we recognize that transparency is the cornerstone of democracy and that citizens cannot hold their elected officials accountable in a representative government unless government is performed in the open.

As Wisconsin Attorney General, I recognize the important role the Department of Justice has in ensuring that Wisconsin's open government laws are properly and faithfully executed by public officials. Since the Office of Open Government opened its doors in 2015, average public record response times by DOJ have been dramatically reduced. The office also posts a snapshot of all public records requests pending each week, makes average monthly response times for the office available, and makes responses to public records requests available online. DOJ has responded to hundreds of inquiries concerning issues related to the open meetings law and the public records law and instructed on open government at dozens of conferences, seminars, and training sessions. We created the Office of Open Government to meet my goals for increasing openness and transparency and I'm proud of the resources and services the office provides to all state, regional, and local government entities and citizens.

This compliance guide may be accessed, downloaded or printed free of charge from the Wisconsin Department of Justice website, https://www.doj.state.wi.us/ and clicking on the "Office of Open Government" box toward the bottom of the page. I encourage you to share this guide with your constituencies and colleagues. Wisconsin's open government laws promote democracy by ensuring that all state, regional and local governments conduct their business with transparency. Wisconsin citizens have a right to know how their government is spending their tax dollars and exercising the powers granted by the people. This guide is a resource for all Wisconsinites to understand and exercise their right to access their government. I hope you do.

I am grateful to the records custodians and all those who perform public duties and I encourage them to contact the Office of Open Government if we can be of assistance. Additionally, I am grateful to those who continue to reach out to me and my staff to keep the conversation going on this important issue.

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Wisconsin Open Meetings Law Compliance Guide

(March 2018)

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The 2018 edition of the *Wisconsin Open Meetings Law Compliance Guide* results from the efforts of the Office of Open Government, as well as the following Wisconsin Department of Justice (DOJ) personnel, all of whom are acknowledged and appreciated:

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POLICY OF THE OPEN MEETINGS LAW

The State of Wisconsin recognizes the importance of having a public informed about governmental affairs. The state's open meetings law declares that:

> In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.[1]

In order to advance this policy, the open meetings law requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law."[2] There is thus a presumption that meetings of governmental bodies must be held in open session.[3] Although there are some exemptions allowing closed sessions in specified circumstances, they are to be invoked sparingly and only where necessary to protect the public interest. The policy of the open meetings law dictates that governmental bodies convene in closed session only where holding an open session would be incompatible with the conduct of governmental affairs. "Mere government inconvenience is . . . no bar to the requirements of the law."[4]

The open meetings law explicitly provides that all of its provisions must be liberally construed to achieve its purposes.[5] This rule of liberal construction applies in all situations, except enforcement actions in which forfeitures are sought.[6] Public officials must be ever mindful of the policy of openness and the rule of liberal construction in order to ensure compliance with both the letter and spirit of the law.[7]

WHEN DOES THE OPEN MEETINGS LAW APPLY?

The open meetings law applies to every "meeting" of a "governmental body."[8] The terms "meeting" and "governmental body" are defined in Wis. Stat. § 19.82(1) and (2).

Definition of "Governmental Body"

- **Entities That Are Governmental Bodies**

  A "governmental body" is defined as:

  > [A] state or local agency, board, commission, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley Center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district

[1] Wis. Stat. § 19.81(1).
[2] Wis. Stat. § 19.81(2).
[3] *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 97, 398 N.W.2d 154 (1987).
[4] *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).
[5] Wis. Stat. § 19.81(4); *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 570, 494 N.W.2d 408 (1993); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶ 19, 278 Wis. 2d 388, 692 N.W.2d 304 ("The legislature has issued a clear mandate that we are to vigorously and liberally enforce the policy behind the open meetings law.").
[6] Wis. Stat. § 19.81(4).
[7] *State ex rel. Citizens for Responsible Dev. v. City of Milton*, 2007 WI App 114, ¶ 6, 300 Wis. 2d 649, 731 N.W.2d 640 ("The legislature has made the policy choice that, despite the efficiency advantages of secret government, a transparent process is favored.").
[8] Wis. Stat. § 19.83.

under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.[9]

This definition includes multiple parts, the most important of which are discussed below.

- **State or Local Agencies, Boards, and Commissions**

The definition of "governmental body" includes a "state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . . ."[10] This list of entities is broad enough to include virtually any collective governmental entity, regardless of what it is labeled. It is important to note that these entities are defined primarily in terms of the manner in which they are created, rather than in terms of the type of authority they possess. Purely advisory bodies are therefore subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order.[11]

The words "constitution," "statute," and "ordinance," as used in the definition of "governmental body," refer to the constitution and statutes of the State of Wisconsin and to ordinances promulgated by a political subdivision of the state. The definition thus includes state and local bodies created by Wisconsin's constitution or statutes, including condemnation commissions created by Wis. Stat. § 32.08, as well as local bodies created by an ordinance of any Wisconsin municipality. It does not, however, include bodies created solely by federal law or by the law of some other sovereign.

State and local bodies created by "rule or order" are also included in the definition. The term "rule or order" has been liberally construed to include any directive, formal or informal, creating a body and assigning it duties.[12] This includes directives from governmental bodies, presiding officers of governmental bodies, or certain governmental officials, such as county executives, mayors, or heads of a state or local agency, department or division.[13]

Thus, for example, in *State ex rel. Krueger v. Appleton Area School District Board of Education*, the Wisconsin Supreme Court held that a curriculum committee, "created by" school board rule and given the delegated authority to review and select educational materials for the school board's approval, was subject to open meetings laws.[14]

- First, it was a "committee" under Wis. Stat. § 19.82(1), not an ad hoc gathering, because it was comprised of a defined membership of individuals selected pursuant to the procedures set forth in the school board's policy handbook, and its members were empowered to vote on how the school board should exercise its collective authority as a body.[15]

- Second, it was "created by . . . rule" under Wis. Stat. § 19.82(1), because the school board handbook policy was authorized by school board rule, thereby authorizing and enabling the

[9] Wis. Stat. § 19.82(1).
[10] Wis. Stat. § 19.82(1).
[11] *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).
[12] 78 Op. Att'y Gen. 67, 68–69 (1989).
[13] *See* 78 Op. Att'y Gen. 67.
[14] *State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, ¶¶ 27–34, 376 Wis. 2d 239, 898 N.W.2d 35.
[15] *Id*. ¶¶ 28-31.

committee to be created. The school board rule also prescribed the procedures for school district employees to follow in reviewing educational materials and presenting them to the school board for approval. Read together, the school board rule and the board-approved handbook policy therefore authorized committees like the one at issue to be created, and also authorized such committees to exercise the school board's delegated authority over curriculum review for the school district.[16]

- In so holding, the Wisconsin Supreme Court explained that it did not matter that two individual district employees decided to put the rule and handbook policy in motion to form the committee. It also did not matter that neither the school board rule nor the handbook policy had provisions that created or mentioned the committee by name. Nor did it matter that the committee deviated from the handbook's procedures in making its recommendations to the school board for a specific course's curriculum. Rather, the dispositive factor was that the school board's handbook policy authorized such review committees to be created for the purposes of reviewing curriculum materials and making recommendations to the school board for adoption.[17]

A group organized by its own members pursuant to its own charter, however, is not created by any governmental directive and thus is not a governmental body, even if it is subject to governmental regulation and receives public funding and support. The relationship of affiliation between the University of Wisconsin Union and various student clubs thus is not sufficient to make the governing board of such a club a governmental body.[18]

The Wisconsin Supreme Court or Wisconsin Attorney General have concluded that the following entities are state or local bodies that are subject to the open meetings law by virtue of having been created by constitution, statute, ordinance, resolution, rule or order:

- **State or Local Bodies Created by Constitution, Statute, or Ordinance**
  - ◊ A municipal public utility managing a city-owned public electrical utility.[19]
  - ◊ Departments of formally constituted subunits of the University of Wisconsin system or campus.[20]
  - ◊ A town board, but not an annual or special town meeting of town electors.[21]
  - ◊ A county board of zoning adjustment authorized by Wis. Stat § 59.99(3) (1983) (now Wis. Stat. § 59.694(1)).[22]
  - ◊ A public inland lake protection and rehabilitation district established by a county or municipality, pursuant to Wis. Stat. §§ 33.21 to 33.27.[23]

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[16] *Krueger*, 2017 WI 70, ¶¶ 32–34, 43.
[17] *Id*. ¶¶ 35–40.
[18] Penkalski Correspondence (May 4, 2009).
[19] 65 Op. Att'y Gen. 243 (1976).
[20] 66 Op. Att'y Gen. 60 (1977).
[21] 66 Op. Att'y Gen. 237 (1977).
[22] Gaylord Correspondence (June 11, 1984).
[23] DuVall Correspondence (Nov. 6, 1986).

- **State or Local Bodies Created by Resolution, Rule, or Order**

  - ◊ A committee created by a school board's policy handbook to review and select education materials for the board's approval.[24]

  - ◊ A committee appointed by the school superintendent to consider school library materials.[25]

  - ◊ A citizen's advisory group appointed by the mayor.[26]

  - ◊ An advisory committee appointed by the Natural Resources Board, the Secretary of the Department of Natural Resources, or a District Director, Bureau Director or Property Manager of that department.[27]

  - ◊ A consortium of school districts created by a contract between districts; a resolution is the equivalent of an order.[28]

  - ◊ An industrial agency created by resolution of a county board under Wis. Stat. § 59.57(2).[29]

  - ◊ A deed restriction committee created by resolution of a common council.[30]

  - ◊ A school district's strategic-planning team whose creation was authorized and whose duties were assigned to it by the school board.[31]

  - ◊ A citizen's advisory committee appointed by a county executive.[32]

  - ◊ An already-existing numerically definable group of employees of a governmental entity, assigned by the entity's chief administrative officer to prepare recommendations for the entity's policy-making board, when the group's meetings include the subject of the chief administrative officer's directive.[33]

  - ◊ A Criminal Justice Study Commission created by the Wisconsin Department of Justice, the University of Wisconsin Law School, the State Bar of Wisconsin, and the Marquette University Law School.[34]

  - ◊ Grant review panels created by a consortium which was established pursuant to an order of the Wisconsin Commissioner of Insurance.[35]

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[24] *Krueger*, 2017 WI 70, ¶ 27.
[25] Staples Correspondence (Feb. 10, 1981).
[26] Funkhouser Correspondence (Mar. 17, 1983).
[27] 78 Op. Att'y Gen. 67.
[28] I-10-93 (Oct. 15, 1993).
[29] I-22-90 (Apr. 4, 1990).
[30] I-34-90 (May 25, 1990).
[31] I-29-91 (Oct. 17, 1991).
[32] Jacques Correspondence (Jan. 26, 2004).
[33] Tylka Correspondence (June 8, 2005).
[34] Lichstein Correspondence (Sept. 20, 2005).
[35] Katayama Correspondence (Jan. 20, 2006).

- ◊ A joint advisory task force established by a resolution of a Wisconsin town board and a resolution of the legislature of a sovereign Indian tribe.[36]

- ◊ A University of Wisconsin student government committee, council, representative assembly, or similar collective body that has been created and assigned governmental responsibilities pursuant to Wis. Stat. § 36.09(5).[37]

- **Governmental or Quasi-Governmental Corporations**

The definition of "governmental body" also includes a "governmental or quasi-governmental corporation," except for the Bradley sports center corporation.[38] The term "governmental corporation" is not defined in either the statutes or the case law interpreting the statutes. It is clear, however, that a "governmental corporation" must at least include a corporation established for some public purpose and created directly by the state legislature or by some other governmental body pursuant to specific statutory authorization or direction.[39]

The term "quasi-governmental corporation" also is not defined in the statutes, but its definition was discussed by the Wisconsin Supreme Court in *State v. Beaver Dam Area Development Corp.* (*"BDADC"*).[40] In that decision, the court held that a "quasi-governmental corporation" does not have to be *created* by the government or be *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status.[41] The court further held that each case must be decided on its own particular facts, under the totality of the circumstances and set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative.[42] The factors set out by the court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation's records.[43]

In adopting this case-specific, multi-factored "function, effect or status" standard, the Wisconsin Supreme Court followed a 1991 Attorney General opinion.[44] Prior to 1991, however, Attorney General opinions on this subject emphasized some of the more formal aspects of

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[36] I-04-09 (Sept. 28, 2009).
[37] I-05-09 (Dec. 17, 2009).
[38] Wis. Stat. § 19.82(1).
[39] *See* 66 Op. Att'y Gen. 113, 115 (1977).
[40] *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295.
[41] *Id.* ¶¶ 33–36.
[42] *Id.* ¶¶ 7–8, 63 n.14, 79.
[43] *Id.* ¶ 62.
[44] *See* 80 Op. Att'y Gen. 129, 135 (1991) (Milwaukee Economic Development Corporation, a Wis. Stat. ch. 181 corporation organized by two private citizens and one city employee, is a quasi-governmental corporation); *see also* Kowalczyk Correspondence (Mar. 13, 2006) (non-stock, non-profit corporations established for the purpose of providing emergency medical or fire department services for participating municipalities are quasi-governmental corporations).

quasi-governmental corporations. Those opinions should now be read in light of the *BDADC* decision.[45]

In March 2009, the Attorney General issued an informal opinion which analyzed the *BDADC* decision in greater detail and expressed the view that, out of the numerous factors discussed in that decision, particular weight should be given to whether a corporation serves a public function and has any private functions.[46] When a private corporation contracts to perform certain services for a governmental body, the key considerations in determining whether the corporation becomes quasi-governmental are whether the corporation is performing a portion of the governmental body's public functions or whether the services provided by the corporation play an integral part in any stage—including the purely deliberative stage—of the governmental body's decision-making process.[47]

- **State Legislature**

Generally speaking, the open meetings law applies to the state legislature, including the senate, assembly, and any committees or subunits of those bodies.[48] The law does not apply to any partisan caucus of the senate or assembly.[49] The open meetings law also does not apply where it conflicts with a rule of the legislature, senate, or assembly.[50] Additional restrictions are set forth in Wis. Stat. § 19.87.

- **Subunits**

A "formally constituted subunit" of a governmental body is itself a "governmental body" within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body.[51] If, for example, a fifteen member county board appoints a committee consisting of five members of the county board, that committee would be considered a "subunit" subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is considered a "subunit," as is a committee that is only advisory and that has no power to make binding decisions.[52]

Groups that include both members and non-members of a parent body are not "subunits" of the parent body. Such groups nonetheless frequently fit within the definition of a "governmental body"—*e.g.*, as advisory groups to the governmental bodies or government officials that created them.

Any entity that fits within the definition of "governmental body" must comply with the requirements of the open meetings law. In most cases, it is readily apparent whether a particular

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[45] *See* 66 Op. Att'y Gen. 113 (volunteer fire department organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); 73 Op. Att'y Gen. 53 (1984) (Historic Sites Foundation organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); 74 Op. Att'y Gen. 38 (corporation established to provide financial support to public broadcasting stations organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); Geyer Correspondence (Feb. 26, 1987) (Grant County Economic Development Corporation organized by private individuals under Wis. Stat. ch. 181 is not a quasi-governmental corporation, even though it serves a public purpose and receives more than fifty percent of its funding from public sources).
[46] I-02-09 (Mar. 19, 2009).
[47] *Id.*
[48] Wis. Stat. § 19.87.
[49] Wis. Stat. § 19.87(3).
[50] Wis. Stat. § 19.87(2).
[51] 74 Op. Att'y Gen. 38, 40 (1985).
[52] Dziki Correspondence (Dec. 12, 2006).

body fits within the definition. On occasion, there is some doubt. Any doubts as to the applicability of the open meetings law should be resolved in favor of complying with the law's requirements.

- **Entities That Are Not Governmental Bodies**

  - **Governmental Offices Held by a Single Individual**

    The open meetings law does not apply to a governmental department with only a single member.[53] Because the term "body" connotes a group of individuals, a governmental office held by a single individual likewise is not a "governmental body" within the meaning of the open meetings law. Thus, the open meetings law does not apply to the office of coroner or to inquests conducted by the coroner.[54] Similarly, the Attorney General has concluded that the open meetings law does not apply to an administrative hearing conducted by an individual hearing examiner.[55]

  - **Bodies Meeting for Collective Bargaining**

    The definition of "governmental body" explicitly excludes bodies that are formed for or meeting for the purpose of collective bargaining with municipal or state employees under subchapters I, IV, or V of Wis. Stat. ch. 111. A body formed exclusively for the purpose of collective bargaining is not subject to the open meetings law.[56] A body formed for other purposes, in addition to collective bargaining, is not subject to the open meetings law when conducting collective bargaining.[57] The Attorney General has, however, advised multi-purpose bodies to comply with the open meetings law, including the requirements for convening in closed session, when meeting for the purpose of forming negotiating strategies to be used in collective bargaining.[58] The collective bargaining exclusion does not permit any body to consider the final ratification or approval of a collective bargaining agreement under subchapters I, IV, or V of Wis. Stat. ch. 111 in closed session.[59]

  - **Bodies Created by the Wisconsin Supreme Court**

    The Wisconsin Supreme Court has held that bodies created by the court, pursuant to its superintending control over the administration of justice, are not governed by the open meetings law.[60] Thus, generally speaking, the open meetings law does not apply to the court or bodies created by the court. In the *Lynch* case, for example, the court held that the former open meetings law, Wis. Stat. § 66.77(1) (1973), did not apply to the Wisconsin Judicial Commission, which is responsible for handling misconduct complaints against judges. Similarly, the Attorney General has indicated that the open meetings law does not apply to: the Board of Attorneys Professional Responsibility;[61] the Board of Bar Examiners;[62] or the monthly judicial administration meetings of

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[53] *Plourde v. Habhegger*, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130.
[54] 67 Op. Att'y Gen. 250 (1978).
[55] Clifford Correspondence (Dec. 2, 1980).
[56] Wis. Stat. § 19.82(1).
[57] Wis. Stat. § 19.82(1)
[58] 66 Op. Att'y Gen. 93, 96-97 (1977).
[59] Wis. Stat. § 19.85(3).
[60] *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).
[61] OAG 67-79 (July 31, 1979) (unpublished) (the Board of Attorneys Professional Responsibility was the predecessor to the Office of Lawyer Regulation).
[62] Kosobucki Correspondence (Sept. 6, 2006).

circuit court judges, conducted under the authority of the court's superintending power over the judiciary.[63]

- **Ad Hoc Gatherings**

Although the definition of a governmental body is broad, some gatherings are too loosely constituted to fit the definition. Thus, *Conta* holds that the directive that creates the body must also "confer[] collective power and define[] when it exists."[64] *Showers* adds the further requirement that a "meeting" of a governmental body takes place only if there are a sufficient number of members present to determine the governmental body's course of action.[65] In order to determine whether a sufficient number of members are present to determine a governmental body's course of action, the membership of the body must be numerically definable. The Attorney General's Office thus has concluded that a loosely constituted group of citizens and local officials instituted by the mayor to discuss various issues related to a dam closure was not a governmental body, because no rule or order defined the group's membership, and no provision existed for the group to exercise collective power.[66]

The definition of a "governmental body" is only rarely satisfied when groups of a governmental unit's employees gather on a subject within the unit's jurisdiction. Thus, for example, the Attorney General concluded that the predecessor of the current open meetings law did not apply when a department head met with some or even all of his or her staff.[67] Similarly, the Attorney General's Office has advised that the courts would be unlikely to conclude that meetings between the administrators of a governmental agency and the agency's employees, or between governmental employees and representatives of a governmental contractor were "governmental bodies" subject to the open meetings law.[68] However, where an already-existing numerically definable group of employees of a governmental entity are assigned by the entity's chief administrative officer to prepare recommendations for the entity's policy-making board, the group's meetings with respect to the subject of the directive are subject to the open meetings law.[69]

Definition of "Meeting"

A "meeting" is defined as:

> [T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter . . . .[70]

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[63] Constantine Correspondence (Feb. 28, 2000).
[64] *Conta*, 71 Wis. 2d at 681.
[65] *Showers*, 135 Wis. 2d at 102.
[66] Godlewski Correspondence (Sept. 24, 1998).
[67] 57 Op. Att'y Gen. 213, 216 (1968).
[68] Peplnjak Correspondence (June 8, 1998).
[69] Tylka Correspondence (June 8, 2005).
[70] Wis. Stat. § 19.82(2).

The statute then excepts the following: an inspection of a public works project or highway by a town board; or inspection of a public works project by a town sanitary district; or the supervision, observation, or collection of information about any drain or structure related to a drain by any drainage board.[71]

- **The *Showers* Test**

  The Wisconsin Supreme Court has held that the above statutory definition of a "meeting" applies whenever a convening of members of a governmental body satisfies two requirements: (1) there is a purpose to engage in governmental business and (2) the number of members present is sufficient to determine the governmental body's course of action.[72]

  - **The Purpose Requirement**

    The first part of the *Showers* test focuses on the purpose for which the members of the governmental body are gathered. They must be gathered to conduct governmental business. *Showers* stressed that "governmental business" refers to any formal or informal action, including discussion, decision or information gathering, on matters within the governmental body's realm of authority.[73] Thus, in *Badke*,[74] the Wisconsin Supreme Court held that the village board conducted a "meeting," as defined in the open meetings law, when a quorum of the board regularly attended each plan commission meeting to observe the commission's proceedings on a development plan that was subject to the board's approval. The court stressed that a governmental body is engaged in governmental business when its members gather to simply hear information on a matter within the body's realm of authority.[75] The members need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business.[76] The court also held that the gathering of town board members was not chance or social because a majority of town board members attended plan commission meetings with regularity.[77] In contrast, the court of appeals concluded in *Paulton v. Volkmann*,[78] that no meeting occurred where a quorum of school board members attended a gathering of town residents, but did not collect information on a subject the school board had the potential to decide.

  - **The Numbers Requirement**

    The second part of the *Showers* test requires that the number of members present be sufficient to determine the governmental body's course of action on the business under consideration. People often assume that this means that the open meetings law applies only to gatherings of a majority of the members of a governmental body. That is not the case because the power to control a body's course of action can refer either to the affirmative power to pass a proposal or the negative power to defeat a proposal. Therefore, a gathering of one-half of the members of a body, or even fewer, may be enough to control a course of action if it is enough to block a proposal. This is called a "negative quorum."

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[71] Wis. Stat. § 19.82(2).
[72] *Showers*, 135 Wis. 2d at 102.
[73] *Id.* at 102–03.
[74] *Badke*, 173 Wis. 2d at 572–74.
[75] *Id.* at 573–74.
[76] *Id.* at 574–76.
[77] *Id.* at 576.
[78] *Paulton v. Volkmann*, 141 Wis. 2d 370, 375–77, 415 N.W.2d 528 (Ct. App. 1987).

Typically, governmental bodies operate under a simple majority rule in which a margin of one vote is necessary for the body to pass a proposal. Under that approach, exactly one-half of the members of the body constitutes a "negative quorum" because that number against a proposal is enough to prevent the formation of a majority in its favor. Under simple majority rule, therefore, the open meetings law applies whenever one-half or more of the members of the governmental body gather to discuss or act on matters within the body's realm of authority.

The size of a "negative quorum" may be smaller, however, when a governmental body operates under a super majority rule. For example, if a two-thirds majority is required for a body to pass a measure, then any gathering of more than one-third of the body's members would be enough to control the body's course of action by blocking the formation of a two-thirds majority. *Showers* made it clear that the open meetings law applies to such gatherings, as long as the purpose requirement is also satisfied (*i.e.*, the gathering is for the purpose of conducting governmental business).[79] If a three-fourths majority is required to pass a measure, then more than one-fourth of the members would constitute a "negative quorum," etc.

- **Convening of Members**

When the members of a governmental body conduct official business while acting separately, without communicating with each other or engaging in other collective action, there is no meeting within the meaning of the open meetings law.[80] Nevertheless, the phrase "convening of members" in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. Whether such a situation qualifies as a "convening of members" under the open meetings law depends on the extent to which the communications in question resemble a face-to-face exchange.

  - **Written Correspondence**

The circulation of a paper or hard copy memorandum among the members of a governmental body, for example, may involve a largely one-way flow of information, with any exchanges spread out over a considerable period of time and little or no conversation-like interaction among members. Accordingly, the Attorney General has long taken the position that such written communications generally do not constitute a "convening of members" for purposes of the open meetings law.[81] Although the rapid evolution of electronic media has made the distinction between written and oral communication less sharp than it once appeared, it is still unlikely that a Wisconsin court would conclude that the circulation of a document through the postal service, or by other means of paper or hard-copy delivery, could be deemed a "convening" or "gathering" of the members of a governmental body for purposes of the open meetings law.

  - **Telephone Conference Calls**

A telephone conference call, in contrast, is very similar to an in-person conversation and thus qualifies as a convening of members.[82] Under the *Showers* test, therefore, the open meetings law applies to any conference call that: (1) is for the purpose of conducting governmental business

[79] *Showers*, 135 Wis. 2d at 101–02.
[80] Katayama Correspondence (Jan. 20, 2006).
[81] Merkel Correspondence (Mar. 11, 1993).
[82] 69 Op. Att'y Gen. 143 (1980).

and (2) involves a sufficient number of members of the body to determine the body's course of action on the business under consideration. To comply with the law, a governmental body conducting a meeting by telephone conference call must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers located at one or more sites open to the public.[83]

- **Electronic Communications**

Written communications transmitted by electronic means, such as email or instant messaging, also may constitute a "convening of members," depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion—*e.g.*, a rapid back-and-forth exchange of viewpoints among multiple members—or more like non-electronic written correspondence, which generally does not raise open meetings law concerns. If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body.[84] In addressing these questions, courts are likely to consider such factors as the following: (1) the number of participants involved in the communications; (2) the number of communications regarding the subject; (3) the time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.

Because the applicability of the open meetings law to such electronic communications depends on the particular way in which a specific message technology is used, these technologies create special dangers for governmental officials trying to comply with the law. Although two members of a governmental body larger than four members may generally discuss the body's business without violating the open meetings law, features like "forward" and "reply to all" common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender's message. Moreover, it is quite possible that, through the use of electronic mail, a quorum of a governmental body may receive information on a subject within the body's jurisdiction in an almost real-time basis, just as they would receive it in a physical gathering of the members.

Inadvertent violations of the open meetings law through the use of electronic communications can be reduced if electronic mail is used principally to transmit information one-way to a body's membership; if the originator of the message reminds recipients to reply only to the originator, if at all; and if message recipients are scrupulous about minimizing the content and distribution of their replies. Nevertheless, because of the absence of judicial guidance on the subject, and because electronic mail creates the risk that it will be used to carry on private debate and discussion on matters that belong at public meetings subject to public scrutiny, the Attorney General's Office strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body's realm of authority.[85] Members of a governmental body may not decide matters by email voting, even if the result of the vote is later ratified at a properly noticed meeting.[86]

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[83] 69 Op. Att'y Gen. 143, 145.
[84] Krischan Correspondence (Oct. 3, 2000).
[85] Krischan Correspondence (Oct. 3, 2000); Benson Correspondence (Mar. 12, 2004).
[86] I-01-10 (Jan. 25, 2010).

- **Walking Quorums**

The requirements of the open meetings law also extend to walking quorums. A "walking quorum" is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.[87] In *Conta*, the court recognized the danger that a walking quorum may produce a predetermined outcome and thus render the publicly-held meeting a mere formality.[88] The court commented that any attempt to avoid the appearance of a "meeting" through use of a walking quorum is subject to prosecution under the open meetings law.[89] The requirements of the open meetings law thus cannot be circumvented by using an agent or surrogate to poll the members of governmental bodies through a series of individual contacts. Such a circumvention "almost certainly" violates the open meetings law.[90]

The essential feature of a "walking quorum" is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. The signing, by members of a body, of a document asking that a subject be placed on the agenda of an upcoming meeting thus does not constitute a "walking quorum" where the signers have not engaged in substantive discussion or agreed on a uniform course of action regarding the proposed subject.[91] In contrast, where a majority of members of a body sign a document that expressly commits them to a future course of action, a court could find a walking quorum violation.[92]

- **Multiple Meetings**

When a quorum of the members of one governmental body attend a meeting of another governmental body under circumstances where their attendance is not chance or social, in order to gather information or otherwise engage in governmental business regarding a subject over which they have decision-making responsibility, two separate meetings occur, and notice must be given of both meetings.[93] The Attorney General has advised that, despite the "separate public notice" requirement of Wis. Stat. § 19.84(4), a single notice can be used, provided that the notice clearly and plainly indicates that a joint meeting will be held and gives the names of each of the bodies involved, and provided that the notice is published and/or posted in each place where meeting notices are generally published or posted for each governmental body involved.[94]

The kinds of multiple meetings presented in the *Badke* case, and the separate meeting notices required there, must be distinguished from circumstances where a subunit of a parent body meets during a recess from or immediately following the parent body's meeting, to discuss or act on a matter that was the subject of the parent body's meeting. In such circumstances, Wis. Stat. § 19.84(6) allows the subunit to meet on that matter without prior public notice.

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[87] *Showers*, 135 Wis. 2d at 92 (quoting *Conta*, 71 Wis. 2d at 687).
[88] *Conta*, 71 Wis. 2d at 685–88.
[89] *Id.* at 687.
[90] Clifford Correspondence (Apr. 28, 1986); *see also* Herbst Correspondence (July 16, 2008) (use of administrative staff to individually poll a quorum of members regarding how they would vote on a proposed motion at a future meeting is a prohibited walking quorum).
[91] Kay Correspondence (Apr. 25, 2007); Kittleson Correspondence (June 13, 2007).
[92] Huff Correspondence (Jan. 15, 2008); *see also* I-01-10 (Jan. 25, 2010) (use of email voting to decide matters fits the definition of a "walking quorum" violation of the open meetings law).
[93] *Badke*, 173 Wis. 2d at 577.
[94] Friedman Correspondence (Mar. 4, 2003).

- **Burden of Proof As to Existence of a Meeting**

  The presence of members of a governmental body does not, in itself, establish the existence of a "meeting" subject to the open meetings law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a "meeting."[95] The law also exempts any "social or chance gathering" not intended to circumvent the requirements of the open meetings law.[96] Thus, where one-half or more of the members of a governmental body rode to a meeting in the same vehicle, the law presumes that the members conducted a "meeting" which was subject to all of the requirements of the open meetings law.[97] Similarly, where a majority of members of a common council gathered at a lounge immediately following a common council meeting, a violation of the open meetings law was presumed.[98] The members of the governmental body may overcome the presumption by proving that they did not discuss any subject that was within the realm of the body's authority.[99]

  Where a person alleges that a gathering of less than one-half the members of a governmental body was held in violation of the open meetings law, that person has the burden of proving that the gathering constituted a "meeting" subject to the law.[100] That burden may be satisfied by proving: (1) that the members gathered to conduct governmental business and (2) that there was a sufficient number of members present to determine the body's course of action.

  Again, it is important to remember that the overriding policy of the open meetings law is to ensure public access to information about governmental affairs. Under the rule of liberally construing the law to ensure this purpose, any doubts as to whether a particular gathering constitutes a "meeting" subject to the open meetings law should be resolved in favor of complying with the provisions of the law.

WHAT IS REQUIRED IF THE OPEN MEETINGS LAW APPLIES?

The two most basic requirements of the open meetings law are that a governmental body:

(1) give advance public notice of each of its meetings, and

(2) conduct all of its business in open session, unless an exemption to the open session requirement applies.[101]

Notice Requirements

Wisconsin Stat. § 19.84, which sets forth the public notice requirements, specifies when, how, and to whom notice must be given, as well as what information a notice must contain.

- **To Whom and How Notice Must Be Given**

  The chief presiding officer of a governmental body, or the officer's designee, must give notice of each meeting of the body to: (1) the public; (2) any members of the news media who have submitted a written

[95] Wis. Stat. § 19.82(2).
[96] Wis. Stat. § 19.82(2).
[97] Karstens Correspondence (July 31, 2008).
[98] Dieck Correspondence (Sept. 12, 2007).
[99] *Id.*
[100] *Showers*, 135 Wis. 2d at 102.
[101] Wis. Stat. § 19.83.

request for notice; and (3) the official newspaper designated pursuant to state statute or, if none exists, a news medium likely to give notice in the area.[102]

The chief presiding officer may give notice of a meeting to the public by posting the notice in one or more places likely to be seen by the general public.[103] As a general rule, the Attorney General has advised posting notices at three different locations within the jurisdiction that the governmental body serves.[104] Alternatively, the chief presiding officer may give notice to the public by paid publication in a news medium likely to give notice in the jurisdictional area the body serves.[105] If the presiding officer gives notice in this manner, he or she must ensure that the notice is actually published. Meeting notices may also be posted at a governmental body's website as a supplement to other public notices, but web posting should not be used as a substitute for other methods of notice.[106] Nothing in the open meetings law prevents a governmental body from determining that multiple notice methods are necessary to provide adequate public notice of the body's meetings.[107] If a meeting notice is posted on a governmental body's website, amendments to the notice should also be posted.[108]

The chief presiding officer must also give notice of each meeting to members of the news media who have submitted a written request for notice.[109] Although this notice may be given in writing or by telephone,[110] it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists.[111] Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings.[112]

In addition, the chief presiding officer must give notice to the officially designated newspaper or, if none exists, to a news medium likely to give notice in the area.[113] The governmental body is not required to pay for and the newspaper is not required to publish such notice.[114] Note, however, that the requirement to provide notice to the officially designated newspaper is distinct from the requirement to provide notice to the public. If the chief presiding officer chooses to provide notice to the public by paid publication in a news medium, the officer must ensure that the notice is in fact published.

When a specific statute prescribes the type of meeting notice a governmental body must give, the body must comply with the requirements of that statute as well as the notice requirements of the open meetings law.[115] However, violations of those other statutory requirements are not redressable under the open meetings law. For example, the open meetings law is not implicated by a municipality's alleged failure to comply with the public notice requirements of Wis. Stat. ch. 985 when providing published notice of public hearings on proposed tax incremental financing districts.[116] Where a class 1 notice under Wis. Stat. ch. 985 has been published, however, the public notice requirement of the open meetings law is also thereby satisfied.[117]

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[102] Wis. Stat. § 19.84(1).
[103] 66 Op. Att'y Gen. 93, 95.
[104] 66 Op. Att'y Gen. 93, 95.
[105] 63 Op. Att'y Gen. 509, 510–11 (1974).
[106] Peck Correspondence (Apr. 17, 2006).
[107] Skindrud Correspondence (Mar. 12, 2009).
[108] Eckert Correspondence (July 25, 2007).
[109] *Lawton*, 2005 WI App 16, ¶ 7.
[110] 65 Op. Att'y Gen. Preface, v–vi (1976).
[111] 65 Op. Att'y Gen. 250, 251 (1976).
[112] 77 Op. Att'y Gen. 312, 313 (1988).
[113] *Lawton*, 2005 WI App 16, ¶ 7.
[114] 66 Op. Att'y Gen. 230, 231 (1977).
[115] Wis. Stat. § 19.84(1)(a).
[116] *See* Boyle Correspondence (May 4, 2005).
[117] Stalle Correspondence (Apr. 10, 2008).

- **Contents of Notice**

  - **In General**

Every public notice of a meeting must give the "time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof."[118] The chief presiding officer of the governmental body is responsible for providing notice, and when he or she is aware of matters which may come before the body, those matters must be included in the meeting notice.[119] The Attorney General's Office has advised that a chief presiding officer may not avoid liability for a legally deficient meeting notice by assigning to a non-member of the body the responsibility to create and provide a notice that complies with Wis. Stat. § 19.84(2).[120]

A frequently recurring question is how specific a subject-matter description in a meeting notice must be. Prior to June 13, 2007, this question was governed by the "bright-line" rule articulated in *State ex rel. H.D. Enterprises II, LLC v. City of Stoughton*.[121] Under that standard, a meeting notice adequately described a subject if it identified "the general topic of items to be discussed" and the simple heading "licenses," without more, was found sufficient to apprise the public that a city council would reconsider a previous decision to deny a liquor license to a particular local grocery store.[122]

On June 13, 2007, the Wisconsin Supreme Court overruled *H.D. Enterprises* and announced a new standard to be applied prospectively to all meeting notices issued after that date.[123] In *State ex rel. Buswell v. Tomah Area School District*, the court held that a public notice for a closed session for the purpose of "consideration and/or action concerning employment/negotiations with district personnel pursuant to Wis. Stat. § 19.85(1)(c)" was vague, misleading and legally insufficient, where the school board tentatively approved a collective bargaining agreement between it and the teacher's union.[124] In reaching that conclusion, the court determined that "the plain meaning of Wis. Stat. § 19.84(2) sets forth a reasonableness standard, and that such a standard strikes the proper balance contemplated in Wis. Stat. §§ 19.81(1) and (4) between the public's right to information and the government's need to efficiently conduct its business."[125] This reasonableness standard "requires a case-specific analysis" and "whether notice is sufficiently specific will depend upon what is reasonable under the circumstances."[126] In making that determination, the factors to be considered include: "[1] the burden of providing more detailed notice, [2] whether the subject is of particular public interest, and [3] whether it involves non-routine action that the public would be unlikely to anticipate."[127]

The first factor "balances the policy of providing greater information with the requirement that providing such information be 'compatible with the conduct of governmental affairs.'

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[118] Wis. Stat. § 19.84(2).
[119] 66 Op. Att'y Gen. 68, 70 (1977).
[120] Schuh Correspondence (Oct. 17, 2001).
[121] *State ex rel. H.D. Enters. II, LLC v. City of Stoughton*, 230 Wis. 2d 480, 602 N.W.2d 72 (Ct. App. 1999).
[122] *Id.* at 486–87.
[123] *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.
[124] *Id.* ¶¶ 6–7, 37–38, 41.
[125] *Id.* ¶ 3.
[126] *Id.* ¶ 22.
[127] *Id.* ¶ 28.

Wis. Stat. § 19.81(1)."[128] The determination must be made on a case-by-case basis.[129] "[T]he demands of specificity should not thwart the efficient administration of governmental business."[130]

The second factor takes into account "both the number of people interested and the intensity of that interest," though the level of interest is not dispositive, and must be balanced with other factors on a case-by-case basis.[131]

The third factor considers "whether the subject of the meeting is routine or novel."[132] There may be less need for specificity where a meeting subject occurs routinely, because members of the public are more likely to anticipate that the subject will be addressed.[133] "Novel issues may . . . require more specific notice."[134]

Whether a meeting notice is reasonable, according to the court, "cannot be determined from the standpoint of when the meeting actually takes place," but rather must be "based upon what information is available to the officer noticing the meeting at the time the notice is provided, and based upon what it would be reasonable for the officer to know."[135] Once reasonable notice has been given, "meeting participants would be free to discuss any aspect of the noticed subject matter, as well as issues that are reasonably related to it."[136] However, "a meeting cannot address topics unrelated to the information in the notice."[137] The Attorney General has similarly advised, in an informal opinion, that if a meeting notice contains a general subject matter designation and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from engaging in any information gathering or discussion or from taking any action that would deprive the public of information about the conduct of governmental business.[138]

Whether a meeting notice reasonably apprises the public of the meeting's subject matter may also depend in part on the surrounding circumstances. A notice that might be adequate, standing alone, may nonetheless fail to provide reasonable notice if it is accompanied by other statements or actions that expressly contradict it, or if the notice is misleading when considered in the light of long-standing policies of the governmental body.[139]

In order to draft a meeting notice that complies with the reasonableness standard, a good rule of thumb will be to ask whether a person interested in a specific subject would be aware, upon reading the notice, that the subject might be discussed. In an unpublished, post-*Buswell* decision, the court of appeals determined that a meeting notice for a closed session of a school board under Wis. Stat. § 19.85(1)(c) for the purpose of "[d]iscussion of the role, duties, and responsibilities of the [l]ibrary [d]irector and evaluation of job performance and possible action" gave sufficient

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[128] *Buswell*, 2007 WI 71, ¶ 29.
[129] *Id.*
[130] *Id.*
[131] *Id.* ¶ 30.
[132] *Id.* ¶ 31.
[133] *Id.*
[134] *Id.*
[135] *Id.* ¶ 32.
[136] *Id.* ¶ 34.
[137] *Id.*
[138] I-05-93 (Apr. 26, 1993).
[139] Linde Correspondence (May 4, 2007); Koss Correspondence (May 30, 2007); Musolf Correspondence (July 13, 2007); Martinson Correspondence (Mar. 2, 2009).

public notice of the board's discussion of the discipline and termination of the library director.[140] The court reasoned that, under *Buswell*, the "sufficiency of the notice will be based on the knowledge of the person posting notice at the time when it is posted."[141]

- **Generic Agenda Items**

Purely generic subject matter designations such as "old business," "new business," "miscellaneous business," "agenda revisions," or "such other matters as are authorized by law" are insufficient because, standing alone, they identify no particular subjects at all.[142] Similarly, the use of a notice heading that merely refers to an earlier meeting of the governmental body (or of some other body) without identifying any particular subject of discussion is so lacking in informational value that it almost certainly fails to give the public reasonable notice of what the governmental body intends to discuss.[143] If such a notice is meant to indicate an intent to simply receive and approve minutes of the designated meeting, it should so indicate and discussion should be limited to whether the minutes accurately reflect the substance of that meeting.[144]

Likewise, the Attorney General has advised that the practice of using such designations as "mayor comments," "alderman comments," or "staff comments" for the purpose of communicating information on matters within the scope of the governmental body's authority "is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful."[145] Because members and officials of governmental bodies have greater opportunities for input into the agenda-setting process than the public has, they should be held to a higher standard of specificity regarding the subjects they intend to address.[146]

- **Action Agenda Items**

The Wisconsin Court of Appeals has noted that "Wis. Stat. § 19.84(2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken."[147] The *Buswell* decision inferred from this that "adequate notice . . . may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified."[148] Both in *Olson* and in *Buswell*, however, the courts reiterated the principle—first recognized in *Badke*[149]—that the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend.[150] The *Olson* decision thus acknowledged that, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law.[151] Although the courts have not articulated the specific standard to apply to this question, it appears to follow from *Buswell* that the test would be whether, under the particular

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[140] *State ex rel. Wanninger v. City of Manitowoc Pub. Library Bd.*, No. 2011AP1059, 2012 WL 1192048, ¶¶ 19–21 (Wis. Ct. App. Apr. 11, 2012) (unpublished).
[141] *Id.* ¶ 21 (citing *Buswell*, 2007 WI 71, ¶ 32).
[142] Becker Correspondence (Nov. 30, 2004); Heupel Correspondence (Aug. 29, 2006).
[143] Erickson Correspondence (Apr. 22, 2009).
[144] *Id.*
[145] Rude Correspondence (Mar. 5, 2004).
[146] Thompson Correspondence (Sept. 3, 2004).
[147] *State ex rel. Olson v. City of Baraboo Joint Review Bd.*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796.
[148] *Buswell*, 2007 WI 71, ¶ 37 n.7.
[149] *Badke*, 173 Wis. 2d at 573-74, 577–78.
[150] *Buswell*, 2007 WI 71, ¶ 26; *Olson*, 2002 WI App 64, ¶ 15.
[151] *Olson*, 2002 WI App 64, ¶ 15.

factual circumstances of the case, the notice reasonably alerts the public to the importance of the meeting.[152]

Another frequently asked question is whether a governmental body may act on a motion for reconsideration of a matter voted on at a previous meeting, if the motion is brought under a general subject matter designation. The Attorney General has advised that a member may move for reconsideration under a general subject matter designation, but that any discussion or action on the motion should be set over to a later meeting for which specific notice of the subject matter of the motion is given.[153]

- **Notice of Closed Sessions**

The notice provision in Wis. Stat. § 19.84(2) requires that if the chief presiding officer or the officer's designee knows at the time he or she gives notice of a meeting that a closed session is contemplated, the notice must contain the subject matter to be considered in closed session. Such notice "must contain enough information for the public to discern whether the subject matter is authorized for closed session under § 19.85(1)."[154] The Attorney General has advised that notice of closed sessions must contain the specific nature of the business, as well as the exemption(s) under which the chief presiding officer believes a closed session is authorized.[155] Merely identifying and quoting from a statutory exemption does not reasonably identify any particular subject that might be taken up thereunder and thus is not adequate notice of a closed session.[156] In *State ex rel. Schaeve v. Van Lare*, the court held that a notice to convene in closed session under Wis. Stat. § 19.85(1)(b) "to conduct a hearing to consider the possible discipline of a public employee" was sufficient.[157]

- **Time of Notice**

The provision in Wis. Stat. § 19.84(3) requires that every public notice of a meeting be given at least 24 hours in advance of the meeting, unless "for good cause" such notice is "impossible or impractical." If "good cause" exists, the notice should be given as soon as possible and must be given at least two hours in advance of the meeting.[158]

No Wisconsin court decisions or Attorney General opinions discuss what constitutes "good cause" to provide less than twenty-four-hour notice of a meeting. This provision, like all other provisions of the open meetings law, must be construed in favor of providing the public with the fullest and most complete information about governmental affairs as is compatible with the conduct of governmental business.[159] If there is any doubt whether "good cause" exists, the governmental body should provide the full twenty-four-hour notice.

When calculating the twenty-four hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and legal holidays shall be excluded. Posting notice of a Monday meeting on the preceding Sunday is,

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[152] Herbst Correspondence (July 16, 2008).
[153] Bukowski Correspondence (May 5, 1986).
[154] *Buswell*, 2007 WI 71, ¶ 37 n.7.
[155] 66 Op. Att'y Gen. 93, 98.
[156] Weinschenk Correspondence (Dec. 29, 2006); Anderson Correspondence (Feb. 13, 2007).
[157] *State ex rel. Schaeve v. Van Lare,* 125 Wis. 2d 40, 47, 370 N.W.2d 271 (Ct. App. 1985).
[158] Wis. Stat. § 19.84(3).
[159] Wis. Stat. § 19.81(1), (4).

therefore, inadequate, but posting such notice on the preceding Saturday would suffice, as long as the posting location is open to the public on Saturdays.[160]

Wisconsin Stat. § 19.84(4) provides that separate notice for each meeting of a governmental body must be given at a date and time reasonably close to the meeting date. A single notice that lists all the meetings that a governmental body plans to hold over a given week, month, or year does not comply with the notice requirements of the open meetings law.[161] Similarly, a meeting notice that states that a quorum of various town governmental bodies may participate at the same time in a multi-month, on-line discussion of town issues fails to satisfy the "separate notice" requirement.[162]

University of Wisconsin departments and their subunits, as well as the Olympic ice training rink, are exempt from the specific notice requirements in Wis. Stat. § 19.84(1)–(4). Those bodies are simply required to provide notice "which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice."[163] Also exempt from the specific notice requirements are certain meetings of subunits of parent bodies held during or immediately before or after a meeting of the parent body.[164]

- **Compliance With Notice**

A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice.[165] There is no requirement, however, that a governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time.[166] Nor is a governmental body required to actually discuss every item contained in the public notice. It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date.[167]

Open Session Requirements

- **Accessibility**

In addition to requiring advance public notice of every meeting of a governmental body, the open meetings law also requires that "all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times."[168] Similarly, an "open session" is defined in Wis. Stat. § 19.82(3) as "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." Every meeting of a governmental body must initially be convened in "open session."[169] All business of any kind, formal or informal, must be initiated, discussed, and acted upon in "open session," unless one of the exemptions set forth in Wis. Stat. § 19.85(1) applies.[170]

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[160] Caylor Correspondence (Dec. 6, 2007).
[161] *See* 63 Op. Att'y Gen. 509, 513.
[162] Connors/Haag Correspondence (May 26, 2009).
[163] Wis. Stat. § 19.84(5).
[164] *See* Wis. Stat. § 19.84(6).
[165] *Buswell*, 2007 WI 71, ¶ 34.
[166] Stencil Correspondence (Mar. 6, 2008).
[167] Black Correspondence (Apr. 22, 2009).
[168] Wis. Stat. § 19.81(2).
[169] *See* Wis. Stat. §§ 19.83, 19.85(1).
[170] Wis. Stat. § 19.83.

The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in rooms that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings.[171] Absolute access is not, however, required.[172] In *Badke*, for instance, the Wisconsin Supreme Court concluded that a village board meeting that was held in a village hall capable of holding 55-75 people was reasonably accessible, although three members of the public were turned away due to overcrowding.[173] Whether a meeting place is reasonably accessible depends on the facts in each individual case. Any doubt as to whether a meeting facility is large enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility.

The policy of openness and accessibility favors governmental bodies holding their meetings in public places, such as a municipal hall or school, rather than on private premises.[174] The law prohibits meetings on private premises that are not open and reasonably accessible to the public.[175] Generally speaking, places such as a private room in a restaurant or a dining room in a private club are not considered "reasonably accessible." A governmental body should meet on private premises only in exceptional cases, where the governmental body has a specific reason for doing so which does not compromise the public's right to information about governmental affairs.

The policy of openness and accessibility also requires that governmental bodies hold their meetings at locations near to the public they serve. Accordingly, the Attorney General has concluded that a school board meeting held forty miles from the district which the school board served was not "reasonably accessible" within the meaning of the open meetings law.[176] The Attorney General advises that, in order to comply with the "reasonably accessible" requirement, governmental bodies should conduct all their meetings at a location within the territory they serve, unless there are special circumstances that make it impossible or impractical to do so.[177]

Occasionally, a governmental body may need to leave the place where the meeting began in order to accomplish its business—*e.g.*, inspection of a property or construction projects. The Attorney General's Office has advised that such off-site business may be conducted consistently with the requirements of the open meetings law, as long as certain precautions are taken. First the public notice of the meeting must list all of the locations to be visited in the order in which they will be visited. This makes it possible for a member of the public to follow the governmental body to each location or to join the governmental body at any particular location. Second, each location at which government business is to be conducted must itself be reasonably accessible to the public at all times when such business is taking place. Third, care must be taken to ensure that government business is discussed only during those times when the members of the body are convened at one of the particular locations for which notice has been given. The members of the governmental body may travel together or separately, but if half or more of them travel together, they may not discuss government business when their vehicle is in motion, because a moving vehicle is not accessible to the public.[178]

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[171] *Badke*, 173 Wis. 2d at 580–81.
[172] *Id.*
[173] *Id.* at 561, 563, 581.
[174] *See* 67 Op. Att'y Gen. 125, 127 (1978).
[175] Wis. Stat. § 19.82(3).
[176] Miller Correspondence (May 25, 1977).
[177] I-29-91 (Oct. 17, 1991).
[178] Rappert Correspondence (Apr. 8, 1993); Musolf Correspondence (July 13, 2007).

- **Access for Persons With Disabilities**

The public accessibility requirements of the open meetings law have long been interpreted by the Attorney General as meaning that every meeting subject to the law must be held in a location that is "reasonably accessible to all citizens, including those with disabilities."[179] In selecting a meeting facility that satisfies this requirement, a local governmental body has more leeway than does a state governmental body. For a state body, the facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *without* assistance.[180] In the case of a local governmental body, however, a meeting facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *with* assistance.[181] In order to optimally comply with the spirit of open government, however, local bodies should also, whenever possible, meet in buildings and rooms that are accessible without assistance.

The Americans with Disabilities Act and other federal laws governing the rights of persons with disabilities may additionally require governmental bodies to meet accessibility and reasonable accommodation requirements that exceed the requirements imposed by Wisconsin's open meetings law. For more detailed assistance regarding such matters, both government officials and members of the public are encouraged to consult with their own attorneys or to contact the appropriate federal enforcement authorities.

- **Tape Recording and Videotaping**

The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session. The open meetings law also grants citizens the right to tape record or videotape open session meetings, as long as doing so does not disrupt the meeting. The law explicitly states that a governmental body must make a reasonable effort to accommodate anyone who wants to record, film, or photograph an open session meeting, as long as the activity does not interfere with the meeting.[182]

In contrast, the open meetings law does not require a governmental body to permit recording of an authorized closed session.[183] If a governmental body wishes to record its own closed meetings, it should arrange for the security of the records to prevent their improper disclosure.[184]

- **Citizen Participation**

In general, the open meetings law grants citizens the right to attend and observe open session meetings of governmental bodies, but does not require a governmental body to allow members of the public to speak or actively participate in the body's meeting.[185] There are some other state statutes that require governmental bodies to hold public hearings on specified matters.[186] Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings.[187]

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[179] 69 Op. Att'y Gen. 251, 252 (1980).
[180] *See* Wis. Stat. §§ 19.82(3), 101.13(1); 69 Op. Att'y Gen. 251, 252.
[181] 69 Op. Att'y Gen. 251, 253.
[182] Wis. Stat. § 19.90.
[183] 66 Op. Att'y Gen. 318, 325 (1977); Maroney Correspondence (Oct. 31, 2006).
[184] 66 Op. Att'y Gen. 318, 325.
[185] Lundquist Correspondence (Oct. 25, 2005).
[186] *See, e.g.*, Wis. Stat. §§ 65.90(4) (requiring public hearing before adoption of a municipal budget), 66.1105(4)(a) (requiring public hearing before creation of a tax incremental finance district).
[187] Zwieg Correspondence (July 13, 2006); Chiaverotti Correspondence (Sept. 19, 2006).

Although it is not required, the open meetings law does permit a governmental body to set aside a portion of an open meeting as a public comment period.[188] Such a period must be included on the meeting notice. During such a period, the body may receive information from the public and may discuss any matter raised by the public. If a member of the public raises a subject that does not appear on the meeting notice, however, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting for which more specific notice can be given. In addition, the body may not take formal action on a subject raised in the public comment period, unless that subject is also identified in the meeting notice.

- **Ballots, Votes, and Records, Including Meeting Minutes**

No secret ballot may be used to determine any election or decision of a governmental body, except the election of officers of a body.[189] For example, a body cannot vote by secret ballot to fill a vacancy on a city council.[190] If a member of a governmental body requests that the vote of each member on a particular matter be recorded, a voice vote or a vote by a show of hands is not permissible unless the vote is unanimous and the minutes reflect who is present for the vote.[191] A governmental body may not use email ballots to decide matters, even if the result of the vote is later ratified at a properly noticed meeting.[192]

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings.[193] This requirement applies to both open and closed sessions.[194] Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording.[195] As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law.[196]

The open meetings law does not specify a timeframe in which a body must create a record of all motions and roll-call votes. In the absence of a specific statutory timeframe, issues can arise. In *Journal Times v. City of Racine Board of Police and Fire Commissioners*,[197] the Racine Board of Police and Fire Commissioners voted on a motion in a closed session meeting, but did not contemporaneously create a record of the motion. Instead, the motion was included in the minutes of the meeting, which were not finished and approved by the Commission until three months after the meeting. In a non-party brief, DOJ argued that Wis. Stat. § 19.88(3) should be construed as requiring that a record of all motions must be made at the time of the meeting in question or as soon thereafter as practicable.[198] While the court resolved the case on other grounds without deciding this issue, as a best practice, it is advisable that the motions and roll call

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[188] Wis. Stat. §§ 19.83(2), 19.84(2).
[189] Wis. Stat. § 19.88(1).
[190] 65 Op. Att'y Gen. 131 (1976).
[191] I-95-89 (Nov. 13, 1989).
[192] I-01-10 (Jan. 25, 2010).
[193] Wis. Stat. § 19.88(3).
[194] De Moya Correspondence (June 17, 2009).
[195] I-95-89 (Nov. 13, 1989).
[196] I-20-89 (Mar. 8, 1989); *see, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk), 60.33(2)(a) (town clerk), 61.25(3) (village clerk), 62.09(11)(b) (city clerk), 62.13(5)(i) (police and fire commission), 66.1001(4)(b) (plan commission), 70.47(7)(bb) (board of review).
[197] *Journal Times v. City of Racine Bd. of Police & Fire Comm'rs*, 2015 WI 56, 362 Wis. 2d 577, 866 N.W.2d 563.
[198] Non-party Brief of Wisconsin Department of Justice at 6, *Journal Times v. City of Racine Bd. of Police & Fire Comm'rs*, 2015 WI 56 (No. 2013AP1715).

votes of a meeting of a governmental body be recorded at the time of the meeting or as soon thereafter as practicable.

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and votes should be, the general legislative policy of the open meetings law is that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business."[199] In light of that policy, it seems clear that a governmental body's records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted.[200]

Nothing in the open meetings law prohibits a body from making decisions by general consent, without a formal vote, but such informal procedures are typically only appropriate for routine procedural matters such as approving the minutes of prior meetings or adjourning. In any event, regardless of whether a decision is made by consensus or by some other method, Wis. Stat. § 19.88(3) still requires the body to create and preserve a meaningful record of that decision.[201] "Consent agendas," whereby a body discusses individual items of business under separate agenda headings, but takes action on all discussed items by adopting a single motion to approve all the items previously discussed, are likely insufficient to satisfy the recordkeeping requirements of Wis. Stat. § 19.88(3).[202]

Wisconsin Stat. § 19.88(3) also provides that meeting records created under that statute—whether for an open or a closed session—must be open to public inspection to the extent prescribed in the state public records law. Because the records law contains no general exemption for records created during a closed session, a custodian must release such items unless the particular record at issue is subject to a specific statutory exemption or the custodian concludes that the harm to the public from its release would outweigh the benefit to the public.[203] There is a strong presumption under the public records law that release of records is in the public interest. As long as the reasons for convening in closed session continue to exist, however, the custodian may be able to justify not disclosing any information that requires confidentiality. But the custodian still must separate information that can be made public from that which cannot and must disclose the former, even if the latter can be withheld. In addition, once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them.[204]

WHEN IS IT PERMISSIBLE TO CONVENE IN CLOSED SESSION?

Every meeting of a governmental body must initially be convened in open session. All business of any kind, formal or informal, must be initiated, discussed, and acted upon in open session unless one of the exemptions in Wis. Stat. § 19.85(1) applies.[205]

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[199] Wis. Stat. § 19.81(1).
[200] De Moya Correspondence (June 17, 2009).
[201] Huebscher Correspondence (May 23, 2008).
[202] Perlick Correspondence (May 12, 2005).
[203] De Moya Correspondence (June 17, 2009).
[204] *See* 67 Op. Att'y Gen. 117, 119 (1978).
[205] Wis. Stat. § 19.83.

Notice of Closed Session

The notice provision in Wis. Stat. § 19.84(2) requires that, if the chief presiding officer of a governmental body is aware that a closed session is contemplated at the time he or she gives public notice of the meeting, the notice must contain the subject matter of the closed session.

If the chief presiding officer was not aware of a contemplated closed session at the time he or she gave notice of the meeting, that does not foreclose a governmental body from going into closed session under Wis. Stat. § 19.85(1) to discuss an item contained in the notice for the open session.[206] In both cases, a governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) before going into closed session.

Procedure for Convening in Closed Session

Every meeting of a governmental body must initially be convened in open session.[207] Before convening in closed session, the governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) which requires that the governmental body pass a motion, by recorded majority vote, to convene in closed session. If a motion is unanimous, there is no requirement to record the votes individually.[208] Before the governmental body votes on the motion, the chief presiding officer must announce and record in open session the nature of the business to be discussed and the specific statutory exemption which is claimed to authorize the closed session.[209] Stating only the statute section number of the applicable exemption is not sufficient because many exemptions contain more than one reason for authorizing closure. For example, Wis. Stat. § 19.85(1)(c) allows governmental bodies to use closed sessions to interview candidates for positions of employment, to consider promotions of particular employees, to consider the compensation of particular employees, and to conduct employee evaluations—each of which is a different reason that should be identified in the meeting notice and in the motion to convene into closed session.[210] Similarly, merely identifying and quoting from a statutory exemption does not adequately announce what particular part of the governmental body's business is to be considered under that exemption.[211] Enough specificity is needed in describing the subject matter of the contemplated closed meeting to enable the members of the governmental body to intelligently vote on the motion to close the meeting.[212] If several exemptions are relied on to authorize a closed discussion of several subjects, the motion should make it clear which exemptions correspond to which subjects.[213] The governmental body must limit its discussion in closed session to the business specified in the announcement.[214]

Authorized Closed Sessions

Wisconsin Stat. § 19.85(1) contains eleven exemptions to the open session requirement which permit, but do not require, a governmental body to convene in closed session. Because the law is designed to provide the public with the most complete information possible regarding the affairs of government, exemptions should be strictly construed.[215] The policy of the open meetings law dictates that the exemptions be invoked sparingly and only where necessary to protect the public interest. If there is any doubt as to whether closure is permitted under a given exemption, the governmental body should hold the meeting in open session.[216]

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[206] 66 Op. Att'y Gen. 106, 108 (1977).
[207] Wis. Stat. §§ 19.83, 19.85(1).
[208] *Schaeve*, 125 Wis. 2d at 51.
[209] 66 Op. Att'y Gen. 93, 97-98.
[210] Reynolds/Kreibich Correspondence (Oct. 23, 2003).
[211] Weinschenk Correspondence (Dec. 29, 2006); Anderson Correspondence (Feb. 13, 2007).
[212] Heule Correspondence (June 29, 1977); *see also Buswell*, 2007 WI 71, ¶ 37 n.7.
[213] Brisco Correspondence (Dec. 13, 2005).
[214] Wis. Stat. § 19.85(1).
[215] *State ex rel. Hodge v. Town of Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993); *Citizens for Responsible Dev.*, 2007 WI App 114, ¶ 8.
[216] *See* 74 Op. Att'y Gen. 70, 73 (1985).

The following are some of the most frequently cited exemptions.

- **Judicial or Quasi-Judicial Hearings**

  Wisconsin Stat. § 19.85(1)(a) authorizes a closed session for "[d]eliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body." In order for this exemption to apply, there must be a "case" that is the subject of a quasi-judicial proceeding.[217] The Wisconsin Supreme Court held that the term "case" contemplates a controversy among parties that are adverse to one another; it does not include a mere request for a permit.[218] An example of a governmental body that considers "cases" and thus can convene in closed session under Wis. Stat. § 19.85(1)(a), where appropriate, is the Wisconsin Employment Relations Commission.[219] Bodies that consider zoning appeals, such as boards of zoning appeals and boards of adjustment, may not convene in closed session.[220] The meetings of town, village, and city boards of review regarding appeals of property tax assessments must also be conducted in open session.[221]

- **Employment and Licensing Matters**

  - **Consideration of Dismissal, Demotion, Discipline, Licensing, and Tenure**

    Two of the statutory exemptions to the open session requirement relate specifically to employment or licensing of an individual. The first, Wis. Stat. § 19.85(1)(b), authorizes a closed session for:

    > Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter . . . .

    If a closed session for such a purpose will include an evidentiary hearing or final action, then the governmental body must give the public employee or licensee actual notice of that closed hearing and/or closed final action. Evidentiary hearings are characterized by the formal examination of charges and by taking testimony and receiving evidence in support or defense of specific charges that may have been made.[222] Such hearings may be required by statute, ordinance or rule, by collective bargaining agreement, or by circumstances in which the employee or licensee is the subject of charges that might damage the person's good name, reputation, honor or integrity, or where the governmental body's action might impose substantial stigma or disability upon the person.[223]

    Where actual notice is required, the notice must state that the person has a right to request that any such evidentiary hearing or final action be conducted in open session. If the person makes such a request, the governmental body may not conduct an evidentiary hearing or take final

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[217] *Hodge*, 180 Wis. 2d at 72; *cf. State ex rel. Cities Serv. Oil Co. v. Bd. of Appeals of Milwaukee*, 21 Wis. 2d 516, 537, 124 N.W.2d 809 (1963) (allowing zoning appeal boards to deliberate in closed session after hearing, decided before the Legislature added the "case" requirement in 1977).
[218] *Hodge*, 180 Wis. 2d at 74.
[219] 68 Op. Att'y Gen. 171 (1979).
[220] Wis. Stat. §§ 59.694 (counties), 60.65(5) (towns), 62.23(7)(e)3. (cities); White Correspondence (May 1, 2009).
[221] Wis. Stat. § 70.47(2m).
[222] 66 Op. Att'y Gen. 211, 214 (1977).
[223] *Id*.

action in closed session. The body may, however, convene in closed session under Wis. Stat. § 19.85(1)(b) for the purpose of deliberating about the dismissal, demotion, licensing, discipline, or investigation of charges. Following such closed deliberations, the body may reconvene in open session and take final action related to the person's employment or license.[224]

Nothing in Wis. Stat. § 19.85(1) permits a person who is not a member of the governmental body to demand that the body meet in closed session. The Wisconsin Court of Appeals held that a governmental body was not required to comply with a public employee's request that the body convene in closed session to vote on the employee's dismissal.[225]

- **Consideration of Employment, Promotion, Compensation, and Performance Evaluations**

The second exemption which relates to employment matters authorizes a closed session for "[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility."[226]

The Attorney General's Office has interpreted this exemption to extend to public officers, such as a police chief, whom the governmental body has jurisdiction to employ.[227] The Attorney General's Office has also concluded that this exemption is sufficiently broad to authorize convening in closed session to interview and consider applicants for positions of employment.[228]

An elected official is not considered a "public employee over which the governmental body has jurisdiction or exercises responsibility."[229] Thus, Wis. Stat. § 19.85(1)(c) does not authorize a county board to convene in closed session to consider appointments of county board members to a county board committee.[230]

The language of the exemption refers to a "public employee" rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies "from potential lawsuits resulting from open discussion of sensitive information."[231] It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees.[232] Thus, Wis. Stat. § 19.85(1)(c) authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant but does not authorize a closed session to discuss the qualifications and salary range for the position in general.[233] The section authorizes closure to determine increases in compensation for specific employees.[234] Similarly, Wis. Stat. § 19.85(1)(c) authorizes closure to determine which employees to lay off, or whether to non-renew an employee's contract at the

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[224] *See State ex rel. Epping v. City of Neillsville Common Council*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998); Johnson Correspondence (Feb. 27, 2009).
[225] *Schaeve*, 125 Wis. 2d at 40.
[226] Wis. Stat. § 19.85(1)(c).
[227] Caturia Correspondence (Sept. 20, 1982).
[228] *Id.*
[229] Wis. Stat. § 19.85(1)(c).
[230] 76 Op. Att'y Gen. 276 (1987).
[231] *Oshkosh Nw. Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985).
[232] *See* 80 Op. Att'y Gen. 176, 177–78 (1992). *See also Buswell*, 2007 WI 71, ¶ 37 (noting that Wis. Stat. § 19.85(1)(c) "provides for closed sessions for considering matters related to *individual* employees").
[233] 80 Op. Att'y Gen. 176, 178–82.
[234] 67 Op. Att'y Gen. 117, 118.

expiration of the contract term,[235] but not to determine whether to reduce or increase staffing, in general.

- **Consideration of Financial, Medical, Social, or Personal Information**

The exemption in Wis. Stat. § 19.85(1)(f) authorizes a closed session for:

> Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

An example is where a state employee was alleged to have violated a state law.[236] This exemption is not limited to considerations involving public employees. For example, the Attorney General concluded that, in an exceptional case, a school board could convene in closed session under the exemption to interview a candidate to fill a vacancy on the school board if information is expected to damage a reputation, however, the vote should be in open session.[237]

At the same time, the Attorney General cautioned that the exemption in Wis. Stat. § 19.85(1)(f) is extremely limited. It applies only where a member of a governmental body has actual knowledge of information that will have a substantial adverse effect on the person mentioned or involved. Moreover, the exemption authorizes closure only for the duration of the discussions about the information specified in Wis. Stat. § 19.85(1)(f). Thus, the exemption would not authorize a school board to actually appoint a new member to the board in closed session.[238]

- **Conducting Public Business With Competitive or Bargaining Implications**

A closed session is authorized for "[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session."[239] This exemption is not limited to deliberating or negotiating the purchase of public property or the investing of public funds. For example, the Attorney General has determined that the exemption authorized a school board to convene in closed session to develop negotiating strategies for collective bargaining.[240]

Governmental officials must keep in mind, however, that this exemption applies only when "competitive or bargaining reasons require a closed session."[241] The exemption is restrictive rather than expansive.[242] When a governmental body seeks to convene in closed session under Wis. Stat. § 19.85(1)(e), the burden is on the body to show that competitive or bargaining interests require closure.[243] An announcement of a contemplated closed session under Wis. Stat. § 19.85(1)(e) that provides only a conclusory assertion that the subject of the session will involve competitive or bargaining issues is inadequate because it does not reflect

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[235] *See* 66 Op. Att'y Gen. 211, 213.
[236] *See Wis. State Journal v. Univ. of Wis.-Platteville*, 160 Wis. 2d 31, 38, 465 N.W.2d 266 (Ct. App. 1990).
[237] 74 Op. Att'y Gen. 70, 72.
[238] *Id.*
[239] Wis. Stat. § 19.85(1)(e).
[240] 66 Op. Att'y Gen. 93, 96 (the opinion advised that governmental bodies that are not formed exclusively for collective bargaining comply with the open meetings law when meeting for the purpose of developing negotiating strategy).
[241] Wis. Stat. § 19.85(1)(e).
[242] *Citizens for Responsible Dev.*, 2007 WI App 114, ¶¶ 6–8.
[243] *Id.* ¶ 10.

how the proposed discussion would implicate the competitive or bargaining interests of the body or the body's basis for concluding that the subject falls within the exemption.[244]

The use of the word "require" in Wis. Stat. § 19.85(1)(e) limits that exemption to situations in which competitive or bargaining reasons leave a governmental body with no option other than to close the meeting.[245] On the facts as presented in *Citizens for Responsible Development*, the court thus found that a desire or request for confidentiality by a private developer engaged in negotiations with a city was not sufficient to justify a closed session for competitive or bargaining reasons.[246] Nor did the fear that public statements might attract the attention of potential private competitors for the developer justify closure under this exemption, because the court found that such competition would be likely to benefit, rather than harm, the city's competitive or bargaining interests.[247] Similarly, holding closed meetings about ongoing negotiations between the city and private parties would not prevent those parties from seeking a better deal elsewhere. The possibility of such competition, therefore, also did not justify closure under Wis. Stat. § 19.85(1)(e).[248] The exemption did, however, allow the city to close those *portions* of its meetings that would reveal its negotiation strategy or the price it planned to offer for a purchase of property, but it could not close other parts of the meetings.[249] The competitive or bargaining interests to be protected by a closed session under Wis. Stat. § 19.85(1)(e) do not have to be shared by every member of the body or by every municipality participating in an intergovernmental body.[250]

Consistent with the above emphasis on the word "require" in Wis. Stat. § 19.85(1)(e), the Attorney General has advised that mere inconvenience, delay, embarrassment, frustration, or even speculation as to the probability of success would be an insufficient basis to close a meeting.[251] Competitive or bargaining reasons permit a closed session where the discussion will directly and substantially affect negotiations with a third party, but not where the discussions might be one of several factors that indirectly influence the outcome of those negotiations.[252] The meetings of a governmental body also may not be closed in a blanket manner merely because they may at times involve competitive or bargaining issues, but rather may only be closed on those occasions when the particular meeting is going to involve discussion which, if held in open session, would harm the competitive or bargaining interests at issue.[253] Once a governmental body's bargaining team has reached a tentative agreement, the discussion whether the body should ratify the agreement should be conducted in open session.[254]

- **Conferring With Legal Counsel With Respect to Litigation**

The exemption in Wis. Stat. § 19.85(1)(g) authorizes a closed session for "[c]onferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved."

The presence of the governmental body's legal counsel is not, in itself, sufficient reason to authorize closure under this exemption. The exemption applies only if the legal counsel is rendering advice on strategy to adopt for litigation in which the governmental body is or is likely to become involved.

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[244] Wirth/Lamoreaux Correspondence (May 30, 2007).
[245] *Citizens for Responsible Dev.*, 2007 WI App 114, ¶ 14.
[246] *Id.* ¶¶ 13–14.
[247] *Id.* ¶ 14 n.6.
[248] *Id.* ¶¶ 15–16.
[249] *Id.* ¶ 19.
[250] *State ex rel. Herro v. Vill. of McFarland*, 2007 WI App 172, ¶¶ 16–19, 303 Wis. 2d 749, 737 N.W.2d 55.
[251] Gempeler Correspondence (Feb. 12, 1979).
[252] Henderson Correspondence (Mar. 24, 1992).
[253] I-04-09 (Sept. 28, 2009).
[254] 81 Op. Att'y Gen. 139, 141 (1994).

There is no clear-cut standard for determining whether a governmental body is "likely" to become involved in litigation. Members of a governmental body should rely on the body's legal counsel for advice on whether litigation is sufficiently "likely" to authorize a closed session under Wis. Stat. § 19.85(1)(g).

- **Remaining Exemptions**

  The remaining exemptions in Wis. Stat. § 19.85(1) authorize closure for:

  1. Considering applications for probation or parole, or considering strategy for crime detection or prevention.[255]

  2. Specified deliberations by the state council on unemployment insurance and the state council on worker's compensation.[256]

  3. Specified deliberations involving the location of a burial site.[257]

  4. Consideration of requests for confidential written advice from the government accountability board or from any county or municipal ethics board.[258]

Who May Attend a Closed Session

A frequently asked question concerns who may attend the closed session meetings of a governmental body. In general, the open meetings law gives wide discretion to a governmental body to admit into a closed session anyone whose presence the body determines is necessary for the consideration of the matter that is the subject of the meeting.[259] If the governmental body is a subunit of a parent body, the subunit must allow members of the parent body to attend its open session and closed session meetings, unless the rules of the parent body or subunit provide otherwise.[260] Where enough non-members of a subunit attend the subunit's meetings that a quorum of the parent body is present, a meeting of the parent body occurs, and the notice requirements of Wis. Stat. § 19.84 apply.[261]

Voting in an Authorized Closed Session

The Wisconsin Supreme Court has held that Wis. Stat. § 14.90 (1959), a predecessor to the current open meetings law, authorized a governmental body to vote in closed session on matters that were the legitimate subject of deliberation in closed session.[262] The court reasoned that "voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process."[263]

In *Schaeve*,[264] the Wisconsin Court of Appeals commented on the propriety of voting in closed session under the current open meetings law. The court indicated that a governmental body must vote in open session unless an

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[255] Wis. Stat. § 19.85(1)(d).
[256] Wis. Stat. § 19.85(1)(ee), (eg).
[257] Wis. Stat. § 19.85(1)(em).
[258] Wis. Stat. § 19.85(1)(h).
[259] Schuh Correspondence (Dec. 15, 1988).
[260] Wis. Stat. § 19.89.
[261] *Badke*, 173 Wis. 2d at 579.
[262] *Cities Serv. Oil Co.*, 21 Wis. 2d at 538.
[263] *Id.* at 539.
[264] *Schaeve*, 125 Wis. 2d at 53.

exemption in Wis. Stat. § 19.85(1) expressly authorizes voting in closed session.[265] The court's statement was not essential to its holding and it is unclear whether the supreme court would adopt a similar interpretation of the current open meetings law.

Given this uncertainty, the Attorney General advises that a governmental body vote in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session under Wis. Stat. § 19.85(1). Stated another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session.[266]

None of the exemptions in Wis. Stat. § 19.85(1) authorize a governmental body to consider in closed session the ratification or final approval of a collective bargaining agreement negotiated by or for the body.[267]

Reconvening in Open Session

A governmental body may not commence a meeting, convene in closed session, and subsequently reconvene in open session within twelve hours after completion of a closed session, unless public notice of the subsequent open session is given "at the same time and in the same manner" as the public notice of the prior open session.[268] The notice need not specify the time the governmental body expects to reconvene in open session if the body plans to reconvene immediately following the closed session. If the notice does specify the time, the body must wait until that time to reconvene in open session. When a governmental body reconvenes in open session following a closed session, the presiding officer has a duty to open the door of the meeting room and inform any members of the public present that the session is open.[269]

WHO ENFORCES THE OPEN MEETINGS LAW AND WHAT ARE ITS PENALTIES?

Enforcement

Both the Attorney General and the district attorneys have authority to enforce the open meetings law.[270] In most cases, enforcement at the local level has the greatest chance of success due to the need for intensive factual investigation, the district attorneys' familiarity with the local rules of procedure, and the need to assemble witnesses and material evidence.[271] Under certain circumstances, the Attorney General may elect to prosecute complaints involving a matter of statewide concern.

A district attorney has authority to enforce the open meetings law only after an individual files a verified open meetings law complaint with the district attorney.[272] Actions to enforce the open meetings law are exempt from the notice of claim requirements of Wis. Stat. § 893.80.[273] The verified complaint must be signed by the individual and notarized and should include available information that will be helpful to investigators, such as: identifying the governmental body and any members thereof alleged to have violated the law; describing the factual circumstances of the alleged violations; identifying witnesses with relevant evidence; and identifying any

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[265] *Schaeve*, 125 Wis. 2d at 53.
[266] *Accord Epping*, 218 Wis. 2d at 524 n.4 (even if deliberations were conducted in an unlawful closed session, a subsequent vote taken in open session could not be voided).
[267] Wis. Stat. § 19.85(3); 81 Op. Att'y Gen. 139.
[268] Wis. Stat. § 19.85(2).
[269] Claybaugh Correspondence (Feb. 16, 2006).
[270] Wis. Stat. § 19.97(1).
[271] 65 Op. Att'y Gen. Preface, ii.
[272] *See* Wis. Stat. § 19.97(1).
[273] *E-Z Roll Off, LLC v. Cty. of Oneida*, 2011 WI 71, ¶ 21, 335 Wis. 2d 720, 800 N.W.2d 421 (citing *State ex rel. Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 597, 547 N.W.2d 587 (1996)).

relevant documentary evidence. The district attorney has broad discretion to determine whether a verified complaint should be prosecuted.[274] An enforcement action brought by a district attorney or by the Attorney General must be commenced within six years after the cause of action accrues or be barred.[275]

Proceedings to enforce the open meetings law are civil actions subject to the rules of civil procedure, rather than criminal procedure, and governed by the ordinary civil standard of proof, rather than a heightened standard of proof such as would apply in a criminal or quasi-criminal proceeding. Accordingly, enforcement of the open meetings law does not involve such practices as arrest, posting bond, entering criminal-type pleas, or any other aspects of criminal procedure. Rather, an open meetings law enforcement action is commenced like any civil action by filing and serving a summons and complaint. In addition, the open meetings law cannot be enforced by the issuance of a citation, in the way that other civil forfeitures are often enforced, because citation procedures are inconsistent with the statutorily-mandated verified complaint procedure.[276]

If the district attorney refuses to commence an open meetings law enforcement action or otherwise fails to act within twenty days of receiving a complaint, the individual who filed the complaint has a right to bring an action, in the name of the state, to enforce the open meetings law.[277] Although an individual may not bring a private enforcement action prior to the expiration of the district attorney's twenty-day review period, the district attorney may still commence an action even though more than twenty days have passed. It is not uncommon for the review and investigation of open meetings complaints to take longer than twenty days.

Court proceedings brought by private relators to enforce the open meetings law must be commenced within two years after the cause of action accrues, or the proceedings will be barred.[278] If a private relator brings an enforcement action and prevails, the court is authorized to grant broad relief, including a declaration that the law was violated, civil forfeitures where appropriate, and the award of the actual and necessary costs of prosecution, including reasonable attorney fees.[279] Attorney fees will be awarded under this provision where such an award will provide an incentive to other private parties to similarly vindicate the public's rights to open government and will deter governmental bodies from skirting the open meetings law.[280]

Relief for alleged violations of the open meetings law cannot be sought under the public records law. In *Journal Times*,[281] the plaintiff newspaper brought a mandamus action under Wis. Stat. § 19.37(2)(a), claiming, in part, that the defendant commission, by not contemporaneously creating a record of a motion at a closed-session meeting, had violated the requirement in Wis. Stat. § 19.88(3) of the open meetings law that all motions and roll call votes must be recorded, preserved, and open to public inspection to the extent required by the public records law. The court held, in part, that the newspaper could not seek relief under the public records law for the alleged violation of the open meetings law.[282]

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[274] *State v. Karpinski*, 92 Wis. 2d 599, 607, 285 N.W.2d 729 (1979).
[275] *See* Wis. Stat. § 893.93(1)(a).
[276] Zwieg Correspondence (Mar. 10, 2005).
[277] *Lawton*, 2005 WI App 16, ¶ 15; Wis. Stat. § 19.97(4); *see also Fabyan v. Achtenhagen*, 2002 WI App 214, ¶¶ 10-13, 257 Wis. 2d 310, 652 N.W.2d 649 (complaint under Wis. Stat. § 19.97 must be brought in the name of and on behalf of the state; *i.e.*, the caption must bear the title "State ex rel." or the court lacks competency to proceed).
[278] Wis. Stat. § 893.93(2)(a); *State ex rel. Leung v. City of Lake Geneva*, 2003 WI App 129, ¶ 6, 265 Wis. 2d 674, 666 N.W.2d 104.
[279] Wis. Stat. § 19.97(4).
[280] *Buswell*, 2007 WI 71, ¶ 54.
[281] *Journal Times*, 2015 WI 56.
[282] *Id.* ¶ 51.

Penalties

Any member of a governmental body who "knowingly" attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between $25 and $300 for each violation.[283] Any forfeiture obtained in an action brought by the district attorney is awarded to the county.[284] Any forfeiture obtained in an action brought by the Attorney General or a private citizen is awarded to the state.[285]

The Wisconsin Supreme Court has defined "knowingly" as not only positive knowledge of the illegality of a meeting, but also awareness of the high probability of the meeting's illegality or conscious avoidance of awareness of the illegality.[286] The court also held that knowledge is not required to impose forfeitures on an individual for violating the open meetings law by means other than attending a meeting held in violation of the law. Examples of "other violations" are failing to give the required public notice of a meeting or failing to follow the procedure for closing a session.[287]

A member of a governmental body who is charged with knowingly attending a meeting held in violation of the law may raise one of two defenses: (1) that the member made or voted in favor of a motion to prevent the violation or (2) that the member's votes on all relevant motions prior to the violation were inconsistent with the cause of the violation.[288]

A member who is charged with a violation other than knowingly attending a meeting held in violation of the law may be permitted to raise the additional statutory defense that the member did not act in his or her official capacity. In addition, in *Swanson*,[289] and *Hodge*,[290] the Wisconsin Supreme Court intimated that a member of a governmental body can avoid liability if he or she can factually prove that he or she relied, in good faith and in an open and unconcealed manner, on the advice of counsel whose statutory duties include the rendering of legal opinions as to the actions of the body.[291]

A governmental body may not reimburse a member for a forfeiture incurred as a result of a violation of the law, unless the enforcement action involved a real issue as to the constitutionality of the open meetings law.[292] Although it is not required to do so, a governmental body may reimburse a member for his or her reasonable attorney fees in defending against an enforcement action and for any plaintiff's attorney fees that the member is ordered to pay. The city attorney may represent city officials in open meetings law enforcement actions.[293]

In addition to the forfeiture penalty, Wis. Stat. § 19.97(3) provides that a court may void any action taken at a meeting held in violation of the open meetings law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action. Thus, in *Hodge*,[294] the court voided the town board's denial of a permit, taken after an unauthorized closed session deliberation about whether to grant or

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[283] Wis. Stat. § 19.96.
[284] Wis. Stat. § 19.97(1).
[285] Wis. Stat. § 19.97(1), (2), (4).
[286] *Swanson*, 92 Wis. 2d at 319.
[287] *Id.* at 321.
[288] Wis. Stat. § 19.96.
[289] *Swanson*, 92 Wis. 2d at 319.
[290] *Hodge*, 180 Wis. 2d at 80.
[291] *See State v. Tereschko*, No. 00-3290, 2001 WL 537491, ¶¶ 9–10 (Wis. Ct. App. May 22, 2001) (unpublished) (declining to find a knowing violation where school board members relied on the advice of counsel in going into closed session); *State v. Davis*, 63 Wis. 2d 75, 82, 216 N.W.2d 31 (1974) (interpreting Wis. Stat. § 946.13(1) (private interest in public contract)); *cf. Journal/Sentinel, Inc. v. Shorewood Sch. Bd.*, 186 Wis. 2d 443, 452–55, 521 N.W.2d 165 (Ct. App. 1994) (school board may not avoid duty to provide public records by delegating the creation and custody of the record to its attorneys).
[292] 66 Op. Att'y Gen. 226 (1977).
[293] 77 Op. Att'y Gen. 177, 180 (1988).
[294] *Hodge*, 180 Wis. 2d at 75–76.

deny the permit.[295] A court may award any other appropriate legal or equitable relief, including declaratory and injunctive relief.[296]

In enforcement actions seeking forfeitures, the provisions of the open meetings law must be narrowly construed due to the penal nature of forfeiture. In all other actions, the provisions of the law must be liberally construed to ensure the public's right to "the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business."[297] Thus, it is advisable to prosecute forfeiture actions separately from actions seeking other types of relief under the open meetings law.

Interpretation by Attorney General

In addition to the methods of enforcement discussed above, the Attorney General also has express statutory authority to respond to requests for advice from any person as to the applicability of the open meetings and public records laws.[298] This differs from other areas of law, in which the Attorney General is only authorized to give legal opinions or advice to specified governmental officials and agencies. Because the Legislature has expressly authorized the Attorney General to interpret the open meetings law, the Wisconsin Supreme Court has acknowledged that the Attorney General's opinions in this area should be given substantial weight.[299]

Citizens with questions about matters outside the scope of the open meetings and public records laws, should seek assistance from a private attorney. Citizens and public officials with questions about the open meetings law or the public records law are advised to first consult the applicable statutes, the corresponding discussions in this Compliance Guide and in the Department of Justice's Public Records Law Compliance Guide, court decisions, and prior Attorney General opinions and to confer with their own private or governmental attorneys. In the rare instances where a question cannot be resolved in this manner, a written request for advice may be made to the Wisconsin Department of Justice. In submitting such requests, it should be remembered that the Department of Justice cannot conduct factual investigations, resolve disputed issues of fact, or make definitive determinations on fact-specific issues. Any response will thus be based solely on the information provided.

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[295] *Cf. State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, ¶ 13, 334 Wis. 2d 70, 798 N.W.2d 436 (supreme court did not void a statute adopted by the legislature because a legislative committee did not comply with notice requirements of the open meetings law); *Epping*, 218 Wis. 2d at 524 n.4 (arguably unlawful closed session deliberation does not provide basis for voiding subsequent open session vote); *State ex rel. Ward v. Town of Nashville*, No. 00-0973, 2001 WL 881704, ¶ 30 (Wis. Ct. App. Aug. 7, 2001) (unpublished) (declining to void an agreement made in open session, where the agreement was the product of three years of unlawfully closed meetings).

[296] Wis. Stat. § 19.97(2).

[297] Wis. Stat. § 19.81(1), (4).

[298] Wis. Stat. §§ 19.39, 19.98.

[299] *BDADC*, 2008 WI 90, ¶¶ 37, 44–45. *See also Krueger*, 2017 WI 70, ¶ 39 (adopting the Attorney General's opinion that, under open meetings law, a committee is created whenever a government body, by rule, "authorizes the committee and assigns the duties and functions of the committee" (quoting 78 Op. Att'y Gen. 67, 69)) .

Appendix A

Open Meetings Law

Wis. Stat. §§ 19.81–19.98

(2) Ensure that the persons identified in sub. (1) know their duties and responsibilities relating to protecting personal privacy, including applicable state and federal laws.

History: 1991 a. 39.

19.67 Data collection. (1) COLLECTION FROM DATA SUBJECT OR VERIFICATION. An authority that maintains personally identifiable information that may result in an adverse determination about any individual's rights, benefits or privileges shall, to the greatest extent practicable, do at least one of the following:

(a) Collect the information directly from the individual.

(b) Verify the information, if collected from another person.

History: 1991 a. 39.

19.68 Collection of personally identifiable information from Internet users. No state authority that maintains an Internet site may use that site to obtain personally identifiable information from any person who visits that site without the consent of the person from whom the information is obtained. This section does not apply to acquisition of Internet protocol addresses.

History: 2001 a. 16.

19.69 Computer matching. (1) MATCHING SPECIFICATION. A state authority may not use or allow the use of personally identifiable information maintained by the state authority in a match under a matching program, or provide personally identifiable information for use in a match under a matching program, unless the state authority has specified in writing all of the following for the matching program:

(a) The purpose and legal authority for the matching program.

(b) The justification for the program and the anticipated results, including an estimate of any savings.

(c) A description of the information that will be matched.

(2) COPY TO PUBLIC RECORDS BOARD. A state authority that prepares a written specification of a matching program under sub. (1) shall provide to the public records board a copy of the specification and any subsequent revision of the specification within 30 days after the state authority prepares the specification or the revision.

(3) NOTICE OF ADVERSE ACTION. (a) Except as provided under par. (b), a state authority may not take an adverse action against an individual as a result of information produced by a matching program until after the state authority has notified the individual, in writing, of the proposed action.

(b) A state authority may grant an exception to par. (a) if it finds that the information in the records series is sufficiently reliable.

(4) NONAPPLICABILITY. This section does not apply to any matching program established between the secretary of transportation and the commissioner of the federal social security administration pursuant to an agreement specified under s. 85.61 (2).

History: 1991 a. 39, 269; 1995 a. 27; 2003 a. 265.

19.70 Rights of data subject to challenge; authority corrections. (1) Except as provided under sub. (2), an individual or person authorized by the individual may challenge the accuracy of a record containing personally identifiable information pertaining to the individual that is maintained by an authority if the individual is authorized to inspect the record under s. 19.35 (1) (a) or (am) and the individual notifies the authority, in writing, of the challenge. After receiving the notice, the authority shall do one of the following:

(a) Concur with the challenge and correct the information.

(b) Deny the challenge, notify the individual or person authorized by the individual of the denial and allow the individual or person authorized by the individual to file a concise statement setting forth the reasons for the individual's disagreement with the disputed portion of the record. A state authority that denies a challenge shall also notify the individual or person authorized by the individual of the reasons for the denial.

(2) This section does not apply to any of the following records:

(a) Any record transferred to an archival depository under s. 16.61 (13).

(b) Any record pertaining to an individual if a specific state statute or federal law governs challenges to the accuracy of the record.

History: 1991 a. 269 ss. 27d, 27e, 35am, 37am, 39am; 2013 a. 171 s. 16; Stats. 2013 s. 19.70.

19.71 Sale of names or addresses. An authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. The collection of fees under s. 19.35 (3) is not a sale or rental under this section.

History: 1991 a. 39.

19.77 Summary of case law and attorney general opinions. Annually, the attorney general shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The attorney general shall provide the summary, at no charge, to interested persons.

History: 1991 a. 39.

19.80 Penalties. (2) EMPLOYEE DISCIPLINE. Any person employed by an authority who violates this subchapter may be discharged or suspended without pay.

(3) PENALTIES. (a) Any person who willfully collects, discloses or maintains personally identifiable information in violation of federal or state law may be required to forfeit not more than $500 for each violation.

(b) Any person who willfully requests or obtains personally identifiable information from an authority under false pretenses may be required to forfeit not more than $500 for each violation.

History: 1991 a. 39, 269.

SUBCHAPTER V

OPEN MEETINGS OF GOVERNMENTAL BODIES

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426; 1983 a. 192.

NOTE: The following annotations relate to s. 66.77, repealed by Chapter 426, laws of 1975.

Subsequent to the presentation of evidence by the taxpayer, a board of review's consideration of testimony by the village assessor at an executive session was contrary to the open meeting law. Although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi−judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi−judicial hearing without the presence of or notice to the objecting taxpayer. Dolphin v. Butler Board of Review, 70 Wis. 2d 403, 234 N.W.2d 277 (1975).

The open meeting law is not applicable to the judicial commission. State ex rel. Lynch v. Dancey, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting when there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is a formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of the vote must be made available for public inspection, pursuant to 19.21, absent a specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code provisions, are governmental bodies and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by worker's compensation and unemployment advisory councils that utilized adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening was contrary to the open records law. 63 Atty. Gen. 414.

A governmental body can call closed sessions for proper purposes without giving notice to members of the news media who have filed written requests. 63 Atty. Gen. 470.

The meaning of "communication" is discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

The posting in the governor's office of agenda of future investment board meetings is not sufficient communication to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

A county board may not utilize an unidentified paper ballot in voting to appoint a county highway commissioner, but may vote by ayes and nays or show of hands at an open session if some member does not require the vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

NOTE: The following annotations refer to ss. 19.81 to 19.98.

When the city of Milwaukee and a private non−profit festival organization incorporated the open meetings law into a contract, the contract allowed public enforcement of the contractual provisions concerning open meetings. Journal/Sentinel, Inc. v. Pleva, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

Sub. (2) requires that a meeting be held in a facility that gives reasonable public access, not total access. No person may be systematically excluded or arbitrarily refused admittance. State ex rel. Badke v. Greendale Village Bd. 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

This subchapter is discussed. 65 Atty. Gen. preface.

Public notice requirements for meetings of a city district school board under this subchapter and s. 120.48, 1983 stats., are discussed. 66 Atty. Gen. 93.

A volunteer fire department organized as a nonprofit corporation under s. 213.05 is not subject to the open meeting law. 66 Atty. Gen. 113.

Anyone has the right to tape−record an open meeting of a governmental body provided the meeting is not thereby physically disrupted. 66 Atty. Gen. 318.

The open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

The open meeting law does not apply if the common council hears a grievance under a collective bargaining agreement. 67 Atty. Gen. 276.

The application of the open meeting law to the duties of WERC is discussed. 68 Atty. Gen. 171.

A senate committee meeting was probably held in violation of the open meetings law although there was never any intention prior to the gathering to attempt to debate any matter of policy, to reach agreement on differences, to make any decisions on any bill or part thereof, to take any votes, or to resolve substantive differences. Quorum gatherings should be presumed to be in violation of the law, due to a quorum's ability to thereafter call, compose and control by vote a formal meeting of a governmental body. 71 Atty. Gen. 63.

Nonstock corporations created by statute as bodies politic clearly fall within the term "governmental body" as defined in the open meetings law and are subject to the provisions of the open meetings law. Nonstock corporations that were not created by the legislature or by rule, but were created by private citizens are not bodies politic and not governmental bodies. 73 Atty. Gen. 53.

Understanding Wisconsin's open meeting law. Harvey, WBB September 1980.

Getting the Best of Both Worlds: Open Government and Economic Development. Westerberg. Wis. Law. Feb. 2009.

An Intro to Understanding Wisconsin's Open Meetings Law. Block. Wis. Law. Dec. 2015.

19.82 Definitions. As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi−governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long−term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, or V of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one−half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77 (5) (k), or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

(3) "Open session" means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305; 1993 a. 215, 263, 456, 491; 1995 a. 27, 185; 1997 a. 79; 1999 a. 9; 2007 a. 20, 96; 2009 a. 28; 2011 a. 10.

A "meeting" under sub. (2) was found although the governmental body was not empowered to exercise the final powers of its parent body. State v. Swanson, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

A "meeting" under sub. (2) was found when members met with a purpose to engage in government business and the number of members present was sufficient to determine the parent body's course of action regarding the proposal discussed. State ex rel. Newspapers v. Showers, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

The open meetings law is not meant to apply to single−member governmental bodies. Sub. (2) speaks of a meeting of the members, plural, implying there must be at least two members of a governmental body. Plourde v. Berends, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130, 05−2106.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a "meeting," unless the gathering is social or by chance. State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

A corporation is quasi−governmental if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status, requiring a case−by−case analysis. Here, a primary consideration was that the body was funded exclusively by public tax dollars or interest thereon. Additionally, its office was located in the municipal building, it was listed on the city Web site, the city provided it with clerical support and office supplies, all its assets revert to the city if it ceases to exist, its books are open for city inspection, the mayor and another city official are directors, and it had no clients other than the city. State v. Beaver Dam Area Development Corporation, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295, 06−0662.

A particular group of members of the government compose a governmental body if there is a constitution, statute, ordinance, rule, or order conferring collective power and defining when it exists. To cause a body to exist, the relevant directive must confer upon it the collective responsibilities, authority, power, or duties necessary to a governmental body's existence under the open meetings law. The creation of a governmental body is not triggered merely by any deliberate meetings involving governmental business between 2 or more officials. Loosely organized, ad hoc gatherings of government employees, without more, do not constitute governmental bodies. Rather, an entity must exist that has the power to take collective action that the members could not take individually. Krueger v. Appleton Area School District Board of Education, 2017 WI 70, 376 Wis. 2 239, 898 N.W.2d 35, 15−0231.

When a governmental entity adopts a rule authorizing the formation of committees and conferring on them the power to take collective action, such committees are created by rule under sub. (1) and the open meetings law applies to them. Here, a school board provided that the review of educational materials should be done according to the board−approved handbook. The handbook, in turn, authorized the formation of committees with a defined membership and the power to review educational materials and make formal recommendations for board approval. Because the committee in question was formed as one of these committees, pursuant to the authority delegated from the board by rule and the handbook, it was created by rule and therefore was a "governmental body" under sub. (1). Krueger v. Appleton Area School District Board of Education, 2017 WI 70, 376 Wis. 2 239, 898 N.W.2d 35, 15−0231.

A municipal public utility commission managing a city owned public electric utility is a governmental body under sub. (1). 65 Atty. Gen. 243.

A "private conference" under s. 118.22 (3), on nonrenewal of a teacher's contract is a "meeting" within s. 19.82 (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under sub. (3). 67 Atty. Gen. 125.

A telephone conference call involving members of governmental body is a "meeting" that must be reasonably accessible to the public and public notice must be given. 69 Atty. Gen. 143.

A "quasi−governmental corporation" in sub. (1) includes private corporations that closely resemble governmental corporations in function, effect, or status. 80 Atty. Gen. 129.

Election canvassing boards operating under ss. 7.51, 7.53, and 7.60 are governmental bodies subject to the open meetings law — including the public notice, open session, and reasonable public access requirements — when they convene for the purpose of carrying out their statutory canvassing activities, but not when they are gathered only as individual inspectors fulfilling administrative duties. OAG 5−14.

19.83 Meetings of governmental bodies. (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

History: 1975 c. 426; 1997 a. 123.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a "meeting," unless the gathering is social or by chance. State ex rel. Badke v. Greendale Village Board, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20.

There is no requirement in this section that the notice provided be exactly correct in every detail. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01−0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. State ex rel. Olson v. City of Baraboo Joint Review Board, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01−0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public's right to information and the government's need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non−routine action that the public would be unlikely to anticipate. Buswell v. Tomah Area School District, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05−2998.

The supreme court declined to review the validity of the procedure used to give notice of a joint legislative committee on conference alleged to violate the sub. (3) 24−hour notice requirement. The court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments and will not intermeddle in what it views, in the absence of constitutional directives to the contrary, to be purely legislative concerns. Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436, 11−0613.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250.

The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.

The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting, is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of the notices. 77 Atty. Gen. 312.

A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publication. Martin v. Wray, 473 F. Supp. 1131 (1979).

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi−judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV, or V of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a. 27; 1997 a. 39, 237, 283; 1999 a. 32; 2007 a. 1, 20; 2009 a. 28; 2011 a. 10, 32; 2015 a. 118.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the public's right of inspection. Oshkosh Northwestern Co. v. Oshkosh Library Board, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

The balance between protection of reputation under sub. (1) (f) and the public interest in openness is discussed. Wis. State Journal v. UW−Platteville, 160 Wis. 2d 31, 465 N.W.2d 266 (Ct. App. 1990). See also Pangman v. Stigler, 161 Wis. 2d 828, 468 N.W.2d 784 (Ct. App. 1991).

A "case" under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of a permit. Hodge v. Turtle Lake, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

A closed session to discuss an employee's dismissal was properly held under sub. (1) (b) and did not require notice to the employee under sub. (1) (b) when no evidentiary hearing or final action took place in the closed session. State ex rel. Epping v. City of Neillsville, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998), 97−0403.

The exception under sub. (1) (e) must be strictly construed. A private entity's desire for confidentiality does not permit a closed meeting. A governing body's belief that secret meetings will produce cost savings does not justify closing the door to public scrutiny. Providing contingencies allowing for future public input was insufficient. Because legitimate concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exception under sub. (1) (e). Citizens for Responsible Development v. City of Milton, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640, 06−0427.

Section 19.35 (1) (a) does not mandate that, when a meeting is closed under this section, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeyer,* 2002 WI 84, 254 Wis. 2d 306. Zellner v. Cedarburg School District, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06−1143.

Nothing in sub. (1) (e) suggests that a reason for going into closed session must be shared by each municipality participating in an intergovernmental body. It is not inconsistent with the open meetings law for a body to move into closed session under sub. (1) (e) when the bargaining position to be protected is not shared by every member of the body. Once a vote passes to go into closed session, the reason for requesting the vote becomes the reason of the entire body. Herro v. Village of McFarland, 2007 WI App 172, 303 Wis. 2d 749, 737 N.W.2d 55, 06−1929.

In allowing governmental bodies to conduct closed sessions in limited circumstances, this section does not create a blanket privilege shielding closed session contents from discovery. There is no implicit or explicit confidentiality mandate. A closed meeting is not synonymous with a meeting that, by definition, entails a privilege exempting its contents from discovery. Sands v. The Whitnall School District, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439, 05−1026.

Boards of review cannot rely on the exemptions in sub. (1) to close any meeting in view of the explicit requirements in s. 70.47 (2m). 65 Atty. Gen. 162.

A university subunit may discuss promotions not relating to tenure, merit increases, and property purchase recommendations in closed session. 66 Atty. Gen. 60.

Neither sub. (1) (c) nor (f) authorizes a school board to make actual appointments of a new member in closed session. 74 Atty. Gen. 70.

A county board chairperson and committee are not authorized by sub. (1) (c) to meet in closed session to discuss appointments to county board committees. In appropriate circumstances, sub. (1) (f) would authorize closed sessions. 76 Atty. Gen. 276.

Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion, or performance evaluation policies to be applied to a position of employment in general. 80 Atty. Gen. 176.

A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that deliberations leading to ratification of a tentative agreement with a bargaining unit, as well as the ratification vote, must be held in open session. 81 Atty. Gen. 139.

"Evidentiary hearing" as used in sub. (1) (b), means a formal examination of accusations by receiving testimony or other forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered by that section. A council that considered a mayor's accusations against an employee in closed session without giving the employee prior notice violated the requirement of actual notice to the employee. Campana v. City of Greenfield, 38 F. Supp. 2d 1043 (1999).

Closed Session, Open Book: Sifting the *Sands* Case. Bach. Wis. Law. Oct. 2009.

19.851 Closed sessions by ethics or elections commission. (1) Prior to convening under this section or under s. 19.85 (1), the ethics commission and the elections commission shall vote to convene in closed session in the manner provided in s. 19.85 (1). The ethics commission shall identify the specific reason or reasons under sub. (2) and s. 19.85 (1) (a) to (h) for convening in closed session. The elections commission shall identify the specific reason or reasons under s. 19.85 (1) (a) to (h) for convening in closed session. No business may be conducted by the ethics commission or the elections commission at any closed session under this section except that which relates to the purposes of the session as authorized in this section or as authorized in s. 19.85 (1).

(2) The commission shall hold each meeting of the commission for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the commission in closed session under this section.

History: 2007 a. 1; 2015 a. 118.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. I, IV, or V of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental body, notice shall be given by the employer's chief officer or such person's designee.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1995 a. 27; 2007 a. 20; 2009 a. 28; 2011 a. 10.

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3. shall be closed to the public.

History: 1975 c. 426; 1977 c. 418; 1987 a. 312 s. 17.

Former open meetings law, s. 66.74 (4) (g), 1973 stats., that excepted "partisan caucuses of the members" of the state legislature from coverage of the law applied to a closed meeting of the members of one political party on a legislative committee to discuss a bill. The contention that this exception was only intended to apply to the partisan caucuses of the whole houses would have been supportable if the exception were simply for "partisan caucuses of the state legislature" rather than partisan caucuses of members of the state legislature. State ex rel. Lynch v. Conta, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

In contrast to former s. 66.74 (4) (g), 1973 stats., sub. (3) applies to partisan caucuses of the houses, rather than to caucuses of members of the houses. State ex rel. Newspapers v. Showers, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

The plaintiff newspaper argued that sub. (3), which requires "the motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection," in turn, required the defendant commission to record and disclose the information the newspaper requested under the open records law. The newspaper could not seek relief under the public records law for the commission's alleged violation of the open meetings law and could not recover reasonable attorney fees, damages, and other actual costs under s. 19.37 (2) for an alleged violation of the open meetings law. The Journal Times v. City of Racine Board of Police and Fire Commissioners, 2015 WI 56, 362 Wis. 2d 577, 866 N.W.2d 563, 13−1715.

Under sub. (1), a common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than $25 nor more than $300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

The state need not prove specific intent to violate the Open Meetings Law. State v. Swanson, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

(5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

History: 1975 c. 426; 1981 c. 289; 1995 a. 158.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613−A]

Awards of attorney fees are to be at a rate applicable to private attorneys. A court may review the reasonableness of the hours and hourly rate charged, including the rates for similar services in the area, and may in addition consider the peculiar facts of the case and the responsible party's ability to pay. Hodge v. Town of Turtle Lake, 190 Wis. 2d 181, 526 N.W.2d 784 (Ct. App. 1994).

Actions brought under the open meetings and open records laws are exempt form the notice provisions of s. 893.80. Auchinleck v. Town of LaGrange, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94−2809.

Failure to bring an action under this section on behalf of the state is fatal and deprives the court of competency to proceed. Fabyan v. Achtenhagen, 2002 WI App 214, 257 Wis. 2d. 310, 652 N.W.2d 649, 01−3298.

Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state, subject to the 2−year statue of limitations under s. 893.93 (2). Leung v. City of Lake Geneva, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104, 02−2747.

When a town board's action was voided by the court due to lack of statutory authority, an action for enforcement under sub. (4) by an individual as a private attorney general on behalf of the state against individual board members for a violation of the open meetings law that would subject the individual board members to civil forfeitures was not rendered moot. Lawton v. Town of Barton, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304, 04−0659

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.

Appendix B

Open Meetings Law Complaint Form–SAMPLE

VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the complainant _____ and as and for a verified complaint pursuant to Wis. Stat. §§ 19.96 and 19.97, alleges and complains as follows:

1. That s/he is a resident of the _____ [town, village, city] of _____, Wisconsin, and that his or her Post Office Address is _____[street, avenue, etc.], _____ [city], Wisconsin _____ [zip].

2. That _____[name of member or chief presiding officer] whose Post Office Address is _____ [street, avenue, etc.], _____ [city], Wisconsin _____ [zip] was on the ____ day of _____ 20_____, a _____[member or chief presiding officer] of _____ [designate official title of governmental body] and that such _____ [board, council, commission or committee] is a governmental body within the meaning of Wis. Stat. § 19.82(1).

3. That _____ [name of member or chief presiding officer] on the ___ day of _____, 20_____, at _____ County of _____, Wisconsin, knowingly attended a meeting of said governmental body held in violation of Wis. Stat. § 19.96 and _____ [cite other applicable section(s)], or otherwise violated those sections in that [set out every act or omission constituting the offense charged]:

4. That _____ [name of member or chief presiding officer] is thereby subject to the penalties prescribed in Wis. Stat. § 19.96.

5. That the following witnesses can testify to said acts or omissions:

Name	Address	Telephone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. That the following documentary evidence of said acts or omissions is available: _____.

7. That this complaint is made to the District Attorney for _____ County under the provisions of Wis. Stat. § 19.97, and that the district attorney may bring an action to recover the forfeiture provided in Wis. Stat § 19.96.

WHEREFORE, complainant prays that the District Attorney for _____ County, Wisconsin, timely institute an action against_____[name of member or chief presiding officer] to recover the forfeiture provided in Wis. Stat. § 19.96, together with reasonable costs and disbursements as provided by law.

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

_____ being first duly sworn on oath deposes and says that s/he is the above-named complainant, that s/he has read the foregoing complaint and that, based on his or her knowledge, the contents of the complaint are true.

_____
COMPLAINANT

Subscribed and sworn to before me
this ____ day of _____, 20___.

_____
Notary Public, State of Wisconsin
My Commission: _____

Diahnn Halbach

From: John Bjelajac <jmbjelajac@gmail.com>
Sent: Wednesday, January 9, 2019 5:16 PM
To: Carina Walters
Cc: dhallbach@burlington-wi.gov; Jeannie Hefty
Subject: Tacit Agreements Leading to an Illegal Walking Quorum

The "Wisconsin Open Meetings Law Compliance Guide," published as of March, 2018, by the Wisconsin Department of Justice, defines a "walking quorum" as follows:

The essential feature of a "walking quorum" is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. The signing, by members of a body, of a document asking that a subject be placed on the agenda of an upcoming meeting thus does not constitute a "walking quorum" where the signers have not engaged in substantive discussion or agreed on a uniform course of action regarding the proposed subject.91 In contrast, where a majority of members of a body sign a document that expressly commits them to a future course of action, a court could find a walking quorum violation.92

The key language is the prohibition against expressly or tacitly agreeing to act uniformly in sufficient numbers to reach a quorum. With respect to "tacitly" agreeing to something, the adverb "tacitly" has been defined as being done "...in a way that is understood or implied without being directly stated." Essentially, a tacit agreement can occur without any words being spoken.

A constituent may want to meet privately with Alderpersons, to promote or advocate for a specific action (the "Topic") that the constituent wants the Common Council to approve and implement. Such a meeting is generally fine and not problematic under the law. If, however, this constituent meets with more than Four (4) Alderpersons on the Topic, even one at a time, then a legal problem is unavoidably created. The constituent has met with a quorum of the Common Council.

The legal problem unavoidably arising is that a "tacit agreement" can create an illegal walking quorum among the Alderpersons who met with the constituent on the Topic. This is true even if every one of the 5 or more quorum Alderpersons just politely sat there and simply listened to the constituent talk about the Topic...each Alderperson saying nothing...just listening. The critical fact is that a quorum has privately received the message from the constituent, on how the constituent wants them to act and vote in the future at a public meeting on the Topic.

When one or more of the said Alderpersons then later promotes and advances the Topic at a Common Council meeting, because the messaged Topic has merit and should be considered by the Common Council, those not charitable to the said Alderpersons and/or the Topic and/or the constituent can claim that the proposed Common

Council action is illegal...that it is a product of an illegal walking quorum meeting with the constituent on the Topic, created by a "tacit agreement" of the Alderpersons so participating. Those even more "not charitable" can escalate the matter to court proceedings and/or legal prosecutions.

Unfortunately, protestations to the contrary by all involved, no matter how sincere and/or how accurate...that no wrong-doing or illegality exists...will not be able to remove the cloud of claimed illegality created by the uncharitable. The meetings with the constituent, after all, did occur, a quorum of the Alderpersons did receive the message on the Topic from the constituent in those private meetings, and the now-publicly-proposed Common Council action on the Topic can be claimed to be the illegal fruit of an illegal walking quorum, founded by illegal tacit agreement. This claim can exist and be pursued as desired by the uncharitable, no matter how forcefully any truthful and accurate protestations to the contrary may be voiced.

The moral of the story: Be cautious. Alderpersons need to be cautious when it is proposed to meet with a constituent who is on a particular mission or has a specific focus to get the Common Council to act on a specific Topic. When that may be the case, it would be prudent for the Alderpersons to not privately meet with the constituent, and instead invite that constituent to speak about the Topic at a public meeting, at the time of Citizen Comments. And if the Topic warrants it, the constituent should be invited to speak with the Mayor and the City staff about the Topic, so that it can be made a specific agenda item for detailed public discussion and possible approval at a public meeting.

John Bjelajac

City Attorney

COMMITTEE OF THE WHOLE **ITEM NUMBER 6A**

DATE: January 15, 2019

SUBJECT: **RESOLUTION 4928(30)** - To consider authorizing fee assessments for Weights and Measures license holders for the period of July 1, 2017 through June 30, 2018.

SUBMITTED BY: Diahnn Halbach, City Clerk

BACKGROUND/HISTORY:

The City Clerk's Office for the City of Burlington acts as an agent for the Weights and Measures Program on behalf of the State of Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP). While State-employed inspectors conduct all program inspections, it is the City Clerk that handles billing for the program. The Weights and Measures Program protects consumers by monitoring the accuracy of gas station pumps, grocery store scales and packages (those sold by weight), checkout scanners, and timers (found in laundromats, taxis, etc.). All establishments in the City of Burlington that utilize pumps, scales, scanners, or timers (as described above) in the sale of goods to consumers are routinely inspected by a State-employed Weights and Measures inspector.

The City of Burlington has received an invoice from the State of Wisconsin in the amount of $6,400 for inspection services provided July 1, 2017 through June 30, 2018. The City must recoup the cost of Weights and Measures Inspections and Certifications mandated by the State of Wisconsin. According to our ordinance, we must notify these businesses of the City's intent to recoup this cost.

Notices have been sent to the license holders at least ten days prior to this evening's meeting to allow them to be present to discuss this assessment fee schedule, which is paid in arrears. Upon approval of this resolution, the City will invoice according to the businesses License Class, which is determined by the number of pumps, scales, scanners, and/or timers.

The proposed "Assessment Fee Schedule" for the fees associated with the Weights and Measures License is listed below. This schedule has been prepared pursuant to the City of Burlington's Municipal Code § 254-1.1K, which requires the City to assess fees to each Weights and Measures License holder.

Proposed Assessment Fee Schedule

Licenses	Issued	Assessment Fee	Cost Recouped
Class 1	5	$405.00	$2,025.00
Class 2	15	$225.00	$3,375.00
Class 3	5	$125.00	$625.00
Class 4	5	$45.00	$225.00
Class 5	6	$25.00	$150.00
Totals	36		$6,400.00

BUDGET/FISCAL IMPACT:

The annual bill from the State of Wisconsin to the City of Burlington for the Weights and Measures inspection is $6,400 with this being the method the City uses to recoup this expense.

RECOMMENDATION:

Staff recommends approval of this resolution, which will result in invoicing the affected businesses to recoup fees paid by the City of Burlington.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 15, 2019 Committee of the Whole meeting and is scheduled for final consideration at the February 05, 2019 Common Council meeting.

Attachments

Res 4928(30) 2016-2017 W&M State Assessment Fees

W&M Letter

RESOLUTION NO. 4928(30)

Introduced by: Committee of the Whole

A RESOLUTION AUTHORIZING FEE ASSESSMENTS FOR WEIGHTS AND MEASURES LICENSE HOLDERS FOR JULY 1, 2017 THROUGH JUNE 30, 2018

WHEREAS, pursuant to City of Burlington Municipal Code s. 254-1.1K, the City assesses fees to each Weights and Measures License holder pursuant to the class of license held in order to recoup the cost of weights and measures inspections and certifications mandated by the State of Wisconsin; and,

WHEREAS, the cost of said inspections and certifications incurred under the City's agreement with the State of Wisconsin Department of Agriculture, Trade and Consumer Protection for the period from July 1, 2017 through June 30, 2018 was $6,400; and,

WHEREAS, the City Clerk has prepared an assessment schedule based upon the number of each class of licenses, the amount of time required to inspect each licensee, and the cost of the agreement with the State, attached hereto and made a part hereof; and,

WHEREAS, the City Clerk has mailed a copy of the Assessment Schedule to each licensee and has mailed to each licensee at least 10 days notice of the date and time at which the Common Council will consider these fee assessments.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington, pursuant to the above, that fees shall be assessed to the holders of Weights and Measures Licenses in the City of Burlington for the period of July 1, 2017 through June 30, 2018 as set forth on the Assessment Schedule attached hereto.

BE IT FURTHER RESOLVED that the Clerk shall mail an invoice to each licensee for the applicable fee assessment, and shall notify each licensee that the fee is to be paid within 30 days of the date of mailing.

Introduced: January 15, 2019
Adopted:

_____
Jeannie Hefty, Mayor

Attest:

_____
Diahnn Halbach, City Clerk

Date: **Thursday, December 20, 2018**

From: **Diahnn Halbach, City Clerk**

Re: **Annual State Weights and Measures Assessment Fee**

FOR INFORMATION ONLY – THERE IS NO PAYMENT DUE AT THIS TIME

Please Note: This is the State Assessment Fee, not the Annual Permit Fee which will be billed in April 2019.

The City Clerk's Office for the City of Burlington acts as an agent for the Weights and Measures Program of the State of Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP). While State-employed inspectors conduct all program inspections, it is the City Clerk that handles billing for the program.

All establishments in the City of Burlington that utilize pumps, scales, scanners, or timers in the sale of goods to consumers are routinely inspected by a State-employed Weights and Measures inspector.

The City must recoup the cost of Weights and Measures Inspections mandated by the State of Wisconsin. The City of Burlington has received an invoice from the State of Wisconsin in the amount of $6,400 for inspection services provided **July 1, 2017 through June 30, 2018**, which is paid in arrears.

The proposed "Assessment Fee Schedule" for the fees associated with your Weights and Measures License is listed below. This schedule has been prepared pursuant to the City of Burlington's Municipal Code § 254-1.1K, which requires the City to assess fees to each Weights and Measures License holder based on their Class. (A description of "Class Types" is listed on the back of this page).

The Common Council of the City of Burlington will consider the "Assessment of Fees" at the Tuesday, January 15, 2019 meeting, located in the Council Chambers at 224 East Jefferson Street, following the 6:30 p.m. Committee of the Whole meeting.

Upon Council approval of the assessment schedule, you will receive an invoice according to your License Class.

Proposed Assessment Fee Schedule

Licenses	Issued	Assessment Fee	Cost Recouped
Class 1	5	$405.00	$2,025.00
Class 2	15	$225.00	$3,375.00
Class 3	5	$125.00	$625.00
Class 4	5	$45.00	$225.00
Class 5	6	$25.00	$150.00
Totals	36		$6,400.00

Class Types

1. There shall be five classes of licenses that shall correspond to the type of the business regulated by the weights and measures program and the amount of time necessary for inspection of the weights and measures of that business. The fee for the license shall be uniform for all classes of licenses, in an amount set by the Common Council, and shall not exceed the cost of administering the weights and measures license program.

2. The classes of licenses shall be:

   a) Class 1 – which shall cover large grocers (more than two check-out points).

   b) Class 2 – which shall cover large gas stations (more than 12 fuel meters) and large retailers (more than two check-out points).

   c) Class 3 – which shall cover businesses that operate vehicle scales, LPG meters and vehicle tank meters, small gas stations (12 or fewer fuel meters), and small grocers (two or fewer check-out points).

   d) Class 4 – which shall cover small retailers (two or fewer check-out points); and

   e) Class 5 – which shall cover laundromats and small businesses not elsewhere classified.

COMMITTEE OF THE WHOLE **ITEM NUMBER 6B**

DATE: January 15, 2019

SUBJECT: **RESOLUTION 4929(31)** - To consider approving a Certified Survey Map for property located at 301 W. State Street and 109-111 and 117 Schemmer Street.

SUBMITTED BY: Megan Watkins, Director of Administrative Services

BACKGROUND/HISTORY:

This resolution is to consider approval of a Certified Survey Map application from Thomas and Marjorie Vos for property located at 301 W. State Street and 109-111 Schemmer Street and 117 Schemmer Street. This CSM, drafted by Robert J. Wetzel, WLS, seeks for two parcels to be reconfigured into three separate properties. The property at 109-111 Schemmer Street currently contains a residential structure and a commercial garage structure. Directly south of the garage structure is another garage and a residential structure on 117 Schemmer Street. The proposed Certified Survey Map organizes the residential property on 109 Schemmer Street to its own lot (Lot 1), known as 301 W. State Street. The adjacent garage structures from 109 Schemmer Street and 117 Schemmer Street are proposed to be on its own lot (Lot 2), and the residential property and an associated garage accessory structure will be on its own lot (Lot 3) on 117 Schemmer Street.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

On 1/8/2019 the Plan Commission considered this item and both Plan Commission and City staff recommend approval of this Certified Survey Map request.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 15, 2019 Committee of the Whole meeting and for final consideration at the February 5, 2019 Common Council meeting.

Attachments

Res 4929(31) CSM

Certified Survey Map

RESOLUTION NO. 4929(31)
Introduced by: Committee of the Whole

A RESOLUTION APPROVING A CERTIFIED SURVEY MAP IN THE CITY OF BURLINGTON FOR PROPERTY LOCATED AT 301 W. STATE STREET AND 109-111, AND 117 SCHEMMER STREET

WHEREAS, the Plan Commission of the City of Burlington has reviewed a Certified Survey Map (CSM) for property described as:

BEING A DIVISION OF LOTS B AND D OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHEWST ¼ OF THE SOUTHWEST ¼ OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE WEST ¼ CORNER OF SAID SECTION 32; THENCE NORTH 88˚43'52" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST ¼ SECTION 857.24 FEET; THENCE SOUTH 00˚55'03" WEST (RECORDED AS SOUTH 2˚20' WEST) 74.76 FEET TO A POINT OF INTERSECTION OF THE SOUTH LINE OF MILWAUKEE AVENUE AND THE WEST LINE OF SCHEMMER STREET AND THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE SOUTH 00˚55'03" WEST (RECORDED AS SOUTH 2˚20' WEST) ALONG SAID WEST LINE OF SCHEMMER STREET 191.30 FEET; THENCE SOUTH 12˚51'49" WEST (RECORDED AS SOUTH 14˚18' WEST) ALING SAID WEST LINE 14.00 FEET; THENCE NORTH 79˚43'01" WEST 187.50 FEET; THENCE NORTH 05˚43'01" WEST 14.68 FEET (RECORDED AS NORTH 14˚18' WEST 15 FEET); THENCE SOUTH 89˚41'41" EAST 64.00 FEET; THENCE NORTH 00˚48'46" EAST (RECORDED AS NORTH 2˚20' EAST) 30.00 FEET; THENCE SOUTH 85˚02'29" EAST 62.98 FEET (RECORDED AS SOUTH 83˚20' EAST 63 FEET) THENCE NORTH 00˚51'58" EAST (RECORDED AS NORTH 2˚20' EAST) 113.93 FEET TO A POINT ON THE SOUTH LINE OF MILWAUKEE AVENUE; THENCE NORTH 73˚30'24" EAST (RECORDED AS NORTH 75˚ EAST) ALONG SAID SOUTH LINE 65.95 FEET TO THE PLACE OF BEGINNING. CONTAINS 1.65 ACRES OF LAND MORE OR LESS.

TAX PARCEL ID: 206 03-19-32-650-030 AND 206 03-19-32-650-060
109-111 Schemmer Street and 117 Schemmer Street
CONTAINING 1.65 ACRES

WHEREAS, at their January 8, 2019 meeting, the Plan Commission did recommend approval of the CSM.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington, Racine County, State of Wisconsin, that the attached CSM prepared on July 23, 2018 by Robert J. Wetzel, WLS, is hereby approved.

BE IT FURTHER RESOLVED that the City Clerk record said CSM with the Racine County Register of Deeds and provide a copy of the recorded CSM to the Planning and Development Director, Julie Anderson, of Racine County Planning and Development, located at 14200 Washington Ave., Sturtevant, WI 53177.

Introduced: January 15, 2019
Adopted: _____, 2019

_____
Jeannie Hefty, Mayor

Attest:

_____
Diahnn Halbach, City Clerk

CERTIFIED SURVEY MAP NO. _____.

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE, AND STATE OF WISCONSIN.

OWNER: THOMAS R. AND MARJORIE C. VOS
124 KINGS COURT
BURLINGTON, WI 53105

PREPARED BY: B.W. SURVEYING, INC.
412 N. PINE STREET
BURLINGTON, WI 53105
JOB NO. 9646-CSM

LEGAL DESCRIPTION:

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE WEST 1/4 CORNER OF SAID SECTION 32; THENCE NORTH 88°43'52" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST 1/4 SECTION 857.24 FEET; THENCE SOUTH 00°55'03" WEST (RECORDED AS SOUTH 2°20' WEST) 74.76 FEET TO A POINT OF INTERSECTION OF THE SOUTH LINE OF MILWAUKEE AVENUE AND THE WEST LINE OF SCHEMMER STREET AND THE PLACE OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE SOUTH 00°55'03" WEST (RECORDED AS SOUTH 2°20' WEST) ALONG SAID WEST LINE OF SCHEMMER STREET 191.30 FEET; THENCE SOUTH 12°51'49" WEST (RECORDED AS SOUTH 14°18' WEST) ALONG SAID WEST LINE 14.00 FEET; THENCE NORTH 79°43'01" WEST 187.50 FEET; THENCE NORTH 05°43'01" WEST 14.68 FEET (RECORDED AS NORTH 14°18' WEST 15 FEET); THENCE SOUTH 89°41'41" EAST 64.00 FEET; THENCE NORTH 00°48'46" EAST (RECORDED AS NORTH 2°20' EAST) 30.00 FEET; THENCE SOUTH 85°02'29" EAST 62.98 FEET (RECORDED AS SOUTH 83°20' EAST 63 FEET) THENCE NORTH 00°51'58" EAST (RECORDED AS NORTH 2°20' EAST) 113.93 FEET TO A POINT ON THE SOUTH LINE OF MILWAUKEE AVENUE; THENCE NORTH 73°30'24" EAST (RECORDED AS NORTH 75° EAST) ALONG SAID SOUTH LINE 65.95 FEET TO THE PLACE OF BEGINNING. CONTAINING 1.65 ACRES OF LAND MORE OR LESS.

SURVEYOR'S CERTIFICATE:

I, ROBERT J. WETZEL, DO HEREBY CERTIFY THAT AT THE DIRECTION OF THOMAS R. AND MARJORIE C. VOS, I HAVE SURVEYED THE LAND DESCRIBED HEREON AND THAT THE MAP SHOWN IS A CORRECT REPRESENTATION OF ALL LOT LINES AND THAT I HAVE FULLY COMPLIED WITH CHAPTER 236.34 OF THE WISCONSIN STATUTES.

DATED THIS 23RD DAY OF JULY, 2018.
REVISED THIS 9TH DAY OF JANUARY, 2019

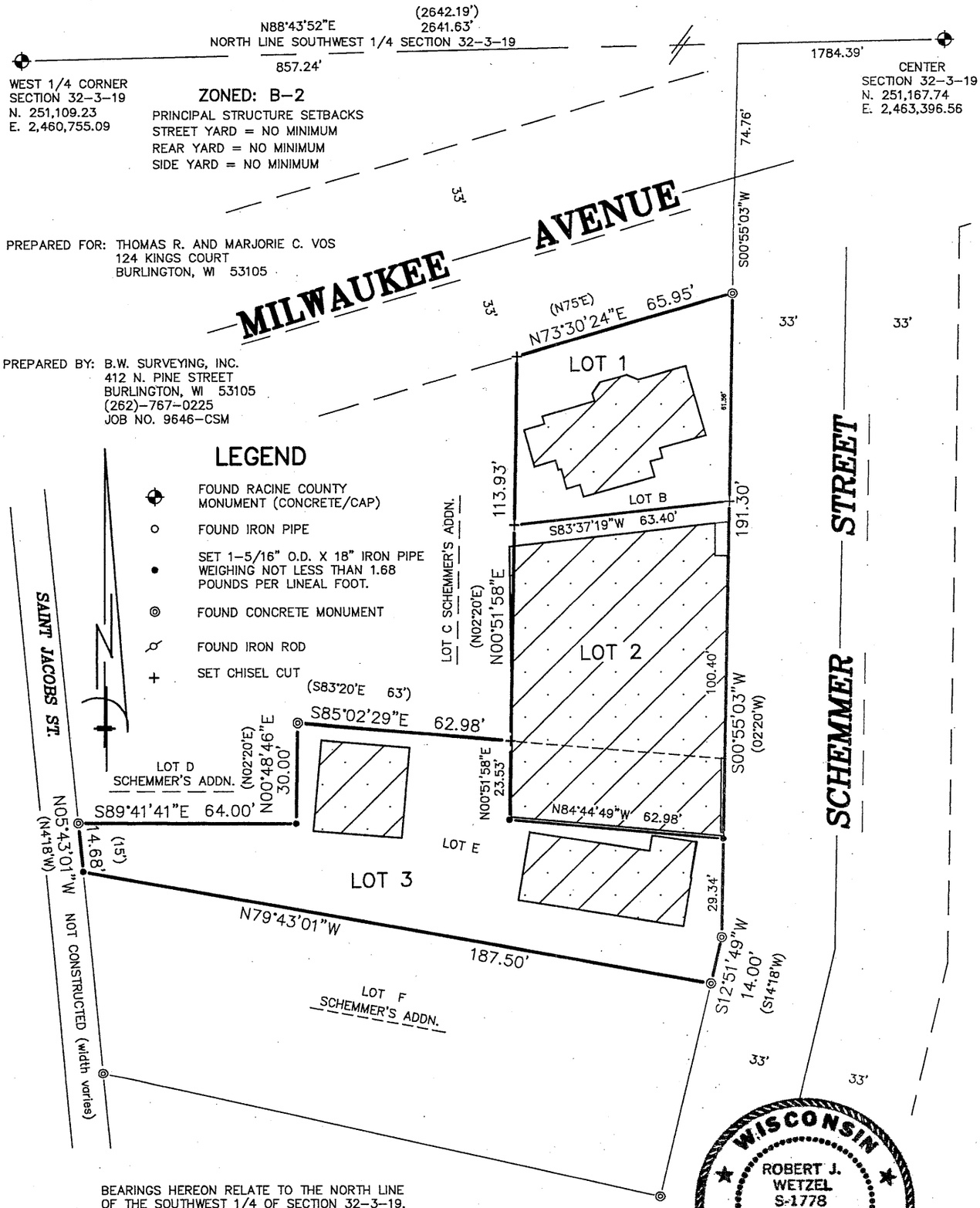
ROBERT J. WETZEL S-1778

WISCONSIN
ROBERT J. WETZEL
S-1778
BURLINGTON
WIS.
LAND SURVEYOR

SHEET 1 OF 6

CERTIFIED SURVEY MAP NO. _____

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.



BEARINGS HEREON RELATE TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF SECTION 32-3-19, ASSUMED BEARING NORTH 88°43'52" EAST.

GRAPHIC SCALE

40 20 0 40

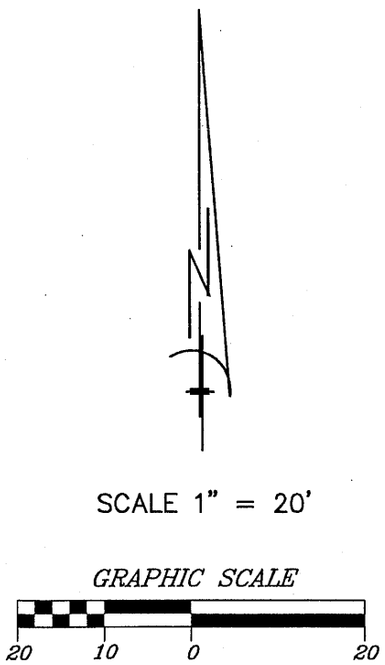
SCALE: 1" = 40'

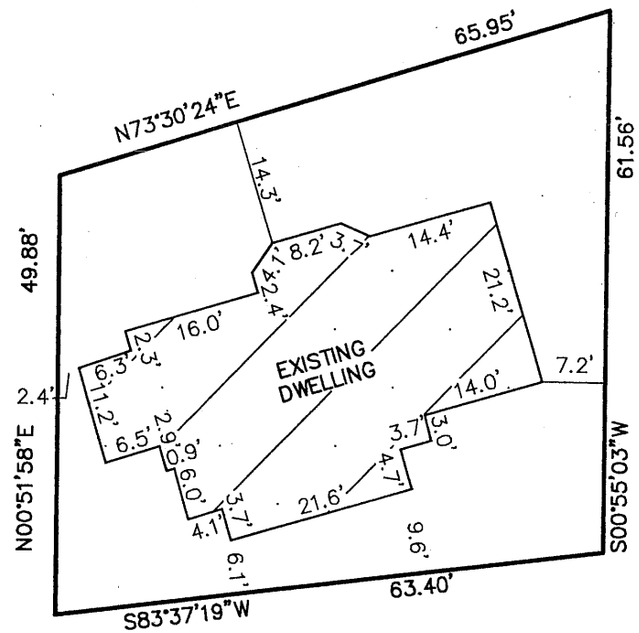
ROBERT J. WETZEL S-1778
JULY 23, 2018 REV.: JAN. 9, 2019

SHEET 2 OF 6

CERTIFIED SURVEY MAP NO. _____

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.

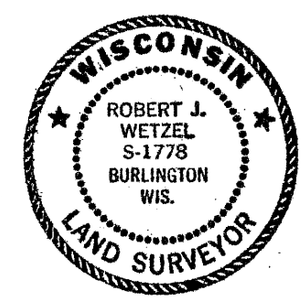




LOT 1 DETAIL

AREA

3,505 sq.ft.



ROBERT J. WETZEL S-1778

JULY 23, 2018

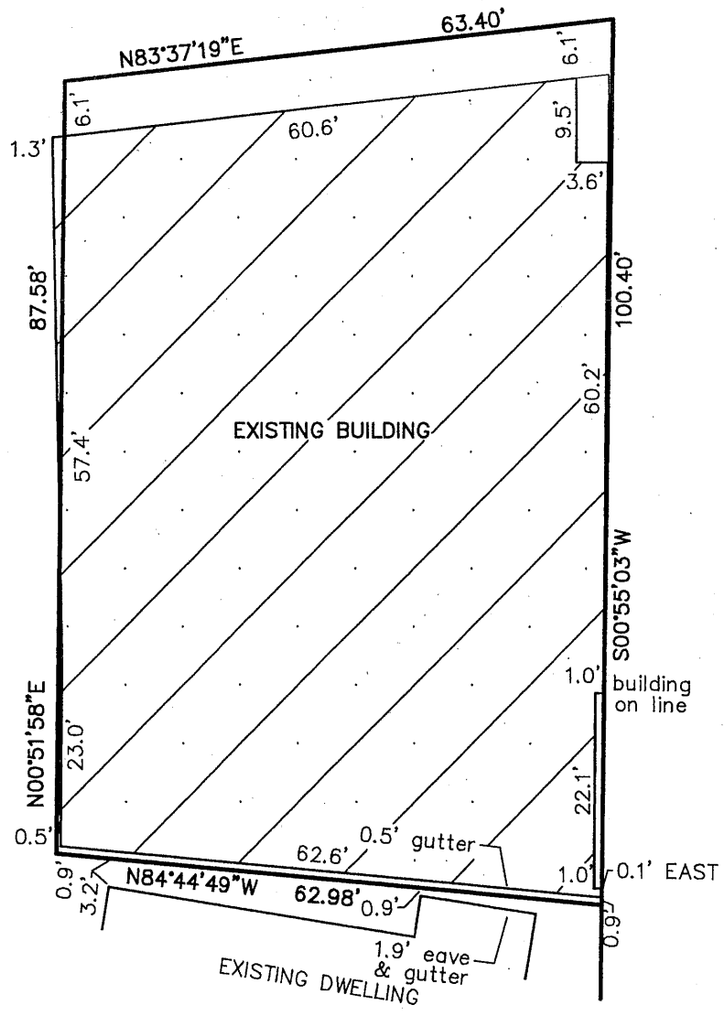
REVISED: JANUARY 9, 2019

CERTIFIED SURVEY MAP NO. _____

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.

LOT 2 DETAIL

AREA
5,906 sq.ft.



SCALE 1" = 20'

GRAPHIC SCALE

20 10 0 20

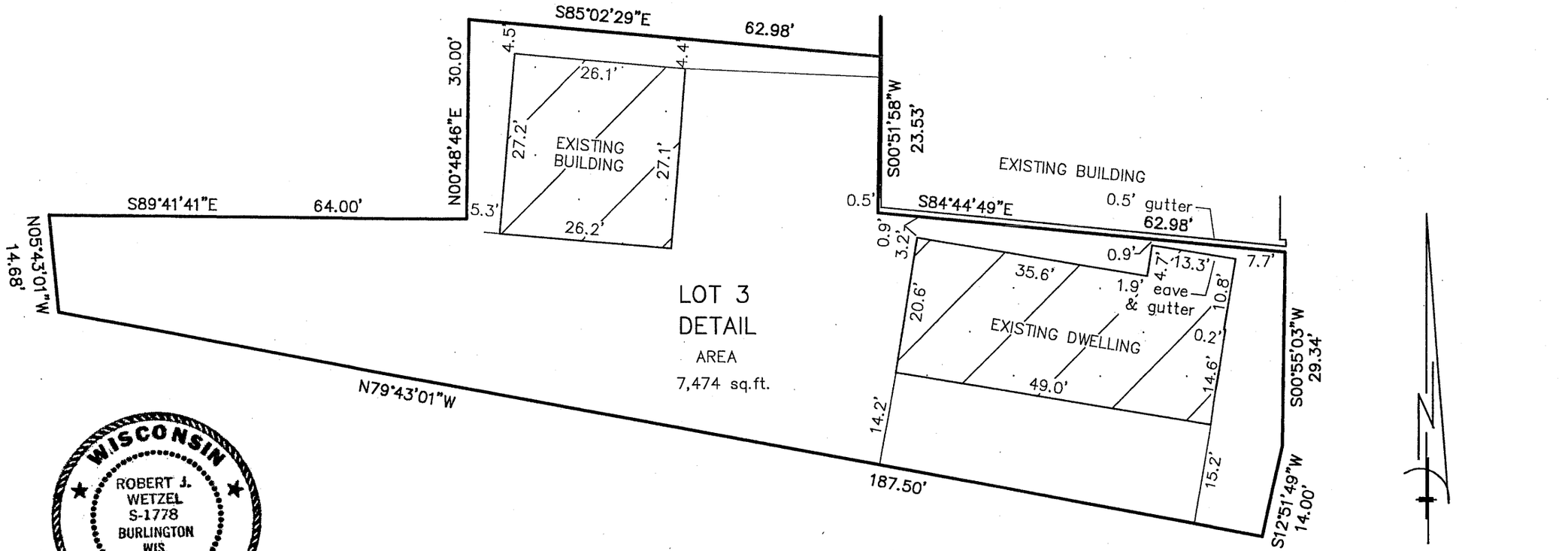
WISCONSIN
ROBERT J. WETZEL
S-1778
BURLINGTON WIS.
LAND SURVEYOR

ROBERT J. WETZEL S-1778
JULY 23, 2018
REVISED: JANUARY 9, 2019

SHEET 4 OF 6

CERTIFIED SURVEY MAP NO. _____

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION AS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.



ROBERT J. WETZEL S-1778
JULY 23, 2018
REVISED: JANUARY 9, 2019

SCALE 1" = 20'

GRAPHIC SCALE

20 10 0 20

SHEET 5 OF 6

CERTIFIED SURVEY MAP NO. _____.

BEING A DIVISION OF LOTS B AND E OF SCHEMMER'S ADDITION RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN AND FOR RACINE COUNTY, WISCONSIN AND BEING LOCATED IN PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 19 EAST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF BURLINGTON, COUNTY OF RACINE AND STATE OF WISCONSIN.

OWNER'S CERTIFICATE:

WE, THOMAS R. AND MARJORIE C. VOS, AS OWNERS HEREBY CERTIFY THAT WE CAUSED THE LAND DESCRIBED ON THIS PLAT TO BE SURVEYED, DIVIDED, AND MAPPED AS REPRESENTED HEREON.

DATED THIS _____ DAY OF _____, 2019.

_____ _____

THOMAS R. VOS MARJORIE C. VOS

STATE OF WISCONSIN)
COUNTY OF RACINE) ss

PERSONALLY CAME BEFORE ME THIS _____ DAY OF _____, 2019, THE ABOVE NAMED THOMAS R. AND MARJORIE C. VOS, TO ME KNOWN TO BE THE PERSONS WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGE THE SAME.

_____ NOTARY PUBLIC
COUNTY OF RACINE, STATE OF WISCONSIN
MY COMMISSION EXPIRES:

CITY OF BURLINGTON COMMON COUNCIL APPROVAL:

THIS CERTIFIED SURVEY MAP IS HEREBY APPROVED BY THE CITY OF BURLINGTON COMMON COUNCIL ON THIS _____ DAY OF _____, 2019.

_____ _____

JEANNIE HEFTY MAYOR DIAHNN HALBACH CITY CLERK

DATED THIS 23RD DAY OF JULY, 2018.
REVISED THIS 9TH DAY OF JANUARY, 2019

ROBERT J. WETZEL S-1778

WISCONSIN
ROBERT J. WETZEL
S-1778
BURLINGTON
WIS.
LAND SURVEYOR

SHEET 6 OF 6

COMMITTEE OF THE WHOLE **ITEM NUMBER 6C**

DATE: January 15, 2019

SUBJECT: **RESOLUTION 4930(33)** - To consider Task Order Number One Hundred and Nine, with Kapur and Associates, Inc. for the 2019 Street and Sidewalk Improvement Program.

SUBMITTED BY: Peter Riggs, Director of Public Works

BACKGROUND/HISTORY:

During the budget workshop, staff identified three roads to be resurfaced in 2018 as part of the five year street improvement plan. One of the subsequent steps includes a task order with Kapur and Associates for engineering services.

The 2019 Street Improvement Program includes asphalt resurfacing of Milwaukee Avenue from Lewis St to West State Street, West State Street from McHenry Street to Elmwood Avenue, and all of Foxtree Circle. These roads were selected because of pavement conditions and minimal utility replacements. Approximately 530 feet of sanitary sewer will be replaced in Milwaukee Avenue. There is no water main replacement included in these projects.

Task Order 109 includes all work necessary to develop plans, specifications, bid documents and engineering costs. Additionally, the task order provides for assistance with utility coordination, cost estimates, and all aspects associated with construction management. This task order also includes services related to the 2019 sidewalk replacement program, which will be a separate bid in 2019, and assistance with the WisDOT mandated WISLR pavement rating updates due in 2019.

BUDGET/FISCAL IMPACT:

The cost of Task Order 109 is $205,654, will will be shared among the General Fund and Wastewater Utilities as included in the CIP portion of the 2019 Budget.

RECOMMENDATION:

Staff recommends approval of Task Order 109.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 15, 2019 Committee of the Whole Meeting and is scheduled for final consideration at the February 5, 2019 Common Council Meeting.

Attachments

Res 4930(32) TO 109

Task Order 109

Resolution No. 4930(32)
Introduced by: Committee of the Whole

A RESOLUTION APPROVING TASK ORDER NUMBER ONE HUNDRED NINE WITH KAPUR AND ASSOCIATES, INC. FOR THE 2019 STREET AND SIDEWALK IMPROVEMENT PROGRAM FOR THE NOT-TO-EXCEED AMOUNT OF $205,654

WHEREAS, the City of Burlington has entered into a master agreement for engineering services with Kapur and Associates, Inc.; and,

WHEREAS, the City has requested assistance with: 2019 WISLR pavement rating update and the 2019 Street and Sidewalk Improvement Program and associated utility improvements. This includes the asphalt resurfacing of Milwaukee Avenue from Lewis Street to West State Street, West State Street from McHenry Street to Elmwood Drive, and the entire length of Foxtree Circle; and,

WHEREAS, the project includes replacement of sanitary sewer on Milwaukee Avenue. Right of way acquisition and reconstruction of the terminus of Dale Drive will also be included. Storm sewer investigation will be completed on all streets with repairs completed as necessary; and,

WHEREAS, in addition, annual sidewalk repairs, curb and gutter repairs, and additional utility improvements will be coordinated with the roadway improvements; and,

WHEREAS, this has resulted in a task order, a copy of which is attached hereto and made a part thereof; and,

WHEREAS, said task order is for the not-to-exceed amount of $205,654 and has been recommended for approval by the Director of Public Works.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington Task Order Number 109 is hereby approved for the not-to-exceed amount of $205,654.

BE IT FURTHER RESOLVED that the City Administrator is hereby authorized and directed to execute Task Order Number One Hundred Nine on behalf of the City.

Introduced: January 15, 2019
Adopted:

_____
Jeannie Hefty, Mayor

Attest:

_____
Diahnn Halbach, City Clerk

TASK ORDER NUMBER #109
CIVIL ENGINEERING SERVICES

This Task Order is made as of December 18, 2018, under the terms and conditions established in the MASTER AGREEMENT FOR ENGINEERING SERVICES, (the Agreement), between the **City of Burlington (Owner)** and **Kapur & Associates, Inc. (Engineer)**. This Task Order is made for the following purpose:

Provide civil engineering services for the complete design and specification preparation for the 2019 City of Burlington - Street and Sidewalk Improvement Program and associated utility improvements. This project includes the asphalt resurfacing of Milwaukee Avenue from Amanda Street to Lewis Street and West State Street from Milwaukee Avenue to McHenry Street, West State Street from Milwaukee Avenue to Elmwood Drive and the entire length of Fox Tree Circle.
The project includes replacement of 523' of sanitary sewer on Milwaukee Avenue installed in 1908. Storm sewer investigation will be completed on all streets with repairs being completed as necessary.

The annual sidewalk repairs, curb & gutter repairs, and additional utility improvements will be coordinated with the roadway improvements.

Right of way acquisition will be complete at the end of Dale Drive bringing the existing terminus into the city. As part of this work Dale Drive will be reconstructed at the terminus to bring the road to public standards.

Section A. – Scope of Services

Engineer shall perform the following Services:

1. Provide topographic survey and mapping, field reviews and plan preparation for the resurfacing of:
    a. Milwaukee Avenue from State Street Lewis Street.
    b. W. State Street from Milwaukee Avenue to McHenry Street
    c. West State Street from Elmwood Drive to Milwaukee Avenue
    d. Fox Tree Circle from Browns Lake Drive to End

    Plans will include location and detail of pavement and base removals, new asphaltic paving, sidewalk repairs and curb and gutter replacement. Utility improvement plans will be prepared for approximately 523 feet of sanitary sewer and lateral replacements, and storm sewer replacement as needed. It is anticipated that a traffic control plan will be prepared for this work. As required by federal law accessible ramps will be review and replaced as needed to meet minimum standards for access.

2. Provide plan preparation with the coordination of City staff for the repair of sidewalks in complaint areas within the City.

3. Provide utility coordination of all private utilities for all streets including utility location for survey of street improvements requiring grading or utility improvements/repairs.

4. Provide construction cost estimate for all streets, sidewalk and utility improvements.

5. Prepare and provide Project Manuals for both the sidewalk program as well as the 2019 Street Program including but not limited to Advertisement for Bids, Instruction to Bidders, Bid Form, Bidder's Qualification Statement, Agreement, and General Conditions of Contract, Supplementary Conditions, and Special Provisions.

6. Provide survey and legal description for the conversion of Dale Drive into public right of way. Prepare plans and details for construction of the Dale Drive terminus bringing it to city standards.

7. Attend Bid Opening.

8. Review Bids and make recommendation for award, and coordinate notice of award, agreement, and notice to proceed documentation.

9. Attend meetings as required and provide updates to the Department of Public Works.

Construction Management Activities

10. Provide administrative services to manage client coordination/invoicing, project schedules, contract change order documentation, establish project logs, formatting monthly contract quantity estimating and contractor invoicing and contract closeout documentation for base bid projects.

11. Provide construction survey staking for necessary items within the construction contract. This survey provides for a "one time" staking for a particular item. If the contractor damages any stakes, they shall be responsible for the cost to replace those damaged stakes.

12. Coordinate and complete necessary material testing services for work completed.

13. Process payment requests from the contractor for their work and prepare recommendation for payment for City approval. Complete final close out documentation and acceptance of improvements memorandum. **(This task is**

completed on a monthly basis and is completed for all work approved for the prior month.)

14. The Engineer will be responsible for notifying, scheduling, conducting, documenting, and distributing minutes of the preconstruction conference.

15. Prepare and provide project update memorandum and provide copies of the daily journal entries to City staff weekly.

16. Attend meetings as needed and coordinate with adjacent property owners and business as needed.

17. Upon project completion, all utility data and as-built information will be transferred to the City GIS system for permanent records. In addition, as-builts, and AutoCAD information will be provided for City record.

18. As part of the 2019 Street improvement program updates to the Burlington road inventory ratings will be assessed and completed through the Wisconsin Department of Transportation WISLR program. Staff will assess all city inventory (Possibly with the assistance of public works) and update the WISLR system as well a City mapping accordingly.

19. It is anticipated the construction work under the 2019 City of Burlington - Street and Sidewalk Improvement Program will begin on or after May 6, 2019 and be completed by September 20, 2019. This schedule has been provided for estimating purposes only. Engineer and staking construction services are estimated on the engineering and survey staff being on site as needed and completing project paperwork for a construction period of up to 20 weeks.

Section B. – Schedule

Engineer shall perform the Scope of Services and deliver the related Documents according to the following schedule:

1. Provide "Preliminary Plans" to the Department of Public Works for review and comment on or before February 22, 2019.
2. Provide "Draft" Final Plans and Specification to the Department of Public Works for review on or before March 8, 2019.
3. Final plans and project manual complete for bid on or before March 21, 2019.
4. Anticipated Bid Opening of April 4, 2019 with recommendation to council for April 16, 2019 meeting.

Section C. – Compensation

In return for the performance of the foregoing obligations, Owner shall pay to Engineer an amount not-to-exceed Two Hundred and five Thousand Six Hundred Fifty-Four Dollars ($205,654.00) payable according to the following terms:

A not-to-exceed amount based on the rates as listed in Attachment A of the Agreement, plus direct expenses. Cost plus services are limited to an agreed maximum figure unless amended.

Engineer may request a change to the billing hours if scope changes, beyond the control of the Engineer, resulting in an extension of the schedule or necessitates a change in personnel.

Compensation for Additional Services (if any) shall be paid by Owner to Engineer according to the hourly billing rates shown in Attachment A of the Agreement.

IN WITNESS WHEREOF, the Owner and Engineer have executed the Task Order.

Owner: City of Burlington	Engineer: Kapur & Associates, Inc.
By: _____	By: Gregory L. Governatori
Signature: _____	Signature: _____
Title: _____	Title: Project Manager
Date: _____	Date: _____

Kapur Associates, Inc.
Summary of Staff Hours and Labor Costs
for the
City of Burlington

TASK ORDER 109

Burlington 2019 City Street Program- Attachment A

CLASSIFICATION		Project Manager		Senior Project Engineer		Surveyor		Staff Engineer II		Construction Engineer		GIS Technician		Survey Crew		Total Labor	
Average Hourly Wage		$139.00		$112.00		$95.00		$80.00		$93.00		$80.00		$115.00			
TASK DESCRIPTION	**ACT. Code**	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars
Milwaukee Avenue																	
Review Master Plan/Field Review				4	$448.00			8	$640.00	8	$744.00					20	$1,832.00
Survey/Mapping				8	$896.00	8	$760.00	32	$2,560.00					40	$4,600.00	88	$8,816.00
Meetings as Required		20	$2,780.00	10	$1,120.00	8	$760.00									38	$4,660.00
Plan Preparation/Review		10	$1,390.00	20	$2,240.00			64	$5,120.00							94	$8,750.00
Traffic Control Plan				20	$2,240.00			40	$3,200.00							60	$5,440.00
Sanitary Sewer Design				12	$1,344.00			44	$3,520.00							56	$4,864.00
Storm Sewer Design				4	$448.00			16	$1,280.00							20	$1,728.00
WDNR Permitting				8	$896.00			44	$3,520.00							52	$4,416.00
W. State Street																	
Review Master Plan/Field Review				4	$448.00			8	$640.00	8	$744.00					20	$1,832.00
Survey/Mapping				8	$896.00	8	$760.00	32	$2,560.00					40	$4,600.00	88	$8,816.00
Plan Preparation/Review		10	$1,390.00	24	$2,688.00			80	$6,400.00							114	$10,478.00
Traffic Control Plan		10	$1,390.00					40	$3,200.00							50	$4,590.00
Storm Sewer Design				8	$896.00			16	$1,280.00							24	$2,176.00
Intersection Design																	
Fox Tree Circle																	
Review Master Plan/Field Review				4	$448.00			8	$640.00	8	$744.00					20	$1,832.00
Survey/Mapping				8	$896.00	8	$760.00	12	$960.00					8	$920.00	36	$3,536.00
Plan Preparation/Review		10	$1,390.00	20	$2,240.00			40	$3,200.00							70	$6,830.00
Storm Sewer Design				4	$448.00			8	$640.00							12	$1,088.00
2019 WISLR Road Inventory																	
Inventory Roadways				40	$4,480.00											40	$4,480.00
Data Input to WISLR								16	$1,280.00							16	$1,280.00
GIS/Mapping Updates												16	$1,488.00			16	$1,488.00
2019 Sidewalk Improvements																	
Field Reviews								4	$320.00	4	$372.00					8	$692.00
Plan Preparation/Review								4	$320.00	8	$744.00	12	$1,116.00			24	$2,180.00
Project Manual/Admin		4	$556.00	12	$1,344.00											16	$1,900.00
Construction Management										64	$5,952.00					64	$5,952.00
Dale Drive Terminus																	
Survey/Mapping						4	$380.00							4	$460.00	8	$840.00
Plan Preparation/Review				4	$448.00			30	$2,400.00							34	$2,848.00
Quit Claim/Aquistion						12	$1,140.00									12	$1,140.00
Project Manual/Administration																	
Administration		8	$1,112.00	16	$1,792.00			10	$800.00	20	$1,860.00					54	$5,564.00
Advertisement/Project Manual		4	$556.00	10	$1,120.00			24	$1,920.00	16	$1,488.00					54	$5,084.00
Attend Bid Opening		4	$556.00													4	$556.00
Post Bid Opening Activities										8	$744.00					8	$744.00
Construction Management Activities																	
Construction Management Admin		20	$2,780.00	40	$4,480.00			40	$3,200.00	40	$3,720.00					140	$14,180.00
Shop Drawing Approvals				8	$896.00			4	$320.00	8	$744.00					20	$1,960.00
Sanitary Sewer								80	$6,400.00	140	$13,020.00			16	$1,840.00	236	$21,260.00
Storm Sewer								40	$3,200.00	60	$5,580.00			24	$2,760.00	124	$11,540.00
Roadway								80	$6,400.00	160	$14,880.00			40	$4,600.00	280	$25,880.00
As-Builts								40	$3,800.00	12	$960.00			24	$2,760.00	76	$7,520.00
GIS Coordination												74	$6,882.00			74	$6,882.00
TOTALS		**100**	**$13,900.00**	**296**	**$33,152.00**	**48**	**4560**	**864**	**$69,720.00**	**564**	**$52,296.00**	**102**	**$9,486.00**	**196**	**$22,540.00**	**2170**	**$205,654**

Expenses:	
Project Total:	**$205,654**

COMMITTEE OF THE WHOLE **ITEM NUMBER 6D**

DATE: January 15, 2019

SUBJECT: **RESOLUTION 4931(33)** - To approve a Suburban Mutual Assistance Response Teams (S.M.A.R.T.) Agreement.

SUBMITTED BY: Mark Anderson, Police Chief

BACKGROUND/HISTORY:

The City of Burlington Police Department recognizes the importance of having the ability to call upon numerous resources in the event of a large-scale emergency. In 2013, the City of Burlington Police Department and other Racine County law enforcement agencies joined the Suburban Mutual Assistance Response Teams (S.M.A.R.T.) which consisted of 38 other law enforcement agencies in Southeastern Wisconsin.

S.M.A.R.T. can be called upon in an emergency situation that threatens or causes loss of life and/or property or exceeds the physical and organizational capabilities of a law enforcement agency. S.M.A.R.T. works like the fire service's MABAS: In the event of a large-scale emergency we would contact SMART and immediately have needed resources responding to our city. The reverse is true as well. At times we may be requested to provide resources to an agency dealing with a major incident. At no time would we deplete the required resources in the city in response to a SMART request; we would only send resources when staffing levels allowed.

As S.M.A.R.T. grows to over 70 law enforcement agencies, the members updated terms of the agreement which can be summarized as follows:

1. The prior Agreement was ambiguous to some extent as to responsibilities in the event of injuries or accidents arising during a S.M.A.R.T. response. The Agreement clarifies the issue by incorporating State law in Section 4 as statutes require that law enforcement officers can assist other officers outside their jurisdiction, and they are deemed to be employees of the Requesting Agency for purposes of liabilities arising out of that Mutual Aid work. The responding Agencies remain the employer of their officers for purposes of compensation, and wages and disabilities, but the Requesting Agencies must pay reimbursement of such costs.

2. The Agreement has been modified to reduce the impression that S.M.A.R.T. has separate corporate status from the participating entities. S.M.A.R.T. is only a collection of participating law enforcement agencies and does not exist as an entity unto itself. This is a mutual aide agreement and it is administered by participating police chiefs and county sheriffs in their capacity as police chief or county sheriff for their municipality.

BUDGET/FISCAL IMPACT:

The City of Burlington paid a one-time membership fee of $100.00 in 2013.

RECOMMENDATION:

Staff recommends continued participation in the Suburban Mutual Assistance Response Teams (S.M.A.R.T.) program.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 15, 2019 Committee of the Whole meeting and scheduled for final consideration at the February 5, 2019 Common Council meeting.

Attachments

Res 4931(33) SMART Agreement
SMART Members
SMART Agreement
SMART Agreement (old)

Resolution No. 4931(33)
Introduced by: Committee of the Whole

A RESOLUTION TO APPROVE THE SUBURBAN MUTUAL RESPNSE TEAMS AGREEMENT

WHEREAS, the Suburban Mutual Assistance Response Teams ("S.M.A.R.T.") have effectively provided law enforcement mutual aid to its participants since 1994**;** and,

WHEREAS, the S.M.A.R.T. Mutual Aid Agreement has not been substantially updated since 1994; and,

WHEREAS, the S.M.A.R.T. Mutual Aid Agreement is in need of updating to address certain inconsistencies within the terms and due to changes in the law; and,

WHEREAS, we have received a recommendation from our Chief Executive Law Enforcement Officer, recommending that we enter the S.M.A.R.T. Mutual Aid Agreement which will update and replace the current Agreement and allow for our continued participation in this cooperative mutual aid, to better serve our municipality and the region.

NOW, THEREFORE, BE IT RESOLVED by the governing body for the municipality named below, that the S.M.A.R.T. Agreement is approved and the officials named below are authorized to execute the same on behalf of the municipality.

Introduced: January 15, 2019
Adopted:

_____
Jeannie Hefty, Mayor

Attest:

_____
Diahnn Halbach, City Clerk

JEFFERSON
(6 Member)
FORT ATKINSON
JEFFERSON
JEFFERSON COUNTY
LAKE MILLS
WATERLOO
WATERTOWN

KENOSHA
(4 Members)
KENOSHA COUNTY
PLEASANT PRAIRIE
TWIN LAKES
UW PARKSIDE

MILWAUKEE
(21 Members)
BAYSIDE
BROWN DEER
CUDAHY
FOX POINT
FRANKLIN
GLENDALE
GREENDALE
GREENFIELD
HALES CORNERS
MILW CO SHERIFF
OAK CREEK
RIVER HILLS
SAINT FRANCIS
SHOREWOOD
SOUTH MILWAUKEE
STATE FAIR
UW MILWAUKEE
WAUWATOSA
WEST ALLIS
WEST MILWAUKEE
WHITEFISH BAY

RACINE
(7 Members)
BURLINGTON
CALEDONIA
MOUNT PLEASANT
RACINE CITY
RACINE COUNTY
STURTEVANT
WATERFORD TOWN

WALWORTH
(12 Members)
DELAVAN CITY
DELAVAN TOWN
EAST TROY
ELKHORN
FONTANA
GENEVA TOWN
GENOA CITY
LAKE GENEVA
SHARON
UW WHITEWATER
WALWORTH COUNTY
WHITEWATER

WAUKESHA
(21 Members)
BIG BEND
BROOKFIELD CITY
BROOKFIELD TOWN
BUTLER
CHENEQUA
DELAFIELD
ELM GROVE
HARTLAND
MENOMONEE FALLS
MUKWONAGO VILLAGE
MUSKEGO
NEW BERLIN
OCONOMOWOC CITY
OCONOMOWOC LAKE
OCONOMOWOC TOWN
PEWAUKEE CITY
PEWAUKEE VILLAGE
STATE PATROL
SUMMIT
WAUKESHA
WAUKESHA COUNTY

[Municipality]

SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS

The undersigned Agencies agree pursuant to Wisconsin Statutes as follows:

Section 1. PURPOSE OF AGREEMENT

This Agreement is made in recognition of the fact that situations may occur which are beyond the ability of the individual law enforcement Agency to deal with effectively in terms of personnel, equipment and available resources. Each Agency in S.M.A.R.T. expresses its intent to assist the other Agencies by assigning some of its personnel, equipment and available resources to permit the law enforcement Agency of each municipality to more fully safeguard the lives, persons and property of all citizens.

Section 2. DEFINITIONS

For the purpose of this Agreement, the following terms are defined as follows:

A. SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS

The Wisconsin law enforcement Agencies participating in this Mutual Aid Agreement, collectively.

B. INCIDENT

A situation that potentially threatens or causes loss of life and/or property or exceeds the physical and organizational capabilities of a Law Enforcement Agency. Generally, the word “Incident” within this document refers to situations (emergencies) connected to a law enforcement response to severe storms, floods, hazardous material incidents, transportation accidents, large fires, public disorders, major crimes, barricaded subjects, hostage situations, searches, traffic control, terrorist activities, dignitary protection and other similar occurrences.

C. AGENCY

A law enforcement organization recognized by its city, village, town, county or state.

D. MUTUAL AID

A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of Incidents by Requesting Agencies by the Aiding Agency in accordance with the Police Incident Assignments as developed by the Police Chiefs and Sheriffs of the Participating Agencies. (The head of law enforcement for a Participating Agency is referred to herein as “Chief/Sheriff,” and collectively the heads

of law enforcement for all Participating Agencies is referred to herein as "Chiefs/Sheriffs". Collectively, and individually the "Chief/Sheriff").

E. PARTICIPATING AGENCY

An Agency that commits itself to this Mutual Aid Agreement by adopting an ordinance or resolution authorizing participation in the program with other Agencies for rendering and receiving Mutual Aid in the event of an Incident in accordance with the Police Incident Assignments, that is accepted into membership. Eligible Agencies must operate in Southeastern Wisconsin, within the counties of Jefferson, Kenosha, Milwaukee, Racine, Walworth and Waukesha.

F. REQUESTING AGENCY

The municipality or legal jurisdiction in which an Incident occurs that is of such magnitude that it cannot be adequately handled by the local law enforcement Agency, that makes a request for Mutual Aid pursuant to this Agreement.

G. AIDING AGENCY

A municipality furnishing police equipment and personnel to a Requesting Agency, pursuant to this Agreement.

H. POLICE INCIDENT ASSIGNMENTS

A predetermined listing of Aiding Agency personnel and equipment that will respond to aid a Requesting Agency.

Section 3. AGREEMENT TO EFFECTUATE THE MUTUAL AID PLAN

The senior on-duty officer of each Participating Agency is authorized to participate with the Participating Agencies in Mutual Aid according to following:

A. Whenever an Incident is of such magnitude and consequence that it is deemed advisable by the senior on-duty officer of the Requesting Agency to request assistance of the Aiding Agencies he or she is hereby authorized to do so under the terms of this Mutual Aid Agreement.

B. The senior on-duty officers of the Aiding Agencies are authorized to and shall forthwith take the following action upon receipt of a request for aid pursuant to this Agreement:

1. Promptly determine what resources are required according to the Mutual Aid Police Incident Assignments.

2. Promptly determine if the required equipment and personnel may be committed in response to the request from the Requesting Agency.

3. If so, promptly dispatch the personnel and equipment required to the Requesting Agency in accordance with the Police Incident Assignments.

C. The rendering of assistance under the terms of this Mutual Aid Agreement is not mandatory. The senior on-duty officer of the Aiding Agency may determine not to respond, for example, if the available personnel and equipment are required for the protection of the Aiding Agency. In that event it is the responsibility of the Aiding Agency to promptly notify the Requesting Agency of the same. The judgment of the senior on-duty officer shall be final.

D. The senior on-duty officer of the Requesting Agency, shall assume full responsibility and command for operations at the scene. He or she will assign personnel and equipment, of the Aiding Agencies, to positions when and where deemed necessary.

E. It is expected that requests for Mutual Aid under this Agreement will be initiated only when the needs exceed the resources of the Requesting Agency. Aiding Agencies will be released and returning to duty in their own community as soon as the situation is restored to the point which permits the Requesting Agency to adequately handle it with its own resources. Aiding Agencies may also return to duty in their own community at any time, upon notifying the senior on-duty officer of the Requesting Agency, if the senior on-duty officer of the Aiding Agency determines the required equipment and personnel should no longer be committed to the Incident.

Section 4. STATUTORY AUTHORITIES

This Agreement is entered pursuant to Wisconsin Statutes §66.0301. The following statutory rights and responsibilities shall apply.

A. Wisconsin Statutes §66.0313: Law enforcement; mutual assistance.

B. Wisconsin Statutes §66.0513: Police, pay when acting outside county or municipality.

C. Wisconsin Statutes §895.35: Expenses in actions against municipal and other officers.

D. Wisconsin Statutes §895.46: State and political subdivisions thereof to pay judgments taken against officers.

To ensure compliance with State laws and to avoid ambiguity, all future amendments and recodification of the foregoing statutes, and judicial interpretations thereof, are incorporated herein and shall apply. Nothing contained within this paragraph or Agreement is intended to be a waiver or estoppel of the municipality or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained with Wisconsin Statutes 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

Section 5. COOPERATION

Nothing herein shall be interpreted to prevent member municipalities from voluntarily cooperating in law enforcement services, including voluntary sharing of equipment or facilities, and voluntarily providing services without seeking reimbursement of costs. Each Participating Agency hereby authorizes its Chief/Sheriff to exercise discretion in cooperating with Participating Agencies. Such discretion includes, but is not limited to, the discretion to waive rights of reimbursement of costs incurred in customary, routine and ordinary activities involving costs, salaries and benefits other than worker's compensation. Such waiver of rights of reimbursement of costs for worker's compensation or significant events involving death or catastrophic injury shall be exercised by the Chief/Sheriff upon consultation with and approval by the municipality's governing body.

Section 6. INSURANCE

Each Participating Agency shall maintain insurance coverage to protect against risks arising out of this Agreement, which shall include general liability coverage, automobile liability coverage, workers compensation coverage, and such additional coverage and amounts as further specified by the Chiefs/Sheriffs. Such coverage shall be endorsed, if necessary, to cover claims arising out of contractual liabilities.

Section 7. NO THIRD PARTY BENEFICIARIES

This Agreement is solely between the Participating Agencies, each of whom acts individually in the performance of this Agreement. There are no third party beneficiaries to this Agreement. No separate entities are hereby created.

Section 8. ADMINISTRATION

This Agreement shall be administered by the Chiefs/Sheriffs of the Participating Agencies. The Chiefs/Sheriffs are empowered to carry out the intentions of this Mutual Aid Agreement through all administrative means including the following:

A. *Determination of membership*. The Chiefs/Sheriffs may determine eligibility for membership, accept new Agencies into membership, maintain records of who is currently a member at any time, determine criteria for termination from membership, and enforce termination of membership.

B. *Membership fees/dues*. The Chiefs/Sheriffs may establish a fee to join into membership, and dues that may be required on a periodic basis to pay for the operations associated with administering this Agreement.

C. *Officers and directors*. The Chiefs/Sheriffs may delegate their administrative responsibilities by creating administrative subunits, officers, directors and system managers, whose authority and duties may be described in by-laws and operating

procedures that the Chiefs/Sheriffs may adopt. All such officers, directors, by-laws and operating procedures in effect pursuant to the predecessor to this Agreement on the effective date of this Agreement remain in effect following the effective date of this Agreement.

D. *Request and response protocols.* The Chiefs/Sheriffs may further define all protocols for making requests and responding to requests for service pursuant to this Mutual Aid Agreement.

E. *Status*. All Chiefs/Sheriffs administering this Agreement, in any capacity, do so solely by virtue of their capacity as Police Chief or County Sheriff, and shall not be compensated by SMART.

F. *Testing procedures*. The Chiefs/Sheriffs may establish and execute testing procedures, to ensure readiness for timely Mutual Aid response.

G. *Method of decision making*. Actions taken by the Chiefs/Sheriffs shall be by majority vote of the quorum of Chiefs/Sheriffs or their designees present and voting, with 50% of the Chiefs/Sheriffs constituting a quorum, except that the Chiefs/Sheriffs may delegate these authorities and modify these terms within the duly adopted by-laws and operating procedures.

Section 9. TERMINATION

Any Agency may withdraw from the Suburban Mutual Assistance Response Teams Agreement by notifying the Chiefs/Sheriffs of the other Participating Agencies in writing, whereupon the withdrawing Agency will terminate participation ninety (90) days from the date of written notice. The Chiefs/Sheriffs may adopt procedures for terminating Agencies who fail to comply with the terms of this Agreement as administered by the Chiefs/Sheriffs, and may exercise that authority.

Section 10. EFFECTIVE DATE

This Agreement supersedes an agreement on the same subject between the same parties. The effective date for this Agreement and the termination of the prior agreement shall be as follows:

A. This Agreement shall first take effect when it has been duly approved in writing by all municipalities shown in attached Appendix 1 (the "Current Members"), and executed by such authorized officials. On the date of the last such approval, the predecessor to this Agreement is thereby terminated and this Agreement is effective.

B. In the event fewer than all of the Current Members choose to enter this Agreement prior to March 1, 2019, those municipalities who have approved this Agreement and executed it may give notice and terminate their participation in the prior agreement per

its terms, in which case this Agreement shall be effective for such members on the date of their termination of participation in the prior agreement.

C. Following its initial effective date, this Agreement shall thereafter be effective for Agencies joining thereafter when the Agreement has been duly approved in writing by such Agency, duly executed by authorized officers of the Agency, and the Agency has been accepted into membership by the Chiefs/Sheriffs of the Participating Agencies. The adoption and signature on this Agreement constitutes an offer, which becomes a binding contract upon acceptance by the Chiefs/Sheriffs.

Section 11. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered in original form or facsimile shall be effective.

[*signatures follow on page 7]*

Signature Page for Suburban Mutual Assistance Response Teams Agreement

IN WITNESS WHEREOF, this Agreement has been duly executed by the following parties on the _____ Day of _____, 2018

_____
[Municipality/Legal Jurisdiction]

_____
[Municipal Official]

_____
[Chief of Police or Sheriff]

ATTEST:

_____
[Municipal Clerk/Witness]

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CITY OF BURLINGTON POLICE DEPARTMENT

SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS

The undersigned agencies agree pursuant to Wisconsin Statutes as follows:

Section 1. **PURPOSE OF AGREEMENT**

This agreement is made in recognition of the fact that situations may occur which are beyond the ability of the individual law enforcement agency to deal with effectively in terms of personnel, equipment and available resources. Each agency identified on Appendix 1 expresses its intent to assist the other agencies identified on Appendix 1 by assigning some of its personnel, equipment and available resources is to permit the law enforcement agency of each municipality to more fully safeguard the lives, persons and property of all citizens.

Section 2. **DEFINITIONS**

For the purpose of this agreement, the following terms are defined as follows:

A. SUBURBAN MUTUAL ASSISTANCE RESPONSE TEAMS

An organization of Southern Wisconsin law enforcement agencies participating in this mutual aid agreement.

B. INCIDENT

An emergency situation that threatens or causes loss of life and property and exceeds the physical and organizational capabilities of a unit of the local government.

C. AGENCY

A law enforcement organization recognized by its city, village, or county.

D. MUTUAL AID

A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of incidents by requesting agencies by the aiding agency in accordance with the police incident assignments as developed by the Police Chiefs/Sheriffs of the participating agencies.

E. PARTICIPATING AGENCY

An agency that commits itself to this mutual agreement by adopting an ordinance or resolution authorizing participation in the program with other agencies for rendering and receiving mutual aid in the event of an incident in accordance with the police incident assignments.

F. REQUESTING AGENCY

The municipality in which an incident occurs that is of such magnitude that it cannot be adequately handled by the local law enforcement agency.

G. AIDING AGENCY

A municipality furnishing police equipment and personnel to a requesting agency.

H. POLICE INCIDENT ASSIGNMENTS

A predetermined listing of personnel and equipment that will respond to aid a requesting agency.

Section 3. **AGREEMENT TO EFFECTUATE THE MUTUAL AID PLAN**

The [municipal official] of each participating municipality is authorized on behalf of that municipality to enter into and from time alter and amend on the advice of the Police Chief/Sheriff and with the consent and authorization of the governing body of that municipality, and with the agreement of other municipalities for mutual aid according to following:

A. Whenever an incident (emergency) is of such magnitude and consequence that it is deemed advisable by the senior on-duty officer of the requesting agency to request assistance of the aiding agencies through the senior on-duty officer, he or she is hereby authorized to do so under the terms of this mutual aid agreement, and they are authorized to and shall forthwith take the following action:

1. Immediately determine what resources are required according to the mutual aid police incident assignment.

2. Immediately determine if the required equipment and personnel can be committed in response to the request from the requesting agency.

3. Dispatch immediately the personnel and equipment required to the requesting agency in accordance with the police incident assignment.

B. The rendering of assistance under the terms of this mutual aid agreement shall not be required in accordance with the police incident assignments if the commanding officer of the aiding agency determines that the available personnel and equipment are required for the protection of the aiding agency. In that event it is the responsibility of the aiding agency to immediately notify the requesting agency of the same. The judgment of the commanding officer shall be final.

C. The senior officer present, of the requesting agency, shall assume full responsibility and command for operations at the scene. He or She will assign personnel and equipment, of the aiding agencies, to positions when and where deemed necessary.

D. It is expected that requests for mutual aid under this agreement will be initiated only when the needs exceed the resources of the requesting agency. Aiding agencies will be released and returning to duty in their own community as soon as the situation is restored to the point which permits the requesting agency to adequately handle it with its own resources or is no longer able to provide assistance per paragraph (3)(b) herein.

E. All service performed under this agreement shall be rendered without reimbursement of any party from the other(s). Requests for indemnification for unusual or extraordinary and unanticipated costs incurred in the performance of mutual aid may be submitted by the aiding agency to the requesting agency for consideration of its Board or Council which may authorize payment in the exercise of discretion.

F. Pursuant to S66.305 Wis.Stats., law enforcement personnel who provide mutual aid assistance shall be deemed an employment of the requesting agency for the purpose of S895.35 and S895.36 Wis. Stats.

G. The Police Chiefs/Sheriffs of the participating agencies shall maintain a governing board and establish an operation plan for giving and receiving aid under this agreement. Said plan shall be reviewed, updated, and tested at regular intervals.

Section 4. **TERMINATION**

Any agency may withdraw from the Suburban Mutual Assistance Response Teams agreement by notifying the Police Chiefs/Sheriffs of the other participating agencies in writing, whereupon the withdrawing agency will terminate participation ninety (90) days from the date of written notice.

Section 5. **ADOPTION**

This mutual aid agreement shall be in full force and effect with the passage of approval of a companion ordinance or resolution by all participating municipalities, in manner provided by law, and in the signing of this agreement by the [municipal official] or other governing body of the municipality.

IN WITNESS WHEREOF, this agreement has been duly executed by the following parties On the 3RD Day of JULY, 2013:

City of Burlington

[Municipality]

KEVIN LAHNER

[Municipal Official]

PETER NIMMER

[Chief of Police or Sheriff]

ATTEST:

[Municipal Clerk]