



OFFICIAL NOTICE & AGENDA
REGULAR MEETING

MEETING: Bicycle & Pedestrian Advisory Committee
DATE/TIME: Monday, December 22, 2025 at 5:00 PM
LOCATION: Wausau City Hall – Maple Room
407 Grant Street, Wausau WI, 54403

MEMBERS:
Jonathan Smith (C) Chris Filtz
Tom Neal Ben Gerhards
Terry Kilian Veronica Hope
Susan Schmidt Brad Lenz
(Ex Officio)

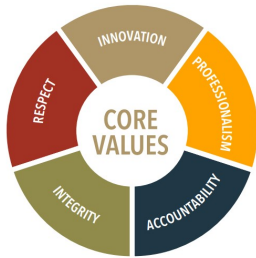
- 1 Call to order.
- 2 Public comment.
- 3 Consideration of the minutes of the preceding meeting(s).
 - a. Review and approve November 24, 2025, meeting minutes.
- 4 Discussion and possible action.
 - a. 2026 Work Plan discussion and possible action.
 - b. Discussion and possible action on WisDOT Business 51, Lakeview Drive to Kent Street/Eau Claire River Bridge to Lakeview Drive project.
- 5 Discussion.
 - a. Marathon County MPO Bicycle and Pedestrian Sub-Committee Update
 - b. Wisconsin Open Meetings Law Overview
 - c. 2026 submission deadlines "Wausau Works for You" City Newsletter
 - 3/6/26 - spring newsletter
 - 6/5/26 - summer newsletter
 - 9/11/26 - fall newsletter
- 6 Update on City projects.
 - a. RRFB installation 6th Avenue/Bridge Street and 1st Avenue/Callon Street
 - b. River Edge Parkway - Winton Street to Gilbert Park extension
- 7 Items for future agendas.
- 8 Next meeting date.
 - a. The next regular meeting is scheduled for Monday, January 26, 5:00 p.m.
- 9 Adjournment.

Jonathan Smith, Chair

NOTICE POSTED AT CITY HALL (407 GRANT STREET) AND TRANSMITTED TO THE OFFICIALLY DESIGNATED NEWSPAPER

DATE: December 16, 2025
TIME: 10:00am
POSTED BY: Michelle Van Krey

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the City of Wausau will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities. If you need assistance or reasonable accommodations in participating in this meeting or event due to a disability as defined under the ADA, please call the ADA Coordinator at (715) 261-6622 or ADAServices@ci.wausau.wi.us to discuss your accessibility needs. We ask your request be provided a minimum of 72 hours before the scheduled event or meeting. If a request is made less than 72 hours before the event the City of Wausau will make a good faith effort to accommodate your request.



City of Wausau
(715) 261-6500 | clerk@wausauwi.gov
wausauwi.gov



MINUTES

November 24, 2025

Members Present: Jonathan Smith (Chair), Alder Tom Neal, Alder Terry Kilian, Chris Filtz, and Ben Gerhards

Others Present: Kris Tiles (UW Extension), Makayla Galecki (Wausau MPO), TJ Nicksich, and Carrie Edmondson

Location: Wausau City Hall, 407 Grant Street, Maple Room

In compliance with Chapter 19, Wisconsin Statutes, notice of this meeting was posted and transmitted to the Wausau Daily Herald in the proper manner.

1. Call to Order/Roll Call

Chair Smith called the meeting to order at 5:00 p.m.

2. Public Comment

No public comments were received.

3. Approve the October 27, 2025, meeting minutes

Motion/second by Filtz/Kilian to approve. Passed unanimously. 5-0

4. Work Plan Discussion

Kris Tiles facilitated a work plan with the group discussing roles, procedure, and potential projects.

5. 2026 submission deadlines “Wausau Works for You” City Newsletter

- 3/6/26 – spring newsletter
- 6/5/26 – summer newsletter
- 9/11/26 – fall newsletter

6. Update on City projects:

- WIS 52, North 6th Street to North 18th Street Improvement Project
- RRFB installation 6th Avenue and Bridge Street and 1st Avenue and Callon Street
- River Edge Parkway – Winton Street to Gilbert Park Extension
 - BA Esther Greenheck Foundation grant

7. Items for Future Agendas

None

8. Next Meeting Date: December 22, 2025

A quorum will be confirmed by email prior to the December meeting.

9. **Adjourn**

Motion/second by Neal/Filtz to adjourn. Passed unanimously 5-0. Meeting ended at 6:05 p.m.

DRAFT

Bicycle and Pedestrian Advisory Committee (BPAC) Work Plan Summary November 2025

Procedure

When BPAC votes to approve an item, it would be helpful to:

- Clarify where the item is going (is it going to a committee or a city department?)
- What exactly will be moving forward to that committee or department?
- If going forward to a committee, is there someone from BPAC that would like to attend the meeting and present the item to the committee?

Roles

BPAC

Overarching MPO Bike/Ped Plan/River Edge Parkway

- Use roles in Common Council and committees to voice support or concerns
- Approve/amend/evaluate bike routes
- Approve/amend/evaluate new bike/ped projects
- Provide input on safe crossings

SRTS

- Ensure equity
- SRTS – encouraging biking/walking to school
- SRTS – evaluating next steps
- Continue to follow-up with Wausau School District (WSD) on adoption (Carrie)

City Projects

- Infrastructural recommendations
- Create connectivity – prioritize gaps
- Consider available funding
- Identification of mellow street network in the City
- Community voice to narrow scope
- E-bike conversation

Citizen Concerns

- Advocacy of solutions for “on the ground” issues
- Use social media to inform the public
- Equity/infrastructure audit of neighborhoods
- Rapid response of incremental infrastructure
- Encouragement – Bike to Work with the Mayor
- Use special skills to make progress (graphics, communication)

Community Development/Engineering Staff

- Continue to collaborate with the Wausau MPO to produce recommendations that support area connectivity

- Develop the construction of new trails, paths
- Work with WSD to adopt SRTS Plan
- Determine project feasibility
- Determine whether plans align with overarching City vision
- Install signage for trails, speed limits

BPAC Liaisons

- Traffic reports/accident reports
- Crossing guard placement (SRTS)
- Provide a connection to Common Council/Committees
- Implement BPAC recommendations
- Bike/ped counts
- Enforcement

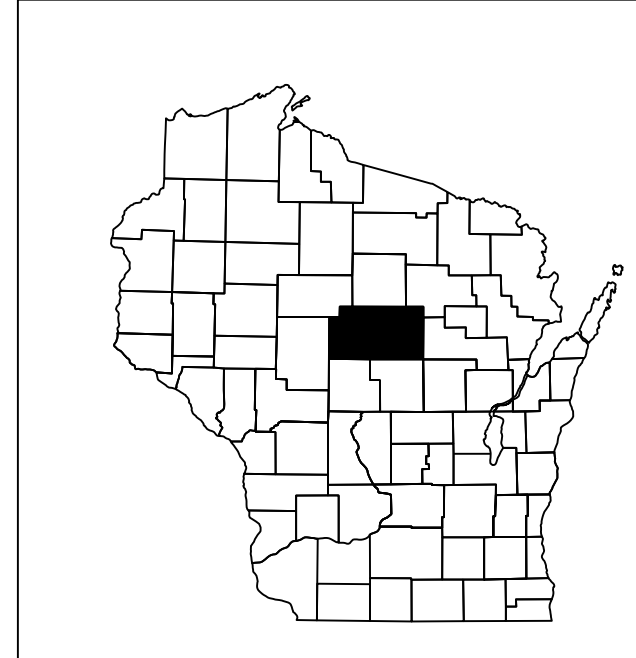
Other Community Groups

- Participate in the development of plans and advance implementation
- Ensure equity in the community and that all groups are included
- Education – safety topics
- Voice lived experiences
- Address safety concerns
- Publicize biking rules
- Education/community bike rides (Aspirus bike rodeo)
- Educate about bike/ped safety

Take-Away Items

- Infrastructure projects come to BPAC for input/recommendation – these items move to I & F Committee with a possible BPAC member to provide an overview of the recommendation.
- Non-infrastructure items may go to a City department or to another committee such as Public Health and Safety Committee or Parks and Recreation Committee, with a possible BPAC member to provide an overview of the recommendation.
- How do we work to ensure equity?
- How do we want to move the SRTS plan forward?
- Do we want to formally prioritize gaps?
- Mellow Street Network (Jonathan)
- Continue to provide content to City newsletter, City Facebook, others?
- Equity/infrastructure walk audits – is this something we would like to pursue? Do we want to identify opportunities?
- Continue Bike to Work with the Mayor
- What group do we think we be best to assist with safety and education? PD – bike rodeo?

City of Wausau Bicycle and Pedestrian Advisory Committee							
2026 Work Plan							
What	Anticipated Outcome, Product, or Result	Idea Source	Specific Actions	Target Dates	Identified Partners	Point Person	Policy Directives
1. Infrastructural recommendations and input Street reconstruction projects	Input/discussion to assist City staff	Wausau MPO Bike/Ped Plan, Wausau Streets Plan, WisDOT	Provide input to Police Department, Engineering Department, and Community Development Department	Ongoing	Engineering Department, Community Development Department, WisDOT, Wausau MPO, Wausau School District	Engineering, Planning	
2. Non-infrastructural recommendations and input Bike racks, bike share, bike/ped amenities, painted crosswalks, public engagement meetings, ribbon cutting events, bike counter placement, mellow streets	Input/discussion to assist City staff	Varied	Provide input to Police Department, Engineering Department, and Community Development Department	Ongoing	Community Development Department, Police Department, Wausau School District, Wausau MPO	Engineering, Planning	
3. Crosswalk improvements RRFB recommendations, increasing crosswalk monitoring	Recommendation to Infrastructure and Facilities Committee and/or staff	Staff, Alders, residents	Provide recommendation to I & F Committee or staff	Ongoing	Engineering Department, Community Development Department, Police Department	Engineering, Planning	
4. Community safety and education. City newsletter, City Facebook, working with other partners	Community information	Safety best practices from WisDOT, Wausau Safe Routes to School Plan	Providing input to City outlets, and suggestions to safety partners	Newsletter - quarterly, events such as bike rodeo	Police Department, Wausau School District, Wausau MPO	Planning	Would BPAC like staff to pursue walk audit opportunities?
5. Community encouragement. Bike to Work with the Mayor, bike to work week, social ride opportunities	Community bike ride	City, BPAC members	Marketing, participation	Annually in May and social rides throughout the year	Community Development Department, Food sponsors	Planning	
6. Trail projects recommendations and input Gaps, connectivity, prioritization, and maintenance	Continued trail development	River Edge Parkway Plan and Wausau Business Campus Master Plan	Provide input on grant applications, trail development, trail maintenance, signage, and policies.	Ongoing	Engineering Department, Community Development Department, Wausau and Marathon County Parks, Recreation, and Forestry	Engineering, Planning	
7. Bicycle Friendly Community application The Wausau MPO is coordinating a Bicycle Friendly Community application with the League of American Bicyclists. With the last application, we were awarded bronze status which expired in 2021.	Submitted June 2026	Wausau MPO Bike/Ped Subcommittee	Assist Wausau MPO with application data	Now through 6/26	Wausau MPO and surrounding municipalities	Planning	

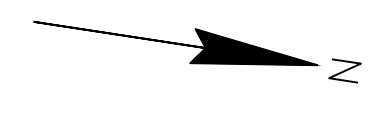
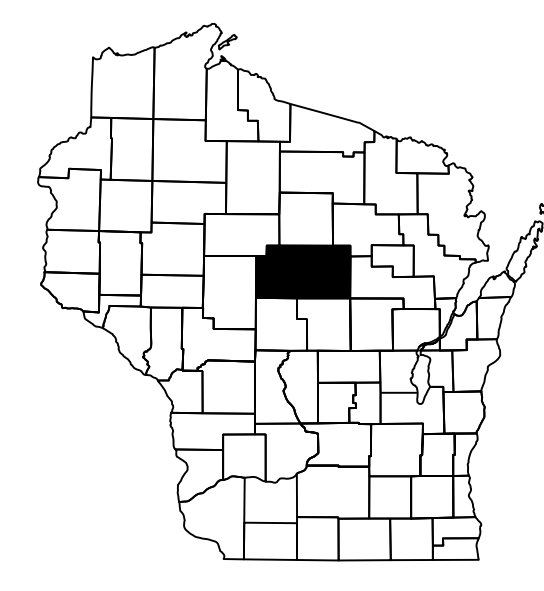


BUSINESS 51 IMPROVEMENTS

PROJECT I.D. 6999-02-10 & 6999-18-13
SCHOFIELD - WAUSAU
EAU CLAIRE RIVER BRIDGE TO KENT STREET
BUSINESS 51
MARATHON COUNTY

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- PROPOSED TEMPORARY EASEMENTS
- PROPERTY LINE
- MUNICIPAL BOUNDARIES
- NEW SIDEWALK AND CURB RAMPS
- PAVEMENT RECONSTRUCTION





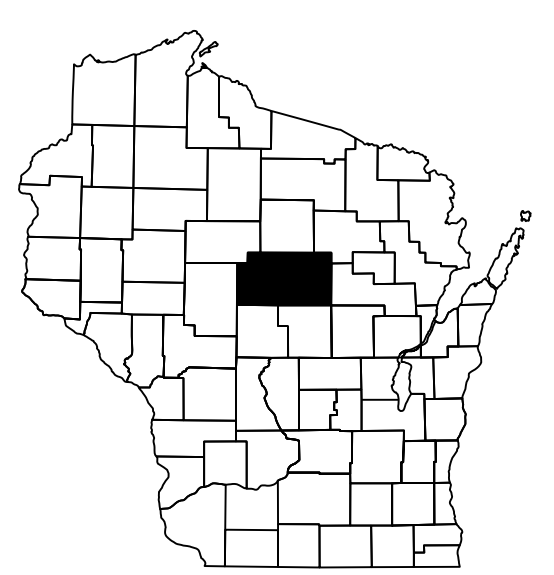
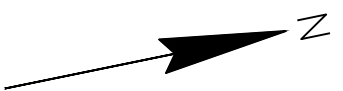
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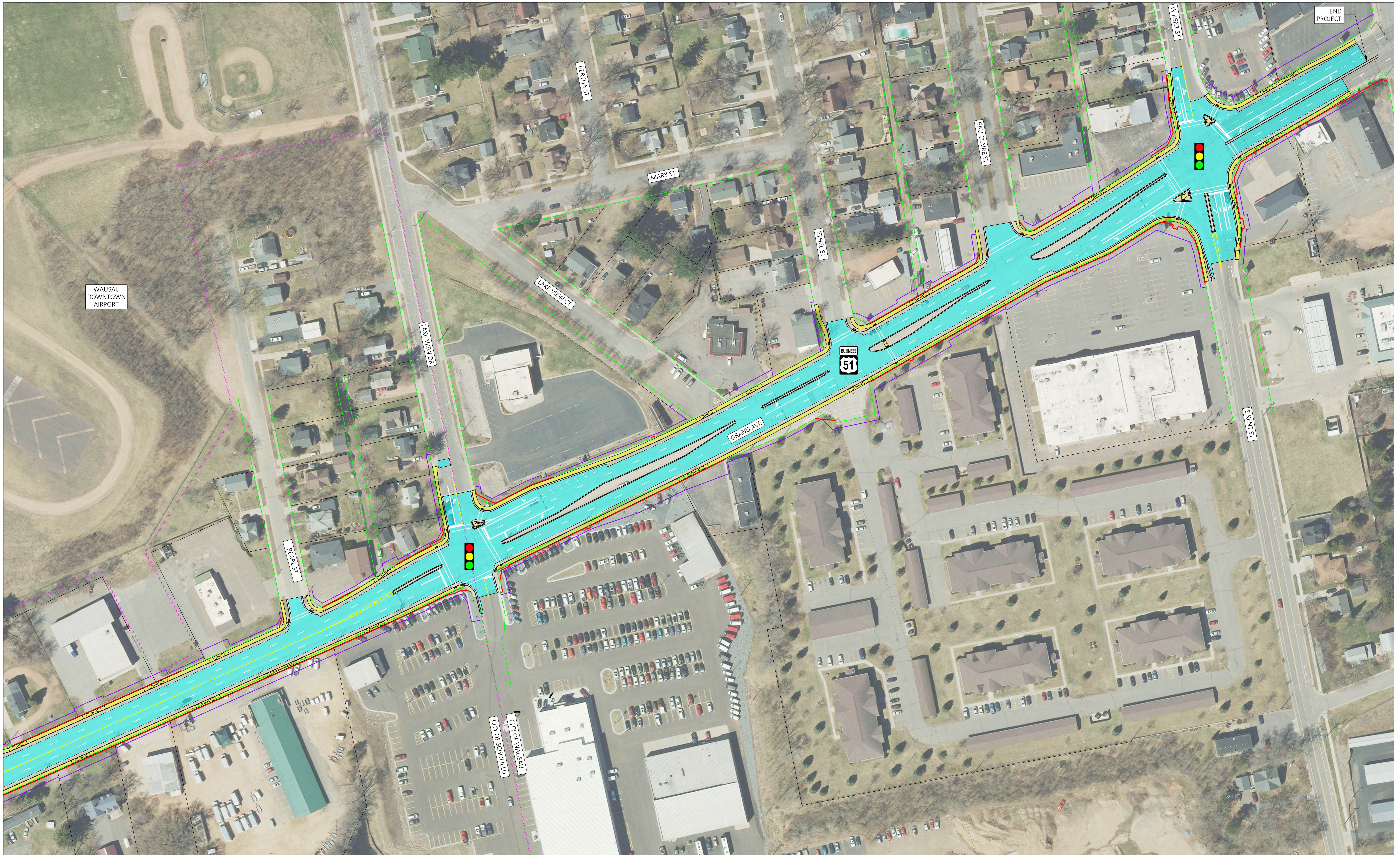
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BUSINESS 51 IMPROVEMENTS
 PROJECT I.D. 6999-02-10 & 6999-18-13
 SCHOFIELD - WAUSAU
 EAU CLAIRE RIVER BRIDGE TO KENT STREET
 BUSINESS 51
 MARATHON COUNTY

- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY
- PROPOSED TEMPORARY EASEMENTS
- - - PROPERTY LINE
- MUNICIPAL BOUNDARIES
- NEW SIDEWALK AND CURB RAMPS
- PAVEMENT RECONSTRUCTION



Public Involvement Meeting

**C Schofield, Grand Avenue
Eau Claire River Bridge to
Lakeview Drive
Business 51
Marathon County**

Project ID: 6999-18-13 (83)

**C Wausau, Grand Avenue
Lakeview Drive to Kent Street
Business 51
Marathon County**

Project ID: 6999-02-10 (80)



**December 10, 2025
5:30 PM – 7 PM
Schofield City Hall
351 Alderson Street, Schofield WI 54476**

Deaf, hard-of-hearing, deaf-blind, and speech-disabled persons should contact the Wisconsin Relay Service for assistance by dialing 711.

Welcome

The purpose of the meeting is to present information on the proposed improvements, review the design concepts and obtain input that will assist the department in further development and refinement of a final design.

After a brief presentation, the meeting will follow an open house format.

Project Information

The project is located on Business 51 from the Eau Claire River Bridge to Kent Street in the cities of Schofield and Wausau, Marathon County.

Business 51 Location Map



Purpose and Need

The existing Business 51 pavement is showing signs of distress with spalling, cracking, and joint failure. The existing street lighting, traffic signals, and street signage do not meet current standards. In addition, curb ramps located throughout the project do not meet current Americans with Disability Act (ADA) standards. The existing bicycle accommodations also do not meet current width standards.

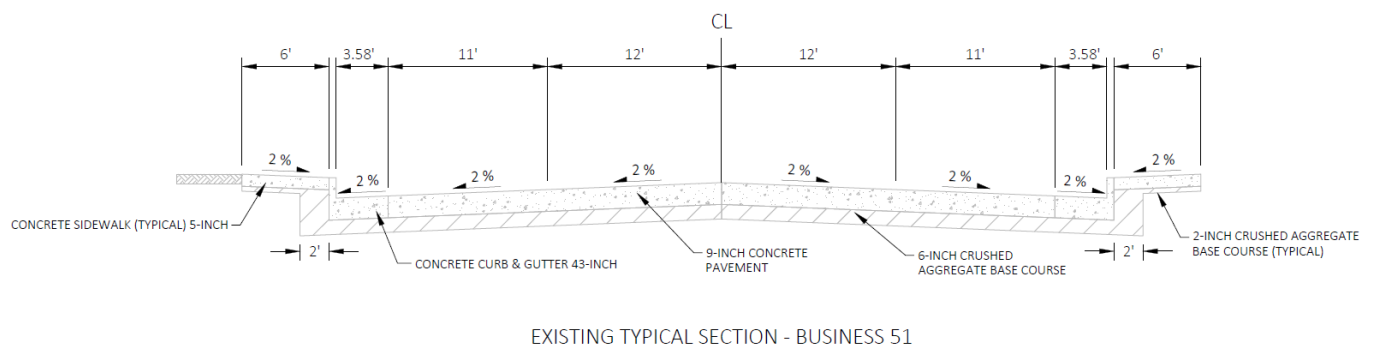
There have been six bicycle crashes in the past seven years that involved bicycles riding on the sidewalk that struck or were struck by vehicles leaving businesses.

The purpose of the project is to address the deteriorated roadway pavement, traffic signals, street signage, street lighting, curb ramps, and bicycle accommodations.

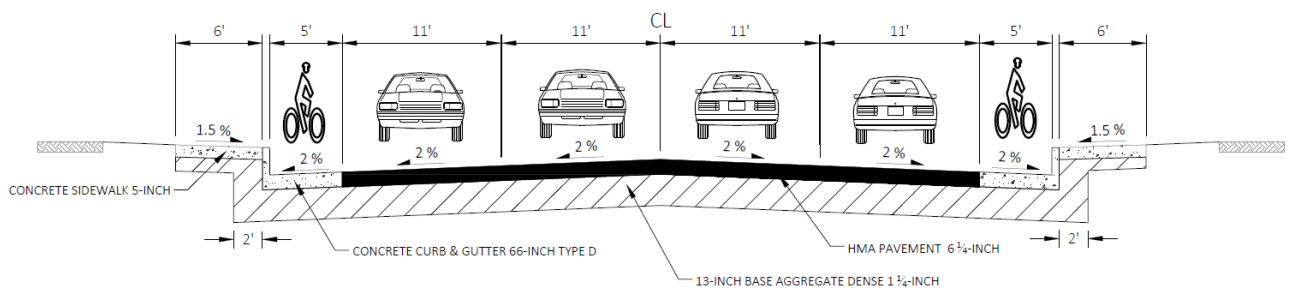
Proposed Improvements

The project proposes to remove all concrete (pavement, curb & gutter, and sidewalk) and base course, and install base aggregate, asphaltic pavement, and concrete curb & gutter with a wide gutter for use as a marked bicycle lane. The project also consists of the following proposed work actions:

- Adjust or replace existing inlets and manholes.
- Remove and replace traffic signals to provide a signal head per lane.
- Reduce the inside lane width from 12-foot to 11-foot from the Eau Claire River bridge to Lakeview Drive
- Provide a five-foot bicycle lane from the Eau Claire River bridge to Kent Street
- Install concrete sidewalk.
- Install curb ramps that meet ADA standards.
- Adjust street lighting as needed.



EXISTING TYPICAL SECTION - BUSINESS 51



FINISHED TYPICAL SECTION - BUSINESS 51

Proposed Bicycle Accommodations

A 5-foot bicycle lane was chosen because it has minimal impacts to other roadside facilities. If a bicycle accommodation wider than 5-foot is provided, impacts would include:

- Fire hydrants at existing back of sidewalk would need to be moved.
- Wooden poles for utilities and street lighting at back of sidewalk would need to be moved.
- All storm sewer inlets would need to be replaced.
- Retaining walls and buildings at the back of sidewalk would need to be moved or removed.
- Additional permanent real estate would be required as well.

Proposed traffic impacts

Construction is currently scheduled to begin in 2030 but could occur as early as 2029. Construction is expected to take an entire construction season.

Business 51 will remain open to traffic utilizing single lane closures with bidirectional traffic and periodic intersection closures. Access will be maintained to businesses and residences during construction, except access may be limited during certain short-term periods. Motorists should expect some minor delays to occur.

Sidewalks within the project limits will be closed on each side of Business 51 that coincides with the lane closures. To provide pedestrian access to businesses and residences within the project limits, a free shuttle service will be provided 24 hours a day, seven days a week. The contact information for the shuttle service will be posted at locations where the sidewalk is closed. Shuttle service information will also be available on the 511 website during construction.

City of Wausau Bus Route A uses West Kent Street and Business 51. Kent Street will be closed for approximately 3 weeks to reconstruct the intersection. Bus Route A will remain operational and will be rerouted during the closure.

Real estate

Minor temporary and permanent real estate impacts are anticipated throughout the Business 51 corridor. New right of way will be required for sidewalk replacement, upgrading traffic signals, adjusting street lighting, and curb ramps. Temporary easement will be required for blending slopes and driveway match points.

The local municipalities will be acquiring the real estate for this project and will be reimbursed 100% of the costs by the department after all acquisitions are complete. For any questions regarding real estate acquisitions, please contact the City of Wausau or the City of Schofield.

Project update/next steps

Local officials meeting	November 6, 2025
Public involvement meeting	December 10, 2025
Environmental document approval	March 2026
Preliminary plans	May 2026
Final right of way plat	July 2026
Real estate acquisition begins	August 2026
Final plans	August 2028
Construction currently scheduled	2030, but could be as early as 2029

Public input/comments

Your comments assist us in developing a project that will serve the needs of the traveling public as well as the needs of the local community. Your input is welcome and appreciated throughout the design process.

We encourage you to talk to the project representatives and ask them questions. Attached to this handout is a sheet for your written comments and input regarding the proposed project. Please mail any written comments about the project by **January 9, 2026** or leave them in the comment box tonight. You can also email your comments to the contact listed below.

Project information is also available on the project website:

<https://wisconsin.gov/Pages/projects/by-region/nc/bus51lakeview/default.aspx>

Deaf, hard-of-hearing, deaf-blind, and speech-disabled persons should contact the Wisconsin Relay Service by dialing 711.

For more information, please contact:

Zach Gruling
Project Manager
Wisconsin Department of Transportation
1681 Second Avenue South
Wisconsin Rapids, WI 54494
715-421-8346
zachary.gruling@dot.wi.gov



In This Together Program

A quick guide to help your business prepare for road construction

1 ORGANIZE EARLY



- Learn more about the project and its timeline
- Develop questions for WisDOT staff
- Check in with neighboring businesses and/or local business organization



- *Can you partner on promotions, events or materials?*
- *Establish a point of contact for the business community?*

2 STAY ENGAGED WITH THE PROJECT



- Attend public involvement meeting(s)
- Make note of contact information for the project team, and voice the unique needs of your business
- Learn more about project resources



- *Is there a construction website?*
- *Is there a mailing list?*
- *Is there an email distribution?*

3 HELP CUSTOMERS FIND YOU



- Consult with project staff to determine when and where there may be closures or detours
- Ask about temporary signage options
- Consider how best to inform customers



- *Maybe a joint communication with neighboring businesses for employees and customers about traffic and parking?*
- *Maybe a feature article in a customer-facing newsletter?*
- *Maybe a social media post shared by businesses and local community pages?*

4 DEVELOP AND ACTIVATE YOUR GAME PLAN



- Check out case studies at wisconsindot.gov/together
- Connect with project contacts to discuss any potential obstacles specific to your business such as deliveries, operational hours, employee parking, etc.
- Check in with employees



- *Is there a consistent message for customers?*
- *Are there temporary changes to shift times, parking, or deliveries?*

5 END OF CONSTRUCTION



- Stay positive, be flexible and know that WisDOT staff are available to help
- Collect any temporary signage
- Let customers know!



- *Consider working with other businesses on a special event?*
- *Share social media about the project's benefits?*
- *Ask customers to help spread the word?*



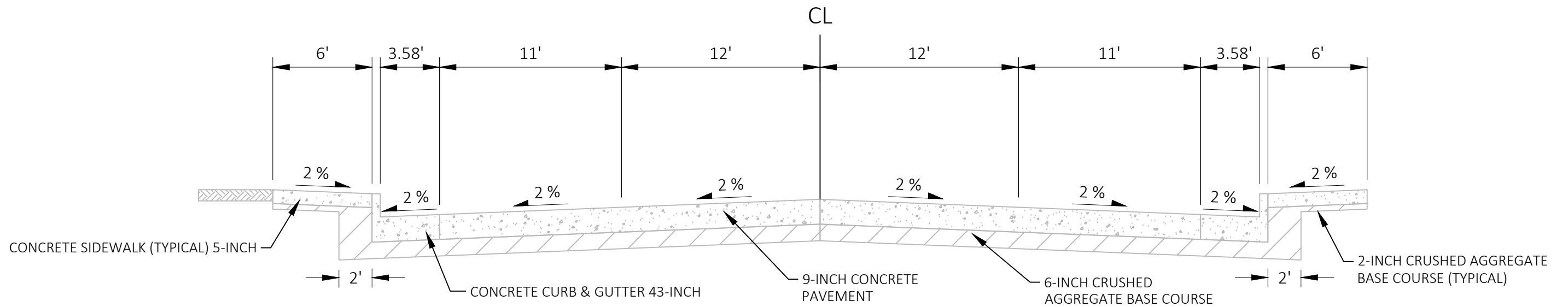
Remember, we are In This Together! For more planning ideas, tips and resources: wisconsindot.gov/together

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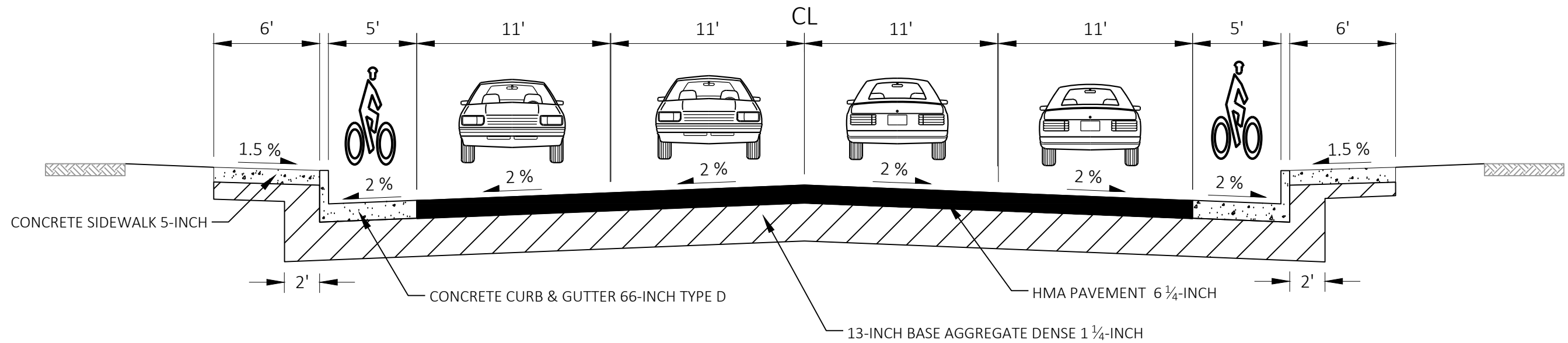
Place
Stamp
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Attn: Zach Gruling, P.E.
WisDOT North Central Region – Wisconsin Rapids
1681 Second Avenue South
Wisconsin Rapids, WI 54494

To mail, fold here and tape.



EXISTING TYPICAL SECTION - BUSINESS 51



FINISHED TYPICAL SECTION - BUSINESS 51



Understanding and Complying With Wisconsin's Open Meetings Law

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

Author's Note: This is Part 1 of a 2-part legal comment providing an overview of Wisconsin's open meetings law requirements. Part 2 will appear in the July issue.

Members of local governmental bodies need to understand Wisconsin's open meetings law requirements. This month's legal comment provides an overview of the law.

The open meetings law is found in §§ 19.81 through 19.98 of the Wisconsin Statutes. The law does not require absolute openness. However, the legislature has declared 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 To that end, the law requires that all meetings of governmental bodies be preceded by public notice, be held in places reasonably accessible to the public, and be open to all citizens except as otherwise specifically provided.² Governmental bodies may meet in closed session if the subject matter comes within one of a set number of exemptions set forth in the law.³

Definitions Are Key to Understanding Law

The open meetings law only applies to meetings of a "governmental body" as defined by Wis. Stat. § 19.82(1). This definition, together with the definition of "meeting" in § 19.82(2), is the key to understanding when the open meetings law applies. A "governmental body" includes a "local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order," as well as "formally constituted" subunits of any of these bodies. Quasi-governmental bodies are also subject to the open meetings law.⁴ For open meetings law purposes, a governmental body must have (1) a defined membership; (2) collective responsibilities, authority, power, and duties vested in the body as a whole, distinct from the individual members; and (3) must be created by constitution, statute, ordinance, rule or order. "Rule" includes any authoritative, prescribed direction for conduct, such as the regulations governing procedure in a governmental body.⁵

Bodies formed for or meeting for the purpose of collective bargaining are specifically excluded from the definition of "governmental body."⁶

"Meeting" is defined as the convening of members of a governmental body for the purpose of exercising the responsibilities vested in that body. A meeting does not include social or chance gatherings that are not intended to avoid the law. When one-half or more of the members of a governmental body are present, a meeting is "rebuttably presumed" to be for official purposes.⁷

Another important term, "open session," is defined as a meeting "which is held in a place reasonably accessible to members of the public and open to all citizens at all times."⁸ The Wisconsin Supreme Court has interpreted this to mean "that a governmental body must meet in a facility which gives reasonable public access, not total access, and that it may not systematically exclude or arbitrarily refuse admittance to any individual."⁹

When Is There a Meeting Subject to the Law?

Although application of the open meetings law is usually straightforward, local officials should be aware of some situations that can result in pitfalls for the unwary.

A two-prong test is used in determining whether a meeting occurs.¹⁰ Both prongs must be met.

1. Wis. Stat. § 19.81(1).

2. Wis. Stat. §§ 19.81 and 19.83.

3. Exemptions are set forth under § 19.85.

4. A private entity is a "quasi-governmental corporation" within the meaning of the open meetings law if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status. Key factors include but are not limited to: (1) the entity's finances; (2) whether the entity serves a public function; (3) whether it appears to the public to be a government entity; (4) whether the entity is subject to government control; and (5) the degree of access that government bodies have to the entity's records. No one factor is determinative, and determinations must be made on a case-by-case basis. *State of Wisconsin v. Beaver Dam Area Development Corporation*, 2008 WI 90.

5. *State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, 376 Wis. 2d 239, 898 N.W.2d 35.

6. Wis. Stat. § 19.82(1).

7. Wis. Stat. § 19.82(2).

8. Wis. Stat. § 19.82(3).

9. *State ex rel. Badke v. Village Bd. of Greendale*, 173 Wis.2d 553, 580, 494 N.W.2d 408, 418 (1993).

10. *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis.2d 77, 102, 398 N.W.2d 154, 165 (1987).

1. *Purpose*: There must be a purpose to engage in governmental business. This can be discussion, decision, or simply information gathering.

2. *Numbers*: The number of members present must be sufficient to determine the parent body's course of action regarding the proposal discussed.

Regarding the numbers prong, the potential of a gathering to determine the parent body's course of action concerning a proposal can be either the affirmative power to pass or the negative power to defeat. Thus, a gathering of less than one-half the members of a body may constitute a meeting if the number of members present constitutes a **"negative quorum"** (i.e., a sufficient number to block action by the body on a particular issue). This happened in the *Showers* case, where the two-prong test was first announced. Four out of 11 members met privately to discuss a budget matter. The court held that the meeting was illegal because four members constituted a negative quorum since they could determine the outcome by voting as a block against the budget change, which required a two-thirds majority vote.¹¹

The same principle would seem to apply with regard to matters that can be passed by a vote based on the quorum rather than total membership, such as a majority or fraction of a quorum. In such cases, the minimum figure for triggering the open meetings law may be less if it is known that fewer members will attend a meeting. For example, if a village board has seven members and all attend a meeting, a matter requiring a majority vote may be blocked by four members.

But if it is known that only four members will attend, the matter may be blocked by two.

Local officials must also be aware of and avoid what is sometimes called a **"walking quorum."** 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.¹² A series of gatherings, telephone calls, or e-mails between a small enough number of officers so as not to trigger the law at one specific gathering may constitute an illegal meeting.¹³

From the public's perspective, the danger of the walking quorum is that it may produce a consensus or predetermined outcome with the result being that the publicly-held meeting is a mere formality without any real discussion or consideration of the issue being conducted in public.

Local officials must use caution when using electronic message technologies. These technologies have the potential to create walking quorums because of the rapid pace of communication and the inability of the sender to control whether and how other members may choose to respond. For this reason, the Attorney General strongly discourages members of governmental bodies from using electronic mail to communicate with other members of the body about matters within the body's realm of authority.¹⁴

Because e-mail is so easy, quick, and inexpensive, it is unlikely that governmental bodies will refrain from using it completely. However, it is

advisable to set procedures in place or parameters for the use of e-mail to ensure that its use does not violate the open meetings law. The Attorney General's Open Meetings Law Compliance Guide suggests that inadvertent violations of the open meetings law by 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."¹⁵

It is also important to be aware that a "meeting" might take place when a sufficient number of members are present at meetings of other governmental bodies. Clearly, planned joint meetings of governmental bodies must be separately noticed by each governmental body planning to attend the joint meeting. But what about situations where members of one governmental body independently attend the meeting of another governmental body?

In a case referred to as *Badke*,¹⁶ a majority of the village board regularly attended meetings of the village plan commission to gather information about subjects over which they had decision-making responsibilities. The Wisconsin Supreme Court concluded that since the trustees regularly attended plan commission meetings, the gatherings were not chance and therefore should have been noticed as meetings of the village board. Specifically, the Wisconsin Supreme Court held that when one-half or more of the members of a governmental

11. *Id.* Wis. Stat. § 65.90(5) requires 2/3 vote to amend budget.

12. *Showers*, 135 Wis.2d at 92.

13. See *Showers*, 398 N.W.2d at 161, 164; *Governing Bodies* 339 and 371.

14. Wisconsin Department of Justice Open Meeting Compliance Guide (2019), at p. 12.

15. *Id.*

16. *Badke*, *supra*, n.9.

body attend a meeting of another governmental body to gather information about a subject over which they have ultimate decision-making responsibility, such a gathering is a “meeting” within the meaning of the open meetings law and must be noticed as such, unless the gathering is social or chance.

Thus, whenever half or more of the members of one governmental body regularly attend or plan in advance to attend the meeting of another governmental body, it is necessary to provide notice that a majority of that body will be attending the meeting of another body for the purpose of observing and gathering information. However, municipalities should avoid routinely placing boilerplate language designed to comply with *Badke* at the bottom of all committee, commission, and board meetings notices.

Such a *Badke* notice should be provided only if governing body members routinely attend the meetings of a second

body, such as a committee or commission, or the chair of the governmental body or clerk has been informed or otherwise has reason to believe that governing body members will likely be attending the meeting of the second body.

Badke also held that when a quorum of a governing body is present at a meeting of a second governmental body merely because all of the individual members of the quorum make up the membership of the second governmental body, additional notice is *not* required.¹⁷

Local officials should not place too much reliance on the exception to the definition of a meeting for chance or social gatherings. Remember, that exception is qualified by the tag “not intended to avoid” the law. If members of a body get together by chance or for a social occasion there is no violation of the law unless the discussion turns to matters pertaining to that body, in which case the gathering probably converts to an improper meeting.

By now it should be clear that governmental body members must be very careful when discussing public body business with other members outside of a properly noticed meeting. If governmental body members should arguably violate the law by discussing matters outside of a meeting, a wise course to take would be to make sure that the matter receives an appropriate level of discussion at a properly noticed meeting before it is voted on. This may help avoid prosecution and decrease the likelihood that a court will void the action.

Part 2 will discuss the open meetings law’s notice requirements, as well as closed sessions, and enforcement and penalties under the law.

Governing Bodies 135R11 (part 1)

About the Author:

Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. She joined the League staff in 1992. Contact Claire at cms@lwm-info.org

17. *Id.* at 417-418.

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Understanding and Complying With Wisconsin's Open Meetings Law (Part 2)

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities



Author's Note: This is Part 2 of a 2-part legal comment providing an overview of Wisconsin's Open Meetings law requirements. Part 1, which focused on the statutory definitions of "governmental body" and "meeting" and the concepts of walking and negative quorums, appeared in the June issue.

Notice Requirement

The open meetings law requires that all meetings of a governmental body be preceded by public notice. The presiding officer of a governmental body, or that person's designee (typically the clerk), must give proper notice of a meeting 24 hours in advance. If good cause exists and 24-hour notice is impossible or impractical, shorter notice may be given but in no case may the notice be provided less than two hours in advance of the meeting.¹ If the notice is mailed, it must be mailed early enough to allow it to arrive within the statutory time frame.²

The notice must specify the body meeting, and the date, time, place, and subject matter of the meeting, and include any contemplated closed sessions. The notice must be in such form as is "reasonably likely to apprise" members of the public and the news media of the above.³ Whether notice is

sufficiently specific is not amenable to a bright line rule but instead is subject to a "reasonableness standard" which requires taking into account the particular circumstances of the situation. This 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.⁴ The determination of whether notice is sufficient should be based upon what information is available to the officer noticing the meeting at the time notice is provided, and what it would be reasonable for the officer to know rather than determined from the standpoint of when the meeting actually takes place.⁵

Municipalities should not rely on broad umbrella clauses such as "old business" or "miscellaneous business" on the agenda to take up unforeseen matters which arise shortly before the scheduled meeting. It is best to deal with late-breaking events by amending the notice, with 24 hours prior to the meeting, or postponing the matter until it can be properly noticed.

A limited exception to the subject notice requirement allows governing bodies to designate a period for public comment in the notice of the meeting.⁶ During such a designated public comment period, a governmental body may "discuss" information raised by a member of the public.⁷ A governmental body may not

act on matters raised during a public comment period if the subject was not on the agenda.

Some governing body members inquire whether they, as members of the public, can bring up items not specifically designated on the agenda under a period of public comment allowed by Wis. Stat. § 19.84(2). The answer is no. The limited exception allowing members of the public to bring up items not specifically on the agenda during a period of noticed public comment was intended to allow local governments to be responsive to their constituents and to allow the governing body to receive information from members of the public. It was not intended to allow governing body members to bring up items for discussion without placing the items on the agenda. Any such use of the exception by governing bodies in that way will likely be viewed as an attempt to circumvent the notice requirements of the open meetings law.⁸

With regard to who must be given notice of a meeting, notice has to be given to any news medium that has requested the notice, and to the official newspaper or, if there is none, to a news medium likely to give notice in the area.⁹ The open meetings law does not require that the notice actually be published,¹⁰ but requires that notice be given as required by other specific statutes governing the subject matter (e.g., Wis. Stat. §

1. Wis. Stat. § 19.84(3).

2. 77 Op. Att'y Gen. 312 (1988).

3. Wis. Stat. § 19.84.

4. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶ 28, 301 Wis. 2d 178, 198, 732 N.W.2d 804, 814.

5. *Id.*, ¶ 32.

6. Wis. Stat. § 19.84(2).

7. Wis. Stat. § 19.84(2).

8. For additional discussion of this issue see *Governing Bodies* 361.

9. Wis. Stat. § 19.84(1)(b).

10. *Martin v. Wray*, 473 F. Supp. 1131 (E.D. Wis. 1979); 77 Op. Att'y Gen. 312 (1988).

62.23(7)(d)2, requires a Class 2 notice be published in advance of a proposed rezoning.¹¹ The law also requires some form of direct notice to the public; this requirement may be met as follows: (1) by posting the notice in at least three public places likely to give notice to persons affected; (2) posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's internet site; or (3) by paid publication in a news medium likely to give notice to persons affected.¹²

A limited exception to the notice requirement allows subunits of governmental bodies¹³ to meet during the meeting of the parent body, during a recess, or directly after such meeting, to discuss or act on matters that were the subject of the parent body's meeting.¹⁴ The parent body's presiding officer must announce the time, place, and subject matter of the subunit meeting in advance at the meeting of the parent body. This announcement must mention any contemplated closed session.¹⁵

Closed Sessions

Generally, meetings of governmental bodies must be held in open session. However, the law authorizes meetings to be closed if the subject matter falls within one of the specific exemptions set forth in Wis. Stat. § 19.85. The general authority to close a meeting is inapplicable where specific authority requires openness (e.g., hearings before a police and fire commission under Wis. Stat. § 62.13(5), and Board of Review meetings under § 70.46(2m)).

Section 19.85 authorizes closing meetings for a number of reasons. The exemptions most commonly used by local governments include the following:

- 1) deliberating after a quasi-judicial hearing;
- 2) considering discipline of an employee or person licensed by the municipality;
- 3) considering employment, promotion, compensation or performance evaluation data of a public employee;
- 4) deliberating or negotiating the purchase of public properties, or conducting other business, whenever competitive or bargaining reasons require a closed session;¹⁶
- 5) considering financial, medical, social, personal history and disciplinary data of specific persons or specific personnel problems which, if discussed in public, would be likely to have a substantial adverse effect on the person's reputation; and
- 6) conferring with legal counsel with respect to litigation in which the body is involved or is likely to become involved.

See Wis. Stat. § 19.85(1)(a)-(j), for the specific exemptions. For more detailed information on the appropriate use of these exemptions, see *Governing Bodies* 375.

When closing a meeting, it is important to follow the statutory procedures. As mentioned above, closed sessions planned in advance must be specified in the public notice; however, if the closed session was not contemplated, the meeting may still

be closed for a valid reason.¹⁷ The body must first convene in open session and vote to go into closed session. Before the vote is taken, the presiding officer must announce the nature of the business to be discussed and the specific statutory provision which authorizes the closed session. The vote of each member must be recorded and preserved.¹⁸

Attendance at the closed session is limited to the body, necessary staff, and other officers, such as the clerk and attorney, and any other persons whose presence is necessary for the business at hand. If the meeting is of a subunit of a parent body, such as a committee, the members of the parent body (i.e., the common council or village board) must be allowed to attend the closed session, unless the rules of the parent body provide otherwise.¹⁹ Discussion in the closed session must be limited to the topics for which the meeting was closed.²⁰

Questions sometimes arise as to whether a member of a governmental body may tape record closed sessions. An individual member of a governmental body does not have the right to record closed sessions of the governmental body. Although a governmental body is obliged under § 19.90 to make a reasonable effort to accommodate any person desiring to record, film, or photograph an open meeting, provided the person does not do so in a disruptive manner, the law does not apply to closed sessions.²¹

A governmental body may not reconvene in open session until 12 hours after completion of the closed session, unless notice of the subsequent open session

11. Wis. Stat. § 19.84(1)(a).

12. Wis. Stat. § 19.84(1)(b).

13. The League has opined that statutory boards or commissions, such as a library board, a utility commission and a police and fire commission, are not subunits of a common council or village board, although committees (e.g., a finance committee, a public safety committee) are typically subunits. *Governing Bodies* 310.

14. Wis. Stat. § 19.84(6).

15. 65 Op. Att'y Gen. Preface vi (1976).

16. This exemption was read narrowly by the Wisconsin court of appeals in *State ex rel Citizens for Responsible Development v. City of Milton*, 2007 WI App. 114, 300 Wis.2d 649, 731 N.W.2d 640 with the court focusing on the word "require." For an in-depth summary of that case, see *Governing Bodies* 380 (*The Municipality*, May 2007).

17. Wis. Stat. § 19.84(2); 66 Op. Att'y Gen. 106 (1977); *Governing Bodies* 325.

18. Wis. Stat. § 19.85(1). These requirements also apply to a closed session of a subunit meeting without notice as provided by § 19.84(6). 65 Op. Att'y Gen. Preface vi (1976).

19. Wis. Stat. § 19.89.

20. Wis. Stat. § 19.85(1).

21. See 66 Op. Att'y Gen. 318 (1977).

was given at the same time and in the same manner as the public notice of the meeting held prior to the closed session.²²

Penalties and Remedies

Violations of the open meetings law may be prosecuted by the district attorney, the attorney general, or by a private individual if the district attorney fails to pursue the case within a certain time frame.²³ Governmental body members who violate the open meetings law are subject to a forfeiture of between \$25 and \$300; this is a personal liability which may not be reimbursed by the municipality.²⁴ However, members may very likely obtain reimbursement for costs and attorney fees incurred in defending against prosecutions under the open meetings law.²⁵ Members may protect themselves from liability by voting in favor of a motion to prevent the violation (e.g., voting against going into an unauthorized closed session).²⁶ In addition to finding personal liability

for violations of the law, a court may also order the violations to cease and void action illegally taken. In order to void action taken in violation of the open meetings law, the court must find that the public interest in enforcing the open meetings law outweighs the public interest in sustaining the validity of the action taken.²⁷

Conclusion

Members of local governmental bodies must understand and comply with the open meetings law. As with other legal matters, officials should consult their municipal attorneys if they have questions.

For additional information on Wisconsin's open meetings law, see the Wisconsin Department of Justice's Open Meetings Law Compliance Guide on the Department of Justice's website <https://www.doj.state.wi.us/office-open-government/open-government-law-and-compliance-guides>

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About the Author:

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. In addition, she coordinates legal material for the League's web page. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org

22. Wis. Stat. § 19.85(2).

23. Wis. Stat. § 19.97(1), (2) and (4).

24. Wis. Stat. § 19.96.

25. Wis. Stat. §§ 62.115, 895.35 and 895.46(1)(a); 77 Op. Att'y Gen. 177 (1988).

26. Wis. Stat. § 19.96.

27. Wis. Stat. § 19.97(3).