



OFFICIAL NOTICE & AGENDA

REGULAR MEETING

MEETING: Bicycle & Pedestrian Advisory Committee
DATE/TIME: Monday, July 27, 2026, at 5:00 PM
LOCATION: Wausau City Hall — Maple Room
407 Grant Street, Wausau WI, 54403

MEMBERS:
Terry Kilian
Kristin Slonski
Chris Filtz
Ben Gerhards
Veronica Hope
Cody Shaide
Arlene Kaatz
Brad Lenz (Ex Officio)

- 1 Call to order by the presiding officer.**
- 2 Public comment on agenda items and reading of the City of Wausau Public Comment Statement.**
- 3 Consideration of the minutes of the preceding meeting(s).**
Approving June 22, 2026, meeting minutes.
- 4 Discussion and possible action.**
 - a. Approving Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of Thomas Street and River Drive.
 - b. Approving fall Wausau Works for You newsletter topic
- 5 Discussion.**
 - a. Wisconsin Open Meetings Law
 - b. [Bicycle Friendly Community survey](#) discussion
- 6 Update on City Projects**
 - a. RRFB installation 6th Avenue/Bridge Street
 - b. River Edge Parkway
 - c. Comprehensive Plan Update - [Public Engagement](#)
- 7 Items for future agendas.**
- 8 Adjournment.**

**Next meeting scheduled for August 24, 2026.*

NOTICE POSTED AT CITY HALL (407 GRANT STREET) AND
TRANSMITTED TO THE OFFICIALLY DESIGNATED NEWSPAPER
DATE: July 20, 2026
TIME: 10:00 a.m.
POSTED BY: Carrie Edmondson, AICP, Assistant City Planner

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@wausauwi.gov 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

June 22, 2026

Members Present: Alder Kristin Slonski (Chair), Alder Terry Kilian, Chris Filtz, Cody Shaide, and Arlene Kaatz

Others Present: Makayla Galecki (Wausau MPO), Carrie Edmondson (staff), and Patricia Thwaits

Location: Wausau City Hall, 407 Grant Street, Council Chambers

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 by the presiding officer

Chair Slonski called the meeting to order at 5:00 p.m.
The group went around with introductions.

2. Public Comment on agenda items and reading of the City of Wausau Public Comment Statement

Patricia Thwaits 2407 Oakwood Blvd., Wausau, stated that she rides a traditional bicycle and has concerns about e-bikes and pedestrian safety on walking paths, specifically the River Edge Parkway. She is grateful for the posted 15 maximum speed limit, but encourages reduction to 8-10 mph. She also suggests requiring bells and horns be used to signal to pedestrians versus a person's voice, as it is more consistent.

3. Election of a Vice Chair

Alder Slonski nominated Alder Kilian for Vice-Chair who noted she would be open to other nominations.
Code Shaide self-nominated and Filtz seconded. Passed unanimously, 5-0.

4. Consideration of the April 27, 2026, meeting minutes.

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

5. Discussion and possible action

- a. Approve bike rack request (four total) for Westsider Diner & Lounge 628 N. Third Avenue

Carrie noted that the applicant had submitted a request for four bike racks and has ample space. She said that this item was before BPAC as four bike racks are requested and the City only has six in stock. Tyler noted that he would like to paint them orange. Alder Slonski noted that making them more visible would be positive. No one voiced objection to the number or the color.

*Motion/second by Filtz/Shaide to approve the four bike racks and to paint them orange.
Passed unanimously, 5-0.*

- b. Approve River Drive bicycling on sidewalk and intersection improvements.

Carrie noted that this is a microgap that has been identified in the River Edge Parkway. A gap exists between the Thomas Street bridge and the River Edge Parkway within Oak Island Park. Alder Kilian stated she has no objection to allowing bicycling on the sidewalk. Arlene noted she thinks it is much more comfortable. The eventual goal will be to make this segment a multiuse path, Cody noted there is a desire path that cuts in further at the corner. Alder Kilian suggested signage noting that bicyclists may use sidewalk. Chris stated that signage similar to what is posted on Grand Avenue would work well.

Motion/second Kilian/Kaatz to approve amending the municipal code to allow bicyclists on this sidewalk segment. Passed unanimously 5-0.

Motion/second Slonski/Shaide to create a high visibility crosswalk at River Drive at the intersection of Thomas Street at the River Drive.

- c. Approve River Edge Parkway Sign Concept and Plan

Carrie noted that the sign where the River Edge Parkway meets Thomas Street was relatively inexpensive and was developed in-house. The committee consensus was to develop concepts for larger trailheads that could include a map and for small signs at key locations.

Motion/second Kaatz/Filtz to approve development of sign concepts and implementation plan. Passed unanimously 5-0.

- d. Approve Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of E. Thomas Street just west of McCleary Street.

Pedestrians waited 5-10 minutes at times to cross because there was uninterrupted traffic. Cody noted that in the spirit of having an interconnected River Edge Parkway, counts will go up as we create the infrastructure. Alder Kilian noted that this is a very problematic crossing. *Motion/second Filtz/Shaide to approve. Passed unanimously.*

- e. Approve Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of 1st Street and McClellan Street

Cody noted that a 240 foot walk to the intersection is a 480 foot round trip for pedestrians. Alder Slonski noted that if people are going to the intersection and working in the Dudley Tower, they are not walking extra distance. Carrie also noted that during pedestrian counts it was noted that people are crossing illegally, which could indicate that they are comfortable crossing. Alder Slonski wondered about the likelihood of people going to an RRFB to cross if they are illegally crossing from the building to the parking lot now. Chris noted that the Dudley Tower has an agreement with the City for a skywalk.

Motion/second Filtz/Slonski to deny Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of 1st Street and McClellan Street. Passed unanimously 5-0.

- f. Approve Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of Stevens Drive and Golden Meadow Street

The group discussed the age criteria for youth and noted that many of these pedestrians would likely be high school students and still near the age where pedestrians are double-counted.

Filtz/Shaide motion/second to approve this location and to deny the Stevens Drive and Knox Street proposal. Unanimous approval 5-0.

- g. Approve Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of Stevens Drive and Knox Street

6. Discussion

a. MPO Bike/Ped Subcommittee Update

- Wausau MPO Pedal Passport
- Wausau MPO Bike Map
- BFC Application
Application was submitted
- Wisconsin River Loop
- Bike Counter Placement and Locations
Near WOW, near Woodchucks, near old Marathon County buildings, and Peckham Way

Makayla provided an overview of current MPO Bike/Ped Subcommittee initiatives.

7. Update on City projects.

a. RRFB installation 6th Avenue/Bridge Street and 1st Avenue/Callon Street

The 1st Avenue/Callon Street RRFB installation has been completed, and the 6th Avenue/Bridge Street should be completed by next meeting.

b. River Edge Parkway

The OCR petition process continues to move forward.

8. Items for future agendas.

- RRFB analysis to cross Thomas Street at the intersection of E. Thomas Street and River Drive.
- RRFB installation at 6th Avenue and Bridge Street

9. Adjournment

Motion/second by Slonski/Filtz to approve. Passed unanimously. 5-0 The meeting was adjourned at 6:10 p.m.



Planning, Community and Economic Development

Date: July 27, 2026

To: Bicycle and Pedestrian Advisory Committee (BPAC)

From: Carrie Edmondson, AICP, Assistant City Planner
Thomas Niksich, P.E., Project Engineer

RE: Request to Install Rectangular Rapid Flashing Beacon (RRFB) at the pedestrian crossing at the intersection of E. Thomas Street and River Drive



The BPAC requested that staff conduct an analysis of the potential merit of a Rectangular Rapid Flashing Beacon (RRFB) at the intersection of E. Thomas Street and River Drive.

WisDOT offers the following criteria to determine if installation is necessitated.

1. The location is an uncontrolled pedestrian crossing.

Criteria Met

2. A minimum volume of 20 or more pedestrians during a single hour (any four consecutive 15-minute periods) of an average date *should* be met. Young (<12), elderly (>85) and pedestrians with disabilities count two times toward volume thresholds. Additionally, seasonal day volumes can be used in place of average daily volumes if the crossing is in a known tourist area.

One one-hour and one two-hour count were conducted and results are listed below.

Date	Time	Count	Information
7/9/26	12:00 p.m.-1:00 p.m.	2	
7/14/26	7:20 a.m. – 9:20 a.m.	0	

Criteria not met.

3. A maximum vehicular volume of 1,500 vehicles per day.

Criteria met. 14,300 AADT Thomas Street, 1,500 AADT River Drive

4. Maximum of four lanes crossed, unless there is a raised median, in which cases it can be six lanes.

Criteria met. Three lanes.

5. There exists a minimum of 300 feet between the subject crossing and the nearest controlled pedestrian crossing or intersection traffic control device on the state trunk highway system. Consideration should be given to extending this distance beyond 300 feet if the proposed crosswalk location falls within an auxiliary turn lane for the nearby intersection or if the standing queue from the intersection extends over the proposed crosswalk location.

Criteria met. ~1,000 feet to nearest controlled intersection at Grand Avenue and Thomas Street

6. Adequate stopping sight distance exists based on FDM 11-10-5 or greater than 8 times the posted speed limit.

Criteria met.

The pedestrian count is well under the suggested threshold and is not met. Staff requests that the Bicycle and Pedestrian Advisory Committee (BPAC) consider the analysis and make a recommendation to the Infrastructure and Facilities Committee.



Safety Benefits:

RRFBs can reduce crashes up to:

47%

for pedestrian crashes.⁴

RRFBs can increase motorist yielding rates up to:

98%

(varies by speed limit, number of lanes, crossing distance, and time of day).³



RRFBs used at a trail crossing.
Source: LJB

For more information on this and other FHWA Proven Safety Countermeasures, please visit <https://highways.dot.gov/safety/proven-safety-countermeasures> and https://highways.dot.gov/sites/fhwa.dot.gov/files/2022-06/techSheet_RRFB_2018.pdf.

Rectangular Rapid Flashing Beacons (RRFB)

A marked crosswalk or pedestrian warning sign can improve safety for pedestrians crossing the road, but at times may not be sufficient for drivers to visibly locate crossing locations and yield to pedestrians. To enhance pedestrian conspicuity and increase driver awareness at uncontrolled, marked crosswalks, transportation agencies can install a pedestrian actuated Rectangular Rapid Flashing Beacon (RRFB) to accompany a pedestrian warning sign. RRFBs consist of two, rectangular-shaped yellow indications, each with a light-emitting diode (LED)-array-based light source.¹ RRFBs flash with an alternating high frequency when activated to enhance conspicuity of pedestrians at the crossing to drivers.

Transportation agencies should refer to the *Manual on Uniform Traffic Control Devices (MUTCD)* for information on the application of RRFBs.¹

Applications

The RRFB is applicable to many types of pedestrian crossings but is particularly effective at multilane crossings with speed limits less than 40 miles per hour.² Research suggests RRFBs can result in motorist yielding rates as high as 98 percent at marked crosswalks, but varies depending on the location, posted speed limit, pedestrian crossing distance, one- versus two-way road, and the number of travel lanes.³ RRFBs can also accompany school or trail crossing warning signs.

RRFBs are placed on both sides of a crosswalk below the pedestrian crossing sign and above the diagonal downward arrow plaque pointing at the crossing.¹ The flashing pattern can be activated with pushbuttons or passive (e.g., video or infrared) pedestrian detection, and should be unlit when not activated.

Considerations

Agencies should:²

- Install RRFBs in the median rather than the far-side of the roadway if there is a pedestrian refuge or other type of median.
- Use solar-power panels to eliminate the need for a power source.
- Reserve the use of RRFBs for locations with significant pedestrian safety issues, as over-use of RRFB treatments may diminish their effectiveness.

Agencies shall not:²

- Use RRFBs without the presence of a pedestrian, school or trail crossing warning sign.
- Use RRFBs for crosswalks across approaches controlled by YIELD signs, STOP signs, traffic control signals, or pedestrian hybrid beacons, except for the approach or egress from a roundabout.

¹ Manual on Uniform Traffic Control Devices (MUTCD), Chapter 4L. FHWA, (2023).

² "Rectangular Rapid Flash Beacon" in PEDSAFE: Pedestrian Safety Guide and Countermeasure Selection System. FHWA, (2013).

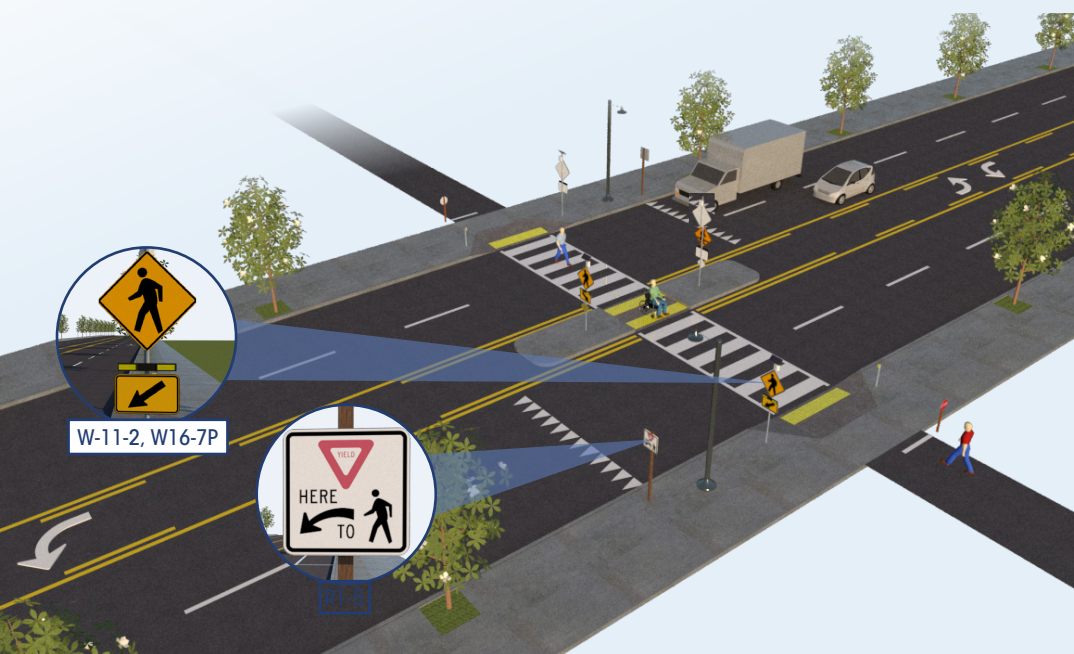
³ Fitzpatrick et al. "Will You Stop for Me? Roadway Design and Traffic Control Device Influences on Drivers Yielding to Pedestrians in a Crosswalk with a Rectangular Rapid-Flashing Beacon." Report No. TTI-CTS-0010. Texas A&M Transportation Institute, (2016).

⁴ (CMF ID: 9024) NCHRP Research Report 841 Development of Crash Modification Factors for Uncontrolled Pedestrian Crossing Treatments, (2017).

Rectangular Rapid-Flashing Beacon (RRFB)

SAFE TRANSPORTATION FOR EVERY PEDESTRIAN

COUNTERMEASURE TECH SHEET



RRFBs are pedestrian-actuated conspicuity enhancements used in combination with a pedestrian, school, or trail crossing warning sign to improve safety at uncontrolled, marked crosswalks. The device includes two rectangular-shaped yellow indications, each with an LED-array-based light source, that flash with high frequency when activated.

The RRFB is a treatment option at many types of established pedestrian crossings. Research indicates RRFBs can result in motorist yielding rates as high as 98 percent at marked crosswalks. However, yielding rates as low as 19 percent have also been noted. Compliance rates varied most per the city location, posted speed limit, crossing distance, and whether the road was one- or two-way. RRFBs are particularly effective at multilane crossings with speed limits less than 40 mph. Consider the Pedestrian Hybrid Beacon (PHB) instead for roadways with higher speeds. FHWA's *Guide for Improving Pedestrian Safety at Uncontrolled Crossing Locations* (HSA-17-072) provides specific conditions where practitioners should strongly consider the PHB instead of the RRFB.



Multiple lanes of traffic create challenges for pedestrians crossing at unsignalized locations.



RRFBs can make crosswalks and/or pedestrians more visible at a marked crosswalk.

RRFBs can
reduce
pedestrian
crashes by
47%



FEATURES:

- Enhanced warning improves motorist yielding

OFTEN USED WITH:

- Crosswalk visibility enhancements
- Pedestrian refuge island
- Advance STOP or YIELD markings and signs



U.S. Department of Transportation
Federal Highway Administration



Rectangular Rapid-Flashing Beacon (RRFB)

EDC-4 STEP: https://www.fhwa.dot.gov/innovation/everydaycounts/edc_4/step.cfm



CONSIDERATIONS

FHWA has issued interim approval for the use of the RRFB (IA-21). State and local agencies must request and receive permission to use this interim approval before they can use the RRFB. IA-21 does not provide guidance or criteria based on number of lanes, speed, or traffic volumes.

RRFBs are placed on both ends of a crosswalk. If the crosswalk contains a pedestrian refuge island or other type of median, an RRFB should be placed to the right of the crosswalk and on the median (instead of the left side of the crosswalk).

RRFBs typically draw power from standalone solar panel units, but may also be wired to a traditional power source. IA-21 provides conditions for the use of accessible pedestrian features with the RRFB assembly. When RRFBs are not in common use in a community, consider conducting an outreach effort to educate the public and law enforcement officers on their purpose and use.

COST

The cost associated with RRFB installation ranges from \$4,500 to \$52,000 each, with the average cost estimated at \$22,250. These costs include the complete system installation with labor and materials.

References

MUTCD section 2B.12 In-Street and Overhead Pedestrian Crossing Signs (R1-6, R1-6a, R1-9, and R1-9a).

Fitzpatrick, K., M. Brewer, R. Avelar, and T. Lindheimer. "Will You Stop for Me? Roadway Design and Traffic Control Device Influences on Drivers Yielding to Pedestrians in a Crosswalk with a Rectangular Rapid-Flashing Beacon." Report No. TTI-CTS-0010. Texas A&M Transportation Institute, College Station, Texas. June 2016. <https://static.tti.tamu.edu/tti.tamu.edu/documents/TTI-CTS-0010.pdf>

Federal Highway Administration. (2018). MUTCD – Interim Approval for Optional Use of Pedestrian-Actuated Rectangular Rapid-Flashing Beacons at Uncontrolled Marked Crosswalks (IA-21). U.S. Department of Transportation, Washington, DC.

Federal Highway Administration. (2013). "Rectangular Rapid Flash Beacon" in PEDSAFE: Pedestrian Safety Guide and Countermeasure Selection System. Available: http://www.pedbikesafe.org/PEDSAFE/countermeasures_detail.cfm?CM_NUM=54

Bushell, M., Poole, B., Zegeer, C., & Rodriguez, D. (2013). Costs for Pedestrian and Bicyclist Infrastructure Improvements: A Resource for Researchers, Engineers, Planners, and the General Public. Pedestrian and Bicycle Information Center.



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.

Do You Have Yours? League Legal Resources

The comprehensive League Legal Resources is available on USB Flash Drive and CD Rom. It is updated annually and is searchable.



The League’s Legal Resources gives you instant access, saving you time and money by providing you with quick answers. The easy-to-use search engine allows you to simply type in any word, phrase, or number, and rapidly find every entry that contains your search query.

The folio format also allows you to customize your version by creating a shadow file with color and style highlights, bookmarks, notes, and pop-up links within the text.

The League’s Legal Resources can only be ordered through American Legal Publishing
<http://www.amlegal.com/product-category/wisconsin-cd-order-form/>

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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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).