



Removal of Officers; Governing Body Procedures and the Recall Procedure

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Past comments have addressed how to fill a vacancy in public office.¹ This comment addresses how to create one – specifically, by removing a local official from office. This area is a frequent source of questions for League attorneys. Can a governing body remove a member who repeatedly fails to show up for meetings? What about a member who always shows up but seems to focus all his or her energy on creating dissent? What about a member who reveals information discussed in closed session?

What recourse do voters have when they feel a local official has done something improper or hasn't been responsive to constituent concerns?

This comment explains under what circumstances local officers can be removed from office. The first section focuses on the procedures a governing body or appointing officer or body has available for removing a local official. The second section focuses on the recall procedure available to electors.

I. Removal by Governing Bodies or Appointing Bodies or Officers

Because the requirements for removal vary for cities and villages, they are discussed separately.

A. Removal & Suspension of City Officers

Removal of city officers is governed by Wis. Stat. sec. 17.12, which was recently modified by 2017 Wis. Act 150². The bases for removal vary depending on whether the office is elective or appointive. Elective officers can be removed by the common council for cause. "Cause" is defined as "inefficiency, neglect of duty, official misconduct or malfeasance in office."³

Appointed officers are treated differently. Officers appointed by the common council can be removed by the common council at pleasure. With the exception of police and fire commissioners, officers appointed by any officer or body other than the common council may be removed at pleasure by the appointing officer or body, regardless of whether or not the appointment was confirmed by the common council. A member of a board of police and fire commissioners who is appointed by the mayor and confirmed by the common council may be removed by the common council, for cause.⁴ An officer who was appointed by an officer or body other than the common council, subject to council confirmation, can be removed by the common council for cause. In first class cities (Milwaukee), persons appointed

by the mayor to public offices specified in Wis. Stat. sec. 62.51(1)(a) serve at the mayor's pleasure, even though the appointments are subject to common council confirmation.⁵

A city may, by ordinance, provide that any appointed city officer may be removed only for inefficiency, neglect of duty, official misconduct, or malfeasance in office.⁶

In addition to the procedures above, Wis. Stat. sec. 17.14 sets forth a procedure for having the circuit court remove an assessor and any board of review member.

Removals by the common council require an affirmative vote of three-fourths of all the members thereof.⁷ Removals by any other body consisting of three or more members, require an affirmative vote of two-thirds of all the members thereof. Any officer lawfully removed from office is ineligible to appointment or election to fill the vacancy caused by the person's removal.⁸

The mayor may summarily suspend from office any city officer whose removal is being sought and against whom charges have been filed, and may appoint an officer to discharge the duties of that office until such charges have been disposed of. If such charges are

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1. See Appointments and Vacancies 245R .
2. These changes took effect March 30, 2018.
3. Wis. Stat. sec. 17.001.
4. Wis. Stat. sec. 17.12(1)(cm).
5. Wis. Stat. secs. 17.12(1) and 62.51(2).
6. Wis. Stat. sec. 17.12(3m).
7. Wis. Stat. sec.17.12(1)(d).
8. Wis. Stat. sec. 17.16(10).

dismissed, the suspended officer must be restored to his or her office and is entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended.⁹

City officers who are appointed according to merit and fitness subject to a civil service or to a police and fire commission law, or whose removal is governed by such a law, must be removed as therein provided.¹⁰

B. Removal of Village Officers

Removal of village officers is governed by Wis. Stat. sec. 17.13. Any appointive village officer may be removed at pleasure by the appointing officer or body. Removal requires a majority

vote of all the members thereof. Any elective village officer may be removed by a majority vote of all the members of the village board, because of continued physical inability to perform the duties of office or gross neglect of duty.

Although sec. 17.13 does not use the term “cause,” these are specific types of cause and the procedure set forth in sec. 17.16 and discussed below must be used.

Any village officer, elective or appointive, can be removed, for cause, by a circuit court judge in the circuit wherein the village is situated. Cause is defined as “inefficiency, neglect of duty, official misconduct or malfeasance in office.”¹¹ An additional procedure for having the circuit court remove an assessor and any board of review member is set forth

in Wis. Stat. sec. 17.14. Removal of a police chief would be covered by the procedure set forth in sec. 62.13(5).¹²

C. Procedure for Removal

Removals from office at pleasure must be made by order. The removing authority must file a copy of the order in the clerk’s office. Removals from office for cause must follow the procedure set forth in Wis. Stat. sec. 17.16 and are more complicated.

Removal for cause under sec. 17.16 requires that a resident taxpayer of the governmental unit bring written verified charges against the officer. These charges must be followed by a speedy public hearing at which the officer must be given a full opportunity to present a

9. Wis. Stat. sec. 17.12(3).
 10. See Wis. Stat. secs. 17.12(4), 62.13(5) and 63.43.
 11. Wis. Stat. sec. 17.001.
 12. Wis. Stat. sec. 61.65(1)(am) and 61.65(3g)(d)2.

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defense against the charges, personally and by counsel. Section 17.16(3) contains important details relating to the time frame for notifying the officer of the charges and hearing, and delivery of the notice.

The removing power may, before acting upon any charges brought against the officer, require the person bringing the charges to execute and deliver a \$1,000 bond with approved sureties, conditioned for payment of costs and expenses incurred by the governmental unit and the removing power in hearing and investigating the charges. The expenses for removal procedures are paid by the city or village. However, if the removing power finds that the complaint was "willful and malicious and

without probable cause,"¹³ the expenses shall be paid by the person who brought the charges and may be collected in an action against the person or on the bond furnished by the person.

If the officer is removed, the removing power must file a certified copy of the removal order in the clerk's office, together with a complete transcript of the testimony and proceedings at the hearing and a statement of the cause(s) for which removal is made.¹⁴

II. Recall of Local Officials

Another way officers are subject to removal is by way of Wis. Stat. sec. 9.10, which sets forth a procedure by which electors can petition for the recall of municipal elected officials.

A recall petition may not be filed before one year has elapsed in the targeted official's term of office.¹⁵ Before a recall petition may be circulated, the petitioner must register as provided in Wis. Stat. sec. 11.0902 and file the registration statement with the municipal clerk. The registration statement must be accompanied by a statement indicating the petitioner's intent to circulate a recall petition, the name of the local official targeted for recall and the reason for the recall.¹⁶ The reason offered must be "related to the official responsibilities of the official for whom removal is sought."¹⁷

A petition requesting the recall of each elected officer shall be prepared and filed separately. The recall petition must

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13. Wis. Stat. sec. 17.16(9).

14. Wis. Stat. sec. 17.16(8).

15. Wis. Stat. sec. 9.10(2)(s).

16. Wis. Stat. sec. 9.10(2)(d).

17. Wis. Stat. sec. 9.10(2)(b).



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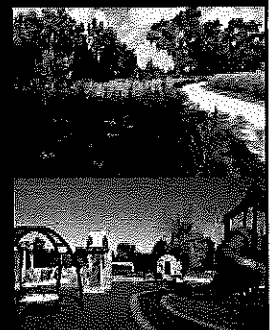
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be signed by electors equal to at least 25 percent of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder targeted for recall.¹⁸ The municipal clerk shall determine and certify to any interested person the number of signatures required on a recall petition for that office. The recall petition must be filed with the municipal clerk within 60 days after registration.¹⁹

When a recall petition is filed, the municipal clerk has 31 days to review the petition to determine whether it is sufficient.²⁰ The clerk has no authority to determine the truth or falsity of any of the reasons for the recall set forth in the petition. Section 9.10(2) sets forth certain rules for determining whether signatures may be counted as valid. The official who is the subject of a recall may, using the process set forth in sec. 9.10(4), challenge the petition's sufficiency. If the petition is sufficient on its face, the clerk must so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate must state the particulars creating the insufficiency and the petition may be amended within five days following the affixing of the certificate. The clerk then has two days to reexamine the petition to determine sufficiency and attach a certificate with his or her findings to the petition.

If the local official targeted for recall or the petitioner disagrees with the clerk's ruling on sufficiency, the party may appeal the ruling to the Wisconsin Elections Commission (commission) by filing a written complaint.²¹ If the commission renders a decision, it sends an order to the

clerk. The clerk or complainant has 30 days in which to appeal the commission's order to the circuit court. Whenever a petition is found to be sufficient, the municipal governing body must conduct the recall election on the Tuesday of the sixth week commencing after the date of certification.²²

Unless the elected official resigns from office within 10 days after the date of the certification, he or she will automatically be a candidate for the office. Other candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers or declarations of candidacy not later than 5:00 p.m. on the fourth Tuesday preceding the election and have their names placed on the ballot at the recall election.

All candidates for any village office, other than the official against whom the recall petition is filed, shall file nomination papers, regardless of whether the village normally uses nomination papers or a caucus to nominate candidates for village offices under Wis. Stat. sec. 8.05.²³

If more than two persons compete for an office, a recall primary must be held. The names of the two persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, then a recall election is not held. If the incumbent receives a majority of the votes cast, the incumbent remains in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate is elected to

serve for the residue of the incumbent's unexpired term. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.²⁴

The candidate who receives a plurality of votes at the recall election or a majority of votes at a primary when authorized under sec. 9.10(4)(f) is declared elected for the remainder of the term. If the incumbent wins the recall election, no further recall petition may be filed against that official during the term for which he or she was elected.²⁵

The official against whom a recall petition has been filed shall continue to perform the duties of his or her office until a certificate of election is issued to his or her successor.²⁶

Elections 605R1, Officers 767R2

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Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire's responsibilities include supervising the legal services provided by the League, answering questions of a general nature for officials and employees of member municipalities, writing legal articles for the League's magazine and amicus briefs in appellate cases involving issues of statewide concern to municipalities, organizing an annual institute for municipal attorneys, and educating local officials on a variety of topics pertaining to their duties. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org

18. Wis. Stat. sec. 9.10(1)(b). If no statistics are available to calculate the required number of signatures for the recall petition, the statute sets forth a method for calculating the number.

19. Wis. Stat. sec. 9.10(2)(d).

20. Wis. Stat. sec. 9.10(4)(a).

21. Wis. Stat. sec. 5.06(1).

22. Wis. Stat. sec. 9.10(4)(d).

23. Wis. Stat. sec. 9.10(4)(h).

24. Wis. Stat. sec. 9.10(4)(f).

25. Wis. Stat. sec. 9.10(6).

26. Wis. Stat. sec. 9.10(5)(b).