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HANdbook for Wisconsin Municipal Officials



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League of Wisconsin Municipalities
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PREFACE

In 1975, the League of Wisconsin Municipalities published its first *Handbook for Wisconsin Municipal Officials*. The *Handbook* was updated in 1983 and was last revised in 1989. While the introduction of computers, e-mail communication, municipal Web sites and other changes in how municipalities conduct business have occurred since these earlier versions of the *Handbook* were published, most aspects of municipal government remain unchanged. Annual budgets need to be adopted, streets plowed, businesses and neighborhoods protected from crime, fires extinguished, solid waste collected and zoning regulations enforced. This latest version of the *Handbook* reflects the legal and technological changes that have occurred since the last update but continues to focus on traditional issues of concern to Wisconsin municipal officials such as home rule authority, open meetings, public records, budgeting, municipal borrowing, contracts and parliamentary procedure.

This *Handbook* is broader in scope and more comprehensive than previous versions. New topics covered include municipal employees, land use, municipal courts, intergovernmental cooperation, compensation of municipal officers, and police and fire services. The *Handbook* provides general background information on key local government issues and is designed to serve as a reference tool for municipal officials and staff.

This publication is presented to municipal officials with the understanding that the League is not rendering any legal, accounting or other professional services. Due to the rapidly changing nature of the law, information contained in this handbook may become outdated. Municipal officials are advised to confer with their municipal attorney, engineer, accountant, planner and other professionals to obtain the most accurate and up-to-date information on the topics discussed in this publication.

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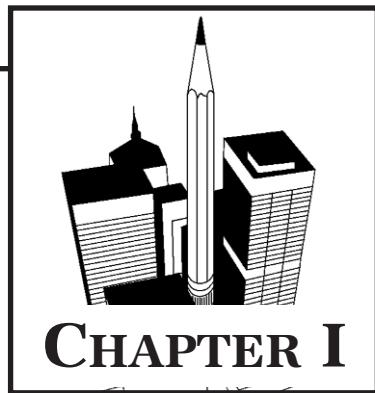
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MUNICIPAL GOVERNMENTS IN WISCONSIN

DEFINITION, LEGAL STATUS AND ORGANIZATION OF CITIES AND VILLAGES

Cities and villages are local general-purpose units of government. They provide a broad range of services to persons and properties within a defined geographical area, including street maintenance, sewer and water, police and fire protection, garbage collection, libraries, parks and recreation and public transportation. Cities and villages in Wisconsin are incorporated municipalities. They are created at the request of their inhabitants to perform local services. The Wisconsin Supreme Court has stated that municipalities are “established by law to assist in the civil government of the state and to regulate and administer the internal or local affairs of the territory within their corporate limits.” *Madison v. Tolzmann*, 7 Wis.2d 570, 97 N.W.2d 513 (1959). According to the courts, “a municipality is generally defined as ‘a legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes.’” *State ex rel. Town of Norway Sanitary District #1 v. Racine County Drainage Board of Commissioners*, 220 Wis.2d 595, 583 N.W.2d 437 (Ct. App. 1998) (quoting *Green Bay Metro. Sewerage Dist. v. Vocational, Technical & Adult Educ.*, Dist. 13, 58 Wis.2d 628, 207 N.W.2d 623). The term “generally refers to a city, borough, town, township or village.” *Id.*

The Wisconsin statutes provide that cities and villages in Wisconsin are bodies corporate and politic and have the powers and privileges of municipal corporations at common law and conferred by the Wisconsin Statutes. Sec. 66.0213(1), Stats.

The statutes do not define the term municipal corporation. A municipal corporation is defined by one leading authority on municipal law as:

[A] ‘body politic’ and corporate. It is established by public law, or sovereign power, evidenced by a charter, with defined limits and a population, a corporate name, and a seal, though a seal is not essential. It has perpetual succession, primarily to regulate the local or internal affairs of the territory or district incorporated, and secondarily to share in the civil government of the state in the particular locality.

1 McQuillin, MUNICIPAL CORPORATIONS, sec. 2.07.10 (3d ed. revised 1999).

DISTINCTIONS BETWEEN MUNICIPALITIES AND TOWNS

There are 190 cities and 396 villages in Wisconsin. Together, they encompass about seventy percent of the state's population. There are 1,264 towns in Wisconsin. Town governments govern those areas of Wisconsin that are not included within the corporate boundaries of cities and villages.

As a respected observer of local government in Wisconsin once noted, "long standing practice defines cities and villages as 'full' or 'true' municipal corporations and distinguishes them from partial or quasi-municipal corporations such as counties and towns." Donoghue, "Local Government in Wisconsin," *1979-80 Wisconsin Blue Book*. Cities and villages in Wisconsin are different from other general-purpose units of local government such as towns and counties because they possess more power to govern themselves in local matters without state interference. That is, cities and villages are granted broad authority under the Wisconsin constitution and statutes to govern themselves locally. The term used to describe this grant of authority to cities and villages is "home rule." Also, cities and villages, unlike towns and counties, can expand their boundaries through the annexation of unincorporated territory. A few other significant differences between incorporated municipalities and towns include:

1. cities and villages can create tax incremental finance districts while towns lack such authority; and
- 2 citizens in cities and villages can initiate ordinances and resolutions through the direct legislation process while citizens in towns lack such powers.

A town, like a city or village, is a local general-purpose unit of government. It is also, like a city or village, a body corporate and politic. Sec. 60.01(1), Stats. However, unlike cities and villages, towns lack constitutional home rule powers. Towns are sometimes referred to as "unincorporated" in contrast to "incorporated" local general-purpose units of government — cities and villages. Unlike cities and villages, a town has only those powers that are conferred by statute, or may be necessarily implied from the statute. Schneider, *Wisconsin Town Officers' Handbook* (1994).

Earlier in this state's history, built-up or urban territory was almost exclusively city and village and towns were located almost exclusively in rural territory. Also, cities and villages often had higher populations than towns. Today, such simple observations do not necessarily hold true in all cases. Urban territory is often a mixture of incorporated and unincorporated areas and some towns in this state are more populated and more urban in character than many cities and villages. However, in general, towns are primarily rural and cities and villages typically provide government services to areas where population is more concentrated, and, as a result, generally offer a greater range and complexity of services than do towns. Donoghue, "Local Government in Wisconsin," *1979-80 Wisconsin Blue Book*.

DISTINCTIONS BETWEEN CITIES AND VILLAGES

While the powers of cities and villages are similar, there are differences in the way they are organized. Generally speaking, city government consists of a mayor or city manager and a common council. The mayor or manager is the chief executive officer and the council is the legislative arm of the city. The members of the council are elected from aldermanic districts and the mayor is elected at large. Village government consists of a village board made up of

trustees and a village president. The village board serves as the executive officer and legislative body of the village. The village president and the trustees are elected at large.

Since 1933, villages have had the same broad statutory home rule powers to change the structure of their local government or exercise corporate powers as cities. Secs. 61.34(1) (villages) and 62.11(5) (cities), Stats. Most state or federal grants-in-aid or shared revenue laws distinguish between local general purpose units of government on the basis of population or need rather than on legal nomenclature. Therefore, although statutory differences still exist between the basic structures and powers of city and village government, the distinctions tend to become blurred with the passage of time and local ordinances.

The following is a summary of differences between Wisconsin cities and villages:

- In cities, when district boundaries are coterminous, the office of alderperson may be consolidated with the office of county supervisor. In villages, only the office of village president may be so combined. Sec. 66.0503(1)(a), Stats. A village changing to a city would not, however, thereby acquire greater representation on the county board, since supervisory districts are based on population. Sec. 59.10(3), Stats.
- Mayors have more power than village presidents. A mayor has the veto power, is the city's chief executive officer and is the head of the police and fire departments, except in cities that have adopted optional powers for police and fire commissions under sec. 62.13(6) Stats. Sec. 62.09(8), Stats. A mayor presides at common council meetings and votes on matters before the council only in cases of a tie. While the mayor is a member of the council, the mayor is not counted in determining whether a quorum is present at a meeting. Village presidents preside at village board meetings but are not considered the chief executive officer of the village. Village presidents do not have veto power and, like any other trustee, may vote on all measures that come before the board. Village presidents are members of the village board and are counted in determining whether a quorum is present at the meeting.
- Cities with populations of 4,000 or more must establish a police and fire commission. Sec. 62.13(2), Stats. Nothing in the state statutes requires cities to provide police or fire protection services. Villages over a certain population are, on the other hand, mandated to provide police and fire protection services. Villages with a population of 5,000 or more must provide police protection services by creating their own department, contracting for those services with another local governmental entity, or by creating a joint department with another city, town or village. Sec. 61.65(l)(a), Stats. Villages with a population of 5,500 or more must provide fire protection services by any of the three permissible techniques available for the provision of police services or by using a fire company organized under ch. 213, Stats. Sec. 61.65(2)(a), Stats. Each village with a population of 5,000 or more that creates a joint police department must create a joint board of police commissioners to govern the department. Similarly, each village whose population exceeds 5,500 that creates its own police department or a joint police department with another municipality must create its own or a joint board of police commissioners to govern the department.
- Villages, but not cities, with programs established prior to 1987, may provide combined police and fire services. Sec. 61.66, Stats.

- Nominations are generally made by caucus in villages and are always made by nomination papers in cities. Secs. 8.05(l) and 8.10, Stats. If a village board opts to use nomination papers for candidates for village office, the caucus method cannot be used. Sec. 8.10(4), Stats.
- Cities may be held liable for mob damage under sec. 893.81, Stats. Counties may also be held liable for such damage under this law, but there is no direct village liability.
- All cities are required to have an official newspaper and to publish all legal notices, council proceedings and ordinances in it. Sec. 985.06, Stats. In villages, no official newspaper is required, although publication in newspapers is required in some instances. Secs. 61.32, 61.50 and 985.05(l), Stats. Also, in villages only ordinances that impose a forfeiture must be published or posted. Sec. 61.50, Stats.
- The list of statutory officers for cities is somewhat longer than for villages. For example, fire chiefs and police chiefs are listed as city officers in ch. 62, Stats., but they are not listed as village officers in ch. 61, Stats. Compare sec. 62.09(1)(b), Stats., with sec. 61.19-29, Stats. However, both cities and villages are authorized to create additional offices not listed in the statutes and eliminate offices listed in the statutes. Other statutory city officers that are not mentioned as village officers in ch. 61, Stats., include comptroller, attorney, engineer, local health officer or local board of health, street commissioner and board of public works. Except for the offices of city attorney and health commissioner, these offices may be eliminated and their duties transferred as provided under sec. 62.09(l)(b), Stats.
- Village presidents under sec. 61.31, Stats., and trustees are officers of the peace, and may suppress riotous or disorderly conduct in public places and may command the assistance of private citizens. Formerly, city council members were given such powers by sec. 62.09(14), Stats. That section, however, was repealed by the legislature in 1983.
- The extraterritorial zoning and plat approval jurisdiction of first, second and third class cities extends to the unincorporated area within three miles of their corporate limits. Fourth-class cities and villages have extraterritorial zoning and plat approval jurisdiction for only one and one-half miles beyond their corporate boundaries. Secs. 62.23(7a)(a) and 236.02(5), Stats.
- In villages, a majority of the members-elect constitutes a quorum of the village board. Sec. 61.32, Stats. The village president, being a trustee is counted in determining whether a quorum is present. In cities, two-thirds of the members of the common council constitutes a quorum, except that in cities having not more than five alderpersons a majority constitutes a quorum. Sec. 62.11(3)(b), Stats. While the mayor is considered a member of the common council, the mayor is not counted in determining whether a quorum is present at a meeting. Sec. 62.11(l), Stats.
- Cities, but not villages, are expressly authorized by sec. 66.0923, Stats., to jointly construct or otherwise acquire, equip, operate and maintain a county-city auditorium.

- Cities, but not villages, are expressly authorized by sec. 66.0925, Stats., to jointly construct or otherwise acquire, equip, operate and maintain a county-city safety building.
- Village library boards consist of five members while library boards in cities of the fourth class consist of seven members and library boards in cities of the second or third class consist of nine members. Sec. 43.54(1)(a), Stats. Library boards in first class cities consist of twelve members as specified in sec. 43.54(1)(am), Stats.

CHANGING FROM A VILLAGE TO A CITY

Under certain circumstances Wisconsin villages may become fourth class cities. A village with a population of at least 1,000 may change to a city by complying with one of the following two statutory procedures:

By Resolution

Under sec. 61.189, Stats., villages with a population exceeding 1,000 (as shown by the last federal census or by a special census) may change to a city of the fourth class by enacting a resolution by a two-thirds vote of all the members of the village board at a regular meeting. The resolution must fix the number and boundaries of the aldermanic districts and arrange the time for holding the first city election, which cannot be less than twenty days from the date of the resolution. The resolution must observe the requirements of sec. 5.15(1) and (2), Stats., for wards. In addition, the resolution must designate a polling place for each ward and provide for the appointment of initial inspectors of election.

Villages incorporated after August 12, 1959 may not become a city under sec. 61.189, Stats., unless they meet the population and area standards set forth in sec. 66.0205, Stats., as determined by the circuit court, and the public interest and urbanization standards set forth in sec. 66.0207, Stats., as determined by the Department of Administration. Sec. 61.189(4), Stats.

By Charter Ordinance

The second method by which a village may become a city is set forth in sec. 61.188, Stats. This section permits villages having a population of 1,000 or more to organize as a city of the appropriate class by adoption of a charter or charter ordinance. The law was enacted as a result of the Wisconsin Supreme Court decision in *Bleck v. Monona Village*, 34 Wis. 2d 191, 148 N.W.2d 708 (1967). In that case, the court held that changes in statutory procedures or offices required for cities could not be effected by charter ordinance until a village had been formally organized into a city under existing statutory procedures.

Under sec. 61.188, Stats., a village over 1,000 in population may, when converting to a city by charter ordinance, elect not to be governed by chs. 62 or 66 in whole or in part or may create such system of government as is deemed by the village to be the most appropriate for its situation. The charter or charter ordinance may address such matters as method of election of members of the council by districts, at large or by a combination of methods; procedures for election of the first council; and creation and selection of administrative officers, departments, boards and commissions and their powers and duties. The charter or charter ordinance may not, however, alter the provisions of ch. 62, Stats., dealing with police and fire departments.

Villages incorporated after August 12, 1959 may not become cities by charter or charter ordinance under sec. 61.188, Stats., unless they meet the population and area standards set

forth in sec. 66.0205, Stats., as determined by the circuit court, and the public interest and urbanization standards set forth in sec. 66.0207, Stats., as applied by the Department of Administration.

CHANGING FROM A CITY TO A VILLAGE

Cities whose populations fall below 1,000 in a federal census may reorganize as villages under a petition and referendum procedure set forth in sec. 66.0213(6), Stats.

CLASSES OF CITIES

Wisconsin law divides cities into four classes for purposes relating to governmental administration and the exercise of corporate power. The division is based on population as determined by the last federal decennial census or a special interim census. Section 62.05(l), Stats., provides that the four classes of cities are as follows:

- Cities of 150,000 population and over constitute cities of the first class.
- Cities of 39,000 and less than 150,000 population constitute cities of the second class.
- Cities of 10,000 and less than 39,000 population constitute cities of the third class.
- Cities of less than 10,000 population constitute cities of the fourth class.

A city changes from one class of city to another only when all of the following conditions are met:

1. a federal census shows that the city's population has reached the required population;
2. provisions for any necessary changes in government have been duly made; and
3. a proclamation by the mayor (manager), declaring the change, has been published under ch. 985. Sec. 62.05(2), Stats.

Presently, the city of Milwaukee is the only first class city in Wisconsin. There are twelve cities of the second class, twenty-five cities of the third class and 152 cities of the fourth class.

There are cities, such as Madison, whose populations would permit their inclusion in a higher or lower classification but which have not taken the two discretionary steps necessary to alter their official classification. Indeed, sec. 990.001(15), Stats., expressly provides that “[i]f a statute refers to a class of city specified under s. 62.05(1), such reference does not include any city with a population which makes the city eligible to be in that class unless the city has taken the actions necessary to pass into the class under s. 62.05(2).” Section 990.001(15), Stats., was enacted in response to *City of Madison v. Town of Fitchburg*, 112 Wis.2d 224, 332 N.W.2d 782 (1982), in which the court treated Madison as a first class city even though it had not taken the steps to change its classification.

DISTINCTIONS AMONG CLASSES OF CITIES

For the most part, few differences exist between the structures of government in the first three classes of cities. Moreover, since all Wisconsin cities have home rule powers, both con-

stitutional and statutory, the basic governmental powers of all classes of cities are essentially the same.

The greatest discrepancies in structure and authority exist between first class cities and the other classes of cities. In 1921, the legislature repealed all special city charters except the City of Milwaukee's and provided that cities would subsequently operate under ch. 62 of the Wisconsin statutes. The City of Milwaukee, at its discretion, was authorized to adopt the provisions of ch. 62, Stats., by simple ordinance. However, the legislature did not refer to the City of Milwaukee by name but rather as a "city of the first class."

Over the years, special grants of authority and other provisions relating to cities of the first class have been adopted with only the City of Milwaukee in mind. These laws include ch. 119, Stats., relating to the "Milwaukee school system;" sec. 62.50, Stats., governing police and fire departments in first class cities; sec. 62.73, Stats., relating to discontinuance of streets in first class cities; secs. 74.81, 74.83 and 74.87, Stats., authorizing first class cities to sell land for nonpayment of taxes; and secs. 65.01 to 65.20, Stats., relating to municipal budget systems in first class cities.

Part of the municipal budget system applicable to first class cities may be adopted by cities of the second, third and fourth class. Specifically, the common council of any second, third, and fourth class city may by ordinance adopted by three-fourths of all its members, accept the provisions of secs. 65.02, 65.03 and 65.04, Stats., relating to the creation of a board of estimates. Sec. 65.01, Stats. All cities besides the City of Milwaukee that have not adopted secs. 65.02, 65.03 and 65.04, Stats., are governed by sec. 65.90, Stats., when developing or modifying an annual budget.

Fourth class cities have extraterritorial zoning and plat approval jurisdiction for only 1.5 miles beyond their corporate boundaries as contrasted with three miles for other classes of cities. Secs. 62.23(7a)(a) and 236.02(s), Stats. Certain regulations with respect to firefighters also differ for fourth class cities. Secs. 62.13(lia) and 213.13, Stats.

Library boards in fourth class cities consist of seven members while library boards in cities of the second or third class consist of nine members. Sec. 43.54(1)(a), Stats. Library boards in first class cities consist of twelve members as specified in sec. 43.54(1)(am), Stats.

With respect to shared revenue and other financial provisions of the Wisconsin statutes, distinctions are based on population rather than class of city. In recent years, little use has been made of class distinctions among cities except with respect to Milwaukee, the state's only first class city. Therefore, the act of changing from one class of city to another, except for the change from a second to a first class city, will have a relatively minor effect on the structure or powers of city government.

INCORPORATION, CONSOLIDATION AND OTHER WAYS CITIES AND VILLAGES ARE CREATED

INCORPORATION

Until 1871 for villages and 1892 for cities, municipalities were incorporated by special acts of the Wisconsin legislature. Altogether, 213 villages and 110 cities were incorporated by special act during the early years of Wisconsin's statehood. Many of the cities incorporated in this manner were first incorporated as villages.

After 1892 all incorporations of cities and villages in Wisconsin were achieved by following the incorporation procedures promulgated by the legislature and set forth in the

Wisconsin statutes. Today there are 190 cities and 396 villages incorporated and functioning in Wisconsin.

Current procedures for the incorporation of new cities and villages out of town territory are found in secs. 66.0201 through 66.0213, Stats. The incorporation process is commenced by publishing a Notice of Intent to Circulate an Incorporation Petition as a class 1 notice within the county in which the territory involved is located. Sec. 66.0203(1), Stats. Circulation of the petition for incorporation must begin not less than ten days nor more than twenty days after the date notice of intent to circulate is published. Sec. 66.0203(2)(f), Stats. The petition for incorporation must be in writing and signed by fifty or more persons who are both electors and freeholders (*i.e.*, landowners) in the territory to be incorporated. If the population of the proposed village or city is less than 300, then the petition need only be signed by twenty-five or more electors and freeholders. Sec. 66.0203(2)(a), Stats. The petition must be filed with the circuit court of the county in which all or a major part of the territory to be incorporated is located within six months of the date the notice of intent to circulate is published. Sec. 66.0203(2)(b), Stats.

Upon the filing of the petition, the court schedules a hearing on the incorporation petition. Notice of the filing of the petition and of the hearing must be published as a class 2 notice in the territory to be incorporated. Notice must also be given by certified or registered mail to the clerk of each “metropolitan municipality” of “the metropolitan community” in which the territory is located. Any municipality entitled to the above notice and any other person found by the court to be a party in interest may become a party to the proceeding. Also, any municipality with boundaries contiguous to the territory proposed for incorporation may file with the circuit court a copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory designated in the incorporation petition. Sec. 66.0203(6), Stats.

After the circuit court holds a hearing on the petition, it must determine whether the standards under sec. 66.0205, Stats., are met. If the court finds that the standards are not met, the petition is dismissed. If the court finds that the standards are met, the petition is referred to the Department of Administration. Sec. 66.0203(8), Stats.

The department must then determine whether the petition meets the standards set forth in secs. 66.0207, 66.0205 and 66.0217(6), Stats. Any party in interest may request that the department hold a hearing on the petition. The determination of the department must be to:

1. dismiss the petition;
2. grant the petition; or
3. dismiss the petition with a recommendation that a new petition be submitted to include more or less territory as specified in the department's findings and determinations.

Sec. 66.0203(9), Stats.

If the petition is dismissed without a recommendation that a new petition be submitted, no petition for the incorporation of the same territory may be entertained for one year following the date of the denial. Sec. 66.0204(9)(h), Stats. If the petition is granted, the circuit court must order that an incorporation referendum be held under sec. 66.0211, Stats., in the territory proposed for incorporation. If a majority of the votes in an incorporation referendum are cast in favor of a city or village, a new city or village is created.

THE RULE OF PRIOR PRECEDENCE

When an annexation and an incorporation proceeding affecting the same territory are commenced at approximately the same time the general rule is that the proceeding first instituted has precedence, regardless of which is first completed or effective. *Brown Deer v. Milwaukee*, 274 Wis. 50, 58, 79 N.W.2d 340, 345 (1956). The date a proceeding is “instituted” is the date on which the earliest statutory requirement is undertaken. *Town of Delavan v. City of Delavan*, 176 Wis.2d 516, 532, 500 N.W.2d 268, 274 (1993). With annexations, this will vary depending on which method of annexation is used. With most direct annexations and annexations by referendum under sec. 66.0217, publication of the Notice of Intent to Circulate is the first step. With incorporations, the first step is publication of the Notice of Intent to Circulate an Incorporation Petition. Thus, under the “Rule of Prior Precedence,” if a Notice of Intent to Circulate a Petition for Incorporation is published before a Notice of Intent to Circulate an Annexation Petition, the incorporation proceeding would have priority until the territory becomes incorporated or until the petition is dismissed.

The significance of this is that towns can use the Rule of Prior Precedence to temporarily freeze boundaries and thwart annexations. For example, a town or town resident may file a Notice of Intent to Circulate an Incorporation Proceeding if it knows that an annexation proceeding involving town territory is about to be commenced. While the incorporation proceeding has priority, no annexation can be effective. As noted above, the incorporation proceeding has priority until the territory becomes incorporated or until the petition is dismissed. Due to insufficient staff levels at the Department of Administration (DOA), it can take two years for the department to determine whether to dismiss or grant an incorporation petition. This is true even though the statute states that the department must issue its decision within ninety days after receiving the petition from the circuit court and even though it might appear obvious that the territory proposed for incorporation does not meet the standards for incorporation set forth in the statutes.

THE OAK CREEK LAW

One exception to the general incorporation procedure for creating new cities and villages is found in sec. 66.0215, Stats. This law, which was created in 1955, is commonly referred to as the “Oak Creek law” because it was successfully utilized shortly after its enactment to incorporate the City of Oak Creek in Milwaukee County. *City of Milwaukee v. Town of Oak Creek*, 8 Wis.2d 102, 98 N.W.2d 469 (1959). Incorporation of a city under the Oak Creek law requires a town population exceeding 5,000, an equalized valuation in excess of \$20 million, location adjacent to a first class city, a petition of elector-taxpayers and owners of real estate and a successful referendum. Because of its specific requirements, the Oak Creek law has limited applicability.

CONSOLIDATION

Another way a town may become a city or village is by consolidating with an existing contiguous city or village under sec. 66.0229, Stats. Under this process, a consolidation ordinance must be passed by a two-thirds vote of all the members of each board or council, fixing the terms of the consolidation. The electors at a referendum held in each municipality must then ratify the consolidation ordinances. Any consolidation ordinance proposing the consolidation of a town and a municipality must, prior to being submitted to the voters for ratification at a referendum, be submitted to the circuit court and the Department of Administration for a determination whether such proposed consolidation is in the public interest. The circuit court must determine whether the proposed ordinance meets the

requirements of sec. 66.0229, Stats., and then refer the matter to the DOA. The department then determines whether the proposed consolidation is in the public interest in accordance with the standards in sec. 66.0207, Stats.

ANNEXATION AND DETACHMENT

Annexation is the process by which parcels of land in unincorporated areas come under the jurisdiction of adjacent cities or villages. Annexation in Wisconsin is a landowner-driven process. Landowners are motivated to annex their land into a city or village for different reasons, but generally it is the desire to obtain higher levels of service, such as sewer or water, than the town is able or willing to provide. Cities and villages cannot unilaterally annex town territory unless the parcels are town islands in existence on December 2, 1973 or are owned by the municipality.

The following is a brief summary of the powers of annexation and detachment. For a comprehensive discussion of annexation procedures and sample annexation forms, see the League's *Annexation of Territory* manual.

METHODS OF ANNEXATION

The statutes provide several methods of annexation. These are:

- Direct Annexation (including Annexation by Unanimous Approval)
- Annexation by Referendum
- Annexation of Town Islands in Existence on December 2, 1973
- Annexation by Court Ordered Referendum under sec. 66.0219, Stats.
- Annexation of Municipally-Owned Territory under sec. 66.0223, Stats.

The most common method of annexation is direct annexation initiated by electors and property owners under sec. 66.0217, Stats. Under this method, town territory contiguous to a city or village may be annexed when a petition of electors and property owners is filed with the city or village requesting that the described territory in which they reside or own property be annexed. The annexation becomes effective only after a city's or village's governing body enacts an annexation ordinance by a two-thirds vote of all the members of the body. If a sufficient number of electors residing within the territory to be annexed petition for a referendum on the annexation within the statutory time limits, a referendum will be held in the area proposed for annexation. A majority vote against annexation nullifies the annexation or halts the annexation process from proceeding. A majority vote in favor of annexation validates the annexation or allows the annexation process to proceed.

MUNICIPAL BOUNDARIES FIXED BY JUDGMENT

Any two municipalities whose boundaries are immediately adjacent at any point and who are parties to any action, proceeding or appeal in court for the purpose of testing the validity of any annexation, may stipulate, in writing, to a compromise that settles the litigation and determines the common boundary line between the municipalities. Sec. 66.0225, Stats. The governing bodies of the annexing and detaching municipalities must approve the stipulation. The court having jurisdiction of the litigation may enter a final judgment incorporating the stipulation's provisions and fixing the common boundary of the municipalities involved.

Any change of municipal boundaries by stipulation is subject to a referendum of the electors residing within the territory annexed or detached if a petition for a referendum is filed

with the clerk of the municipality from which the territory is proposed to be detached. If such a petition is filed, a referendum must be conducted in the same manner as annexation referenda. If the vote is against detachment from the town, then all the proceedings under sec. 66.0225, Stats., are void.

DETACHMENT OF TERRITORY

Territory may be detached from any city or village and be attached to any city, village or town, to which it is contiguous, by following the procedures set forth in sec. 66.0227, Stats. The detachment process is commenced when a petition signed by the owners of land within the territory to be detached is filed with the city or village from which detachment is sought. Detachment can occur only if an ordinance detaching such territory is enacted by a vote of three-fourths of all the members of the governing body of the detaching city or village and its terms accepted by an ordinance enacted by a vote of three-fourths of all the members of the governing body of the city, village or town to which such territory will be annexed.

The governing body of any city, village or town involved may demand a referendum on the issue of detachment. Likewise citizens can petition for a referendum on the issue of detachment. If a referendum is held, the detachment ordinances shall not take effect and be in force unless a majority of the electors approve the detachment.

DETACHMENT OF FARM LANDS FROM CITIES AND VILLAGES

Section 62.075, Stats., which is made applicable to villages by sec. 61.74, Stats., provides a procedure whereby agricultural land may be detached from a municipality. Land is eligible for detachment under this section if it is contiguous to the boundary of any city or village, consists of 200 acres or more and has been within the municipal limits for at least twenty years and during all that time has been used exclusively for agricultural purposes. No owner is eligible to sign a petition for the detachment of agricultural land under this section unless he or she owns at least a twenty-acre parcel. In addition, no land may be detached from a municipality unless the remaining territory of the municipality is left reasonably compact and regular. Also, no lands in which public improvements have been installed are eligible for detachment under this section.

Under sec. 62.075, Stats., the owner or owners of all the territory proposed to be detached must file a petition for detachment with the clerk of circuit court. The court sets a hearing on the detachment. Prior to the hearing, the municipality, town and owners of land in the vicinity may file any objections they may have to the detachment with the court. The court must enter judgment detaching the land described in the petition and annexing it to the adjacent town if all the conditions and requirements set forth in sec. 62.075, Stats., have been complied with.

THE POWERS OF CITY AND VILLAGE GOVERNING BODIES

(For a more in-depth treatment of municipal home rule in Wisconsin complete with legal cites, see League opinion Home Rule 59.)

Because municipalities were created by the state, they have been referred to as "creatures of the state." As "creatures of the state," municipalities have no inherent powers and have only the powers given them. Wisconsin cities and villages are fortunate in that they have been granted extensive home rule powers. "Home rule" is the ability of cities and villages to govern themselves in local matters without state interference. Unlike cities and villages, towns do not have home rule powers and must have specific statutory authorization to exer-

cise control in a given area. Counties have limited “organizational or administrative” home rule powers. Although Wisconsin municipalities enjoy broad home rule authority, that authority has been eroded by the legislature and Wisconsin courts in recent years.

THE HISTORY OF HOME RULE IN WISCONSIN

In 1911, the legislature passed a home rule statute permitting every city in the state to amend or alter its existing charter or to adopt a new charter by charter convention. This statute had been sought by home rule proponents, seeking to keep control at the local level and exempt cities and villages from state legislative control as much as possible. The legislature was motivated to grant home rule powers because so much of its time was devoted to considering legislation relating to city charter powers and it was thought that the home rule statute would relieve the legislature of this considerable burden. However, the home rule statute was short lived. The Wisconsin Supreme Court voided the home rule statute just one year later on the ground that the constitution gave the legislature, not municipalities, the power to affect municipal charters, and that the legislature’s statutory delegation of that power was therefore unlawful. After the home rule statute was declared unconstitutional, home rule proponents turned their efforts towards amending the state constitution to allow home rule.

Voters adopted the constitutional home rule amendment in a 1924 referendum. This amendment empowered municipalities to determine their local affairs and government by use of a method to be specified by the legislature. In 1925, the legislature adopted sec. 66.60 (now renumbered as 66.0101, Stats.) which establishes the procedure for enacting charter ordinances. Section 66.0101, Stats., is often referred to as the enabling legislation for implementing the powers granted municipalities by the constitutional home rule amendment. The legislature also gave cities and villages comprehensive statutory home rule powers in the general charter laws applicable to cities and villages (chs. 61 and 62). These two sources of home rule authority are explained in more detail below.

SOURCES OF HOME RULE

Wisconsin municipalities have two sources of home rule authority: (a) Constitutional and (b) statutory or legislative. There are important differences between these two sources of authority.

Constitutional Home Rule:

The Constitutional home rule amendment, adopted in 1924, allows municipalities to determine their local affairs and government, subject only to the constitution and to legislative enactments of statewide concern that uniformly affect every city or every village. Wis. Const., Art. XI, sec. 3. However, the courts have recognized that because almost every municipal activity has some statewide effect, matters that are local affairs may also be matters of statewide concern.

The constitutional home rule amendment requires a municipality to exercise constitutional home rule through a charter ordinance enacted pursuant to sec. 66.0101, Stats. The courts have interpreted the constitutional home rule amendment as doing two things. First, it directly grants legislative power to municipalities by expressly giving cities and villages the power to determine their local affairs and government. Second, it limits the legislature in its enactments in the field of local affairs of cities and villages.

To determine whether a municipality has validly exercised its constitutional home rule authority or whether the state legislature has unconstitutionally interfered with a municipal-

ity's "local affairs," the legislative enactment, whether state or local, must first be classified as one of three kinds:

1. exclusively of statewide concern;
2. exclusively a matter of a municipality's local affairs and government; or
3. a "mixed bag." The "mixed bag" includes matters that are not exclusively of local or statewide concern. The courts have recognized that many matters while of state-wide concern, affecting the people and state at large somewhat remotely and indirectly, at the same time affect individual municipalities directly and intimately, and therefore are properly considered local affairs.

If the matter is exclusively of statewide concern, the constitutional home rule amendment grants no power to a municipality to deal with it. The legislature may either delegate to municipalities a limited authority or responsibility to further public interests or may preempt the field by expressly banning local legislative action. Furthermore, when the legislature deals with matters that are primarily of state-wide concern, it may deal with them free of any restriction contained in the home-rule amendment. Thus, the legislature can enact a law touching on a matter of state-wide concern which applies in one city and not in another, provided that the classification is proper.

If, however, the subject can be classified as an area primarily and paramountly a matter of the local affairs and government of the municipality, then the municipality is authorized by the home rule amendment to enact a charter ordinance regulating that subject matter. Furthermore, any state legislative delegation of authority to legislate on such a subject is unnecessary and any attempt by the legislature to preempt or ban local legislative action in such an area would be unconstitutional. Finally, if the legislature elects to deal with the local affairs and government of a city or village, its act is subordinate to a charter ordinance unless the legislature's act uniformly affects every city or village across the state.

If a matter falls into the "mixed bag" category, it is necessary to apply what is referred to as the "paramountcy" test — whether the legislative enactment in question is primarily or paramountly a matter of local affairs and government under the home rule amendment or of "state-wide concern." Although legislative pronouncements classifying a subject as a "local affair" or a "matter of state-wide concern," are entitled to great weight, they are not controlling and courts have the final say in deciding whether a matter is properly classified as primarily or paramountly a matter of "local affairs and government" under the home rule amendment or of "state-wide concern." Once the legislative enactment has been classified as being paramountly a matter of local affairs and government or a matter of statewide concern, it is analyzed accordingly.

The courts have classified the vast majority of legislative enactments falling into the mixed category as matters which are paramountly of statewide concern. There are two notable exceptions. *In State ex rel. Ekern v. Milwaukee*,¹ the Wisconsin Supreme Court upheld a Milwaukee charter ordinance which declared a state statute limiting the height of buildings in first class cities to 125 feet inapplicable and permitted a higher maximum height. The court held that building heights in a community was primarily a matter of the local affairs of

1. 90 Wis. 633, 209 N.W. 860 (1926).

the community. The *Ekern* case is significant because it marks the only time a municipality has successfully asserted constitutional home rule powers in the face of a contrary statute.

In another case, *State ex rel. Michalek v. LeGrand*,² the court upheld a Milwaukee rent-withholding ordinance, enacted to secure compliance with zoning and building codes by providing for escrow of a tenant's rent until a landlord brought a building into compliance with zoning and building codes. The court held that enactment was primarily and paramountly an enactment that was a matter of "local affairs and government." The court found no conflict between the city's ordinance and state law governing landlord-tenant relations.

In contrast to those two cases, the majority of court decisions analyzing a municipality's attempt to exert constitutional home rule authority have concluded that the municipal enactment must be characterized as primarily a matter of statewide concern. Thus, municipalities have not fared well in asserting constitutional home rule in the courts. Perhaps that is one reason why municipalities have not used constitutional home rule with any frequency. Other reasons suggested are that the procedures in sec. 66.0101, Stats., for using constitutional home rule are complicated, there is uncertainty as to what the law allows municipalities to do, local officials tend to pass responsibility on to the legislature on controversial issues, and the availability of statutory or legislative home rule (discussed below) which is a broader and more flexible grant of power.³ Whatever the reason, it is unfortunate that municipalities do not exercise their constitutional home rule authority more often. Constitutional home rule will remain a significant source of authority only if municipalities understand what it is and how the courts analyze the use of that authority, and continue to assert it as a viable source of authority. It is up to municipalities to educate the courts regarding constitutional home rule authority.

Statutory or Legislative Home Rule (General Police Power)

The legislative or statutory grants of home rule power are found in secs. 62.11(5) (cities), and 61.34(1) (villages), Stats. Statutory home rule power is separate and distinct from the constitutional home rule power. Unlike sec. 66.0101, Stats., secs. 62.11(5) and 61.34(1), Stats., are not "enabling statutes" of the constitution. Instead, they are independent sources of authority. These grants of power are very broad and give the governing body of the municipality, except as otherwise provided by law, management and control of the municipality's property, finances, highways, navigable waters, and the public service. The statutes empower the governing body to act for the government and good order of the municipality, for its commercial benefit, and for the health, safety, and welfare of the public, and authorize the governing body to carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means.

Unlike constitutional home rule, legislative or statutory home rule is not limited to local affairs and government. Indeed, the courts have said that legislative home rule would be a nullity if it were construed to confer on municipalities only that authority which relates to "local affairs" since that power is already constitutionally guaranteed by the home-rule amendment. Thus, municipalities may act even in matters of statewide concern when exercising statutory home rule powers although there are limits to what they can do.

2. *State ex rel. Michalek v. LeGrand*, 77 Wis.2d 520, 253 N.W.2d 505 (1977).

3. 1979-80 Wisconsin Blue Book at 48.

Municipalities may enact ordinances in the same field and on the same subject covered by state legislation where such ordinances do not conflict with, but rather complement, the state legislation. However, a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized or required or authorize what legislation has forbidden. If the state has expressed through legislation public policy concerning a subject, a municipality cannot ordain an effect contrary to or in qualification of the established public policy unless there is a specific, positive, lawful grant of power by the state to the municipality to so ordain.

Where a municipality acts within the legislative grant of power but not within the constitutional initiative, the state has the authority to withdraw the power of the municipality to act. The Wisconsin Supreme Court has devised a four-part test for determining whether such a legislatively intended withdrawal of power which would necessarily nullify the local ordinance has occurred. If any one of the following questions is answered with a "yes," the ordinance will fail. The questions are:

- whether the legislature has expressly withdrawn municipalities' power to act;
- whether the ordinance logically conflicts with the state legislation;
- whether the ordinance defeats the purpose of the state legislation; or
- whether the ordinance goes against the spirit of the state legislation.

STATE OF WISCONSIN HOME RULE

Although at first glance it appears municipal home rule is alive and well in Wisconsin, a closer look shows a disturbing trend. Despite the legislature's declaration that statutory home rule powers are to be liberally construed in favor of the rights, powers and privileges of cities and villages to promote the general welfare, peace, good order and prosperity of the municipalities and their inhabitants and the express statement that the powers conferred by legislative home rule are in addition to all other grants and shall be limited only by express language and the courts' recognition that the statutory grant of power confers upon a municipality "all the powers that the legislature could by any possibility confer upon it,"⁴ municipal home rule in Wisconsin is being whittled away. The courts have been willing to allow implied preemption and the legislature has, with increasing frequency, preempted local regulation or allowed local regulation only when it strictly conforms to state legislation. In order to protect home rule in Wisconsin and keep it strong, municipalities need to be aware of the framework for exercising their home rule powers and vigilant in protesting against unwarranted incursions.

The tables below illustrate areas where municipalities have been preempted or limited in exercising home rule authority.

4. *Hack v. Mineral Point*, 203 Wis. 215, 219, 233 N.W. 82 (1931).

STATE PREEMPTION OF MUNICIPAL AUTHORITY

Table 1

Municipalities cannot exercise home rule powers where Wisconsin Constitution vests responsibility in state:

- Creation of municipal corporations (incorporation).⁵
- Alteration of municipal boundaries (annexation, consolidation, detachment).⁶
- Taxation (power to tax for revenue purposes; includes power to grant tax exemptions).⁷
- Streets and highways (held in trust for traveling public).⁸
- Navigable waters (held in trust for public by state - includes promotion of navigation, protection for fishing, recreation and scenic beauty and eradication and prevention of pollution).⁹
- Creation of courts.¹⁰
- Designation of appointment authorities for city, village and town officers.¹¹

5. Wis. Const., Art. IV, sec. 31, par. 9 and Art. IV, sec. 32; *City of Madison v. Town of Madison*, 127 Wis.2d 96, 377 N.W.2d 221 (Ct. App. 1985); *Bleck v. Monona Village*, 34 Wis.2d 191, 148 N.W.2d 708 (1967); *Scharping v. Johnson*, 32 Wis. 2d 383, 145 N.W.2d 691 (1966); *In re Incorporation of Village of Elmwood Park*, 9 Wis.2d 592, 101 N.W.2d 659 (1960); *Barth v. Village of Shorewood*, 229 Wis. 151, 282 N.W.2d 89 (1938).
6. *Wauwatosa v. Milwaukee*, 266 Wis. 59, 62 N.W.2d 718 (1954).
7. *City of Milwaukee v. Hoffman*, 29 Wis.2d 193, 138 N.W.2d 223 (1965); *Jordan v. Village of Menomonee Falls*, 28 Wis.2d 608, 137 N.W.2d 442 (1965); *City of Plymouth v. Elsner*, 28 Wis.2d 102, 135 N.W.2d 799 (1965).
8. *Steel v. Bach*, 124 Wis.2d 250, 369 N.W.2d 174 (Ct. App. 1985); *City of Madison v. Reynolds*, 48 Wis.2d 156, 180 N.W.2d 7 (1970); *City of Milwaukee v. Milwaukee & Suburban Transport Corp.*, 6 Wis.2d 299, 94 N.W.2d 584 (1959).
9. *State v. Trudeau*, 139 Wis.2d 91, 408 N.W.2d 337 (1987); *Menomonee Falls v. Wisconsin DNR*, 140 Wis.2d 579, 412 N.W.2d 505 (Ct. App. 1987); *Just v. Marinette County*, 56 Wis.2d 7, 201 N.W.2d 761 (1972); *Madison v. Tolzmann*, 7 Wis.2d 570, 97 N.W.2d 513 (1959); *Fond du Lac v. Town of Empire*, 273 Wis. 333, 77 N.W.2d 699 (1956).
10. Art. VII, sec. 2, Wis. Const.
11. Art. XIII, sec. 9, Wis. Const.
12. Sec. 13.48(13)(a), Stats.
13. Sec. 13.48(13)(b), Stats.
14. Sec. 23.17(5g) and (5r), Stats.
15. Secs. 101.63(1), 101.75(2), 101.94(2), and 101.975(1), Stats.
16. Sec. 66.051(1)(3), Stats.
17. Sec. 66.0611, Stats.
18. Sec. 94.701(1), Stats.
19. Sec. 166.06(3), Stats.
20. Sec. 30.77(1), Stats.
21. Sec. 97.24(4), Stats.
22. Sec. 349.03(2), Stats.
23. Sec. 114.105, Stats.
24. Sec. 145.04(2), Stats.
25. Ch. 196, Stats.

Table 2

Municipalities cannot exercise home rule powers where state statutes preempt local exercise of authority:

Zoning/Building Regulations:

State buildings, structures or facilities are not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including, without limitation because of enumeration, ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions.¹²

Buildings, structures or facilities constructed at state fair park are not subject to zoning or any other ordinances or regulations of the municipality in which the park is located.¹³

Construction on or use of land designated by the Department of Natural Resources as part of the ice age trail is a permitted use under any zoning ordinance enacted by a municipality. A municipality may not refuse to permit construction of a portion of the ice age trail on property owned by the municipality if the municipality determines that the trail does not conflict with other existing or proposed uses of the property.¹⁴

Municipalities cannot impose construction standards on one- and two-family dwellings, multifamily dwellings, manufactured housing and mobile homes which bear insignia or labels showing manufacture under standards established by state law and the Wisconsin Department of Commerce. However, municipalities may regulate the construction and installation of windows and doors in multifamily dwellings if the regulation is related to preventing illegal entry.¹⁵

Limitation of Powers in Miscellaneous areas:

Municipalities cannot regulate obscenity.¹⁶

Municipalities cannot levy local income taxes.¹⁷

With very limited exceptions, municipalities cannot regulate pesticides.¹⁸

State regulation relating to emergency temporary locations of government controls over any contrary or conflicting statutory, charter or ordinance provision to the contrary.¹⁹

Licensing:

Municipalities cannot adopt ordinances requiring local numbering, registration or licensing of boats or local regulations excluding any boat from free use of state waters.²⁰

Municipalities cannot license local milk processors.²¹

Municipalities cannot register motor vehicles, license motor vehicle operators or prohibit or restrict free use of public highways except as authorized by state law.²²

Municipal aeronautics ordinances cannot provide for the suspension or revocation of pilot or aircraft licenses or certificates and cannot provide for imprisonment except for failure to pay any fine which may be imposed. No municipality can enact any ordinance governing aircraft or aeronautics contrary to or inconsistent with ch. 114, Stats., or federal law.²³

Municipalities cannot license state-licensed plumbers.²⁴

Municipal water utilities are subject to rate and service regulation by the Wisconsin Public Service Commission.²⁵

Table 3

Municipal home rule is limited or non-existent where state statutes require local regulations be in strict conformity or consistent with state law:

Municipality can enact ordinance regulating all-terrain vehicles if it is in strict conformity with statute and rules, and encompasses all aspects of the section.²⁶

Ordinance dealing with navigation aids system and affecting markers and buoys in adjacent outlying waters may not conflict with uniform navigation aids system established by DNR or with any county ordinance. Any local ordinance in conflict is void.²⁷

Boating ordinances must be in strict conformity with state law but additional regulations not in conflict with state law may be enacted.²⁸

Section 62.13, relating to organization of police and fire departments and hiring, promotion, discipline and discharge of police officers and firefighters in cities of 4,000 or more is a matter of statewide concern for uniform regulation; sec. 61.65 makes provisions applicable to certain villages also.²⁹

Local ordinances regulating firearms are prohibited unless they are the “same as or similar to, and no more stringent than” state law.³⁰

Ordinances regulating weights and measures may not conflict with ch. 98, Stats., or rules.³¹

Cities and villages may not adopt health or safety regulations for public buildings or places of employment conflicting with the orders of the Wisconsin Department of Commerce, but nonconflicting regulations by the common council, village board or local board of health are allowed.³²

Local regulation of aeronautics permissible if ordinance is in strict conformity with ch. 114.³³

Municipalities may prescribe additional regulations on the sale of fermented malt beverages or intoxicating liquors not in conflict with state regulations. Cities and villages may regulate conduct regulating underage persons if ordinance strictly conforms with statutes.³⁴

Ordinances relating to sale of cigarettes to minors must strictly conform to state law.³⁵

All plumbing installations must conform to state code, but sec. 145.04(1) permits additional local regulations relating to local permits for the installation, alteration and inspection of plumbing.³⁶

Department of Health rules relating to the control of communicable diseases supersede conflicting or less stringent local regulations, orders or ordinances.³⁷

Municipalities may enact and enforce any provisions of chs. 341 to 348, Stats., relating to motor vehicles if local regulations are in strict conformity;³⁸

Municipalities may regulate bicycles by ordinance enacted pursuant to 349.06.³⁹

Municipal regulations of snowmobile operation on highways must be in strict conformity with ch. 350.⁴⁰

26. Sec. 23.33(11)(am), Stats.

27. Sec. 30.745(2), Stats.

28. Sec. 30.77, Stats.

29. Sec. 62.13(12), Stats.

30. Sec. 66.0409, Stats.

31. Sec. 98.04(1), Stats.

32. Sec. 101.02(7), Stats.

33. Sec. 114.105, Stats.

34. Sec. 125.10(2), Stats.

35. Sec. 134.66(5), Stats.

36. Sec. 145.13, Stats.

37. Sec. 252.02(4), Stats.

38. Sec. 349.06, Stats.

39. Sec. 349.18, Stats.

40. Sec. 349.06, Stats.

EMERGENCY POWER

Local Emergency

In the event of an emergency, Wisconsin municipalities are empowered, despite any other provision of law to the contrary, to declare, by ordinance or resolution, an emergency existing within the city, village or town “whenever conditions arise by reason of war, conflagration [fire], flood, heavy snow storm, blizzard, catastrophe, disaster, riot or civil commotion, acts of God, and including conditions, without limitation because of enumeration, which impair transportation, food or fuel supplies, medical care, fire, health or police protection or other vital [municipal] facilities....”⁴¹ The ordinance or resolution must limit the emergency period to the time during which the emergency conditions exist or are likely to exist. The governing body’s emergency power includes the authority to order, by ordinance or resolution, whatever is “necessary and expedient for the health, safety, welfare and good order of the [municipality] in the emergency and includes without limitation because of enumeration the power to bar, restrict or remove all unnecessary traffic, both vehicular and pedestrian, from the local highways. The governing body can also provide penalties for violation of any emergency ordinance or resolution not to exceed a \$100 forfeiture or, in default of payment of the forfeiture, six months’ imprisonment for each separate offense. If the municipal governing body cannot meet promptly because of the emergency, the chief executive officer or acting chief executive officer is empowered to exercise by proclamation all of the powers conferred upon the governing body which the officer believes necessary and expedient. Any such proclamation is subject to ratification, alteration, modification or repeal by the governing body as soon as it can meet, but the subsequent action taken by the governing body does not affect the prior validity of the proclamation. Sec. 166.23(3), Stats.

State Emergency

State law requires that municipalities adopt an effective program of emergency management consistent with the state plan of emergency management and appoint a head of emergency management services.⁴² The head of emergency management services is responsible for developing and promulgating emergency plans consistent with state plans, directing the emergency management program, directing local emergency management training programs and exercises, advising the county head of emergency services and performing other duties relating to emergency management required by the governing body.

41. Sec. 166.23(1), Stats.

42. Sec. 166.03(4), Stats.