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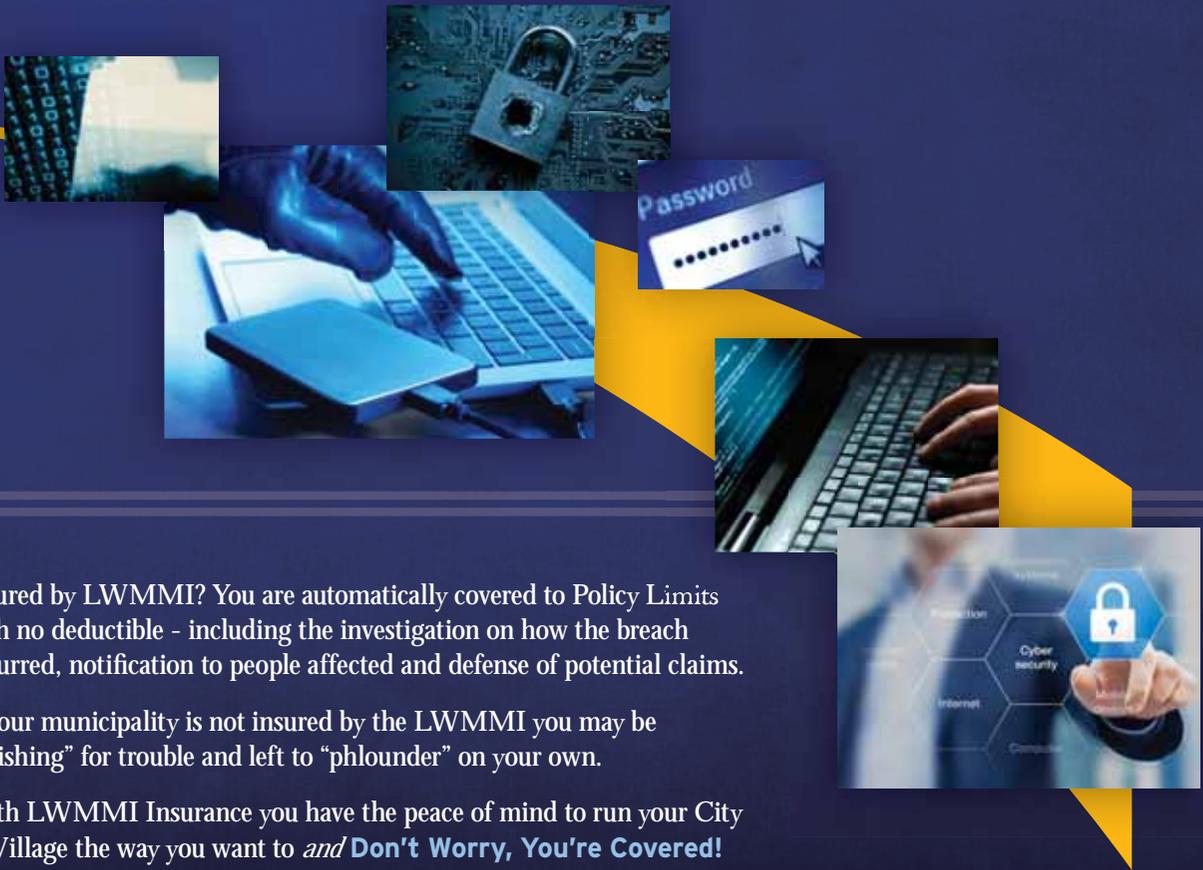
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On the Cover

Read Wisconsin Rapids Mayor Zach Vruwink's article on page 4 to learn more about how Wisconsin Rapids residents came together to fundraise for the new community aquatic center. In the photo are city staff with their children, Mayor's Youth Council members, and yes, that is Mayor Vruwink in the life jacket and shades.

Learn more about the Wisconsin Rapids Mayor's Youth Council <https://www.wirapids.org/mayors-youth-council.html>



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Places to Go, People to See

Jerry Deschane, Executive Director, League of Wisconsin Municipalities



We got the theme for this month's magazine wrong. In my (ever-so-humble) opinion, this month's articles are all about places to go and people to see. Wisconsin is a state chock-full of "Places," and the upcoming 121st Annual Conference of the League will be packed with "People" you need to see. Gail, stop the presses! We need a new cover. Okay, maybe not...

Wisconsin is a destination state. We really are. Ask anyone in the Midwest about Door County, The Dells, Lambeau Field, or Miller Park. Ask any group of Illinois, Iowa, Michigan, or Minnesota residents to name their favorite vacation spot and they'll rattle off a few dozen of their favorite among the 602 Wisconsin cities and villages. People love to come here. This month, we're trying to help you make the most of what your place has to offer.

We're using incoming-League President Zach Vruwink's City of Wisconsin Rapids as an example (see page 4) of what being a "destination" means. On page 7, a team of University of Wisconsin Extension experts offer some invaluable ideas for repurposing your downtown to solidify your village's standing as a destination within your region.

Now about those people to see. This magazine begins to hint at the people you will meet at the Annual Conference (October 23-25 at the KI Center in Green Bay). One of my personal favorites will be Mark Thorsby's opening session

"Mock Board Meeting." Thorsby consults with private and nonprofit organizations on the topic of governance; how to get stuff done at a meeting. One of the more clever ways he does that is to set up a mock board meeting, using audience members as role-playing board members. It's an eye-opening (and amusing) way to learn how boards can and should run.

Sprinkled throughout this month's issue are several "Learn More!" banners touching on the Mock Board meeting and other workshops at the Annual Conference. From levy limits to human resource basics, the Annual Conference is a University of Local Government packed into 48 hours. And that doesn't even begin to cover the new ideas, tips, and good practical advice you'll learn from one another. It's the place you need to go with the people you need to see.

The League's 121st Annual Conference Early Bird Registration through September 13

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Form on page 28 of this magazine
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Wisconsin Rapids – An Emerging Recreation Destination

Zach Vruwink, Mayor, Wisconsin Rapids

Wisconsin Rapids sits in the heart of cranberry country and is united along the banks of the Wisconsin River. Home to 20 city parks, six golf courses, seven area lakes and an abundance of biking, hiking, birding, and watersport opportunities, Wisconsin Rapids is in the midst of a recreational renaissance – emerging as a new recreation destination. It's an exciting transformation, and one that has been long awaited. I know, because Wisconsin Rapids is my home town. I made good use of the public parks and sports facilities as a kid, and our community has always supported and sponsored the recreational amenities found in our own backyard.

As I grew older, I started to pay closer attention to what kept our community vibrant, what was lacking, how our economy was faring over time, and – more holistically – what kinds of investments might positively impact our greater health, sustainability, and success. During my first run for mayor in 2012, I heard a common and familiar rally cry from our residents: return the Wisconsin River to its role as a focal point in our city. Better utilize it, create opportunities for residents and visitors to safely access and enjoy it, and expand upon this prominent natural asset so that it can help bolster our economy, business, and quality of life. When I got elected, I knew that was one of my first priorities as mayor. Now in my fourth term, I'm proud and honored to say that we are well on our way toward completing a robust three-phased, multi-year vision including the redevelopment of both banks of our riverfront, reinvestment in downtown riverfront properties, and the creation of a \$12 million regional aquatic center, splash pad, and park.

Just prior to my first election in 2012, the city commissioned the creation of a Comprehensive Outdoor Recreation Plan (CORP). The role of the CORP is to assess existing recreation amenities, identify needs, review community demographics, appraise ADA compliance, provide recommendations for improving the recreation system, and set goals for implementation. I felt my role was to take that CORP and make it actionable. We invested in an assessment of how we could draw new recreational and tourism traffic to our community; it shouldn't be a plan that just sits on a shelf.

Phase I: Riverfront Revival

The first action item was to improve the deteriorating infrastructure along the riverfront. Investigation revealed that the river wall itself required improvements, specifically along the downtown area. Due to safety concerns, the top of the wall needed a new railing. We also needed to consider potential flooding concerns. The Wisconsin River had flooded before, and no doubt it would flood again. It was my goal to ensure that we created something that was safe, enduring, and attractive. We soon realized the project was much larger than just the railing. When I brought this back to our city council, they agreed that we needed to think bigger, and that we needed to engage with our citizenry to get their input. After all, this was to be their space, and the end goal was to create something that encouraged individuals, families, residents, and guests to actively use and interact with the riverfront space. So, we gathered public opinion. Their passionate and considerate thoughts were immensely helpful and assisted in formulating schematic and conceptual designs. To date, the west bank revitalization of the river has been completed, with the east bank currently receiving the finishing touches and furnishings. The final design includes additions and improvements such as accessible multimodal trails, a performance stage, architectural seating, a riverview balcony, a shade structure, a bike repair station, fitness stations, and bike parking facilities to Demitz Park, E. Riverbank Trail and the E. Riverbank Conservancy, with Mead Rapids View Park and Veterans Memorial parks undergoing improvements this year. WI DNR Knowles-Nelson Stewardship investment has played an instrumental role in activating and improving these precious spaces.

Phase II: Downtown Development

Next, we took a look at our downtown area, just adjacent to the river. What had once been a thriving downtown business district found itself floundering as traditional retail declined and people had less reason to visit. Historically, the relationship between riverfront communities and the waterways that flow through them has been largely a matter of function. Rivers were the medium to carry timber, transport cargo, and provide a link to industry and production much



more so than to recreation. The Wisconsin River grew to be viewed in a utilitarian way – unfavorable for recreational use. Wisconsin Rapids’ existence and founding as a pioneering pulp and paper making community came about due to the ability to power the industry from hydroelectric dams and in earlier days to transport timber. Today, as we strive to make the shift and reconnect people to the waterway and associated activities of leisure, we also need to make an economic transition and redevelop our core downtown riverfront district as the go-to place for unique business, shopping, and entertainment.

Our plan for redevelopment of the downtown area is multifaceted. From the onset of redevelopment efforts, we knew that if we made the riverfront property more accessible and more attractive, there would be an organic increase in the number of visitors downtown. Many businesses have said as much. Without the riverfront work, they’ve said, they may not have opened shop in the downtown at all, or may not have expanded to accommodate growth as many have. More activity generates more business, it’s as simple as that. We also acted as a city to acquire key properties within the downtown area. Our intention is to bring about mixed-use housing and commercial redevelopment, and this vision has gained a lot of support from all ages and types of businesses. Until now, these parcels have been highly underutilized, with an underperforming property tax base. Bringing density into the downtown is a win-win to reactivate formerly stagnant units and foster new growth. We’re already seeing some exciting movement in the downtown area. One new company purchased a building at the edge of the downtown area that was formerly an eyesore. They are in the process of converting the space into a kayak, canoe, bicycle, and fat bike rental and skate shop, with plans to add a beer garden as well as lead outdoor recreation water and trail tours in the area. A Stand-Up Paddleboarding (SUP) business also launched, and they’re providing some interesting historical tours of Wisconsin Rapids from the water. These types of businesses

are wonderful, as they provide healthful opportunities for people of all ages while also attracting younger families to our city.

Part of the goal, naturally, is to pull new tourism dollars into Wisconsin Rapids as well. Having a revitalized waterfront with downtown restaurants, rental shops, and amenities makes us more marketable in bidding to host sports competitions, concerts, and other similar events. For instance, we were excited to host the USA BMX Nationals tournament this year in July, which drew substantial crowds. We also host the Wisconsin State Water Ski Show Championships each year on Lake Wazeecha and were fortunate to hold the World Water Ski Show Tournament in 2016, among many other youth sporting events annually. Events like these entice people not only to come for the show, but stay for the weekend – or longer.

Phase III: Aquatic Amusement

Our final and crowning project in progress is a new aquatic center at Witter Field. Many generations of Wisconsin Rapids residents have enjoyed our two outdoor community pools over the years. I fondly recall going swimming at those pools on hot summer days with friends and family. One of the two pools closed when I was a teenager, and the other more recently during my time as mayor. The aquatics project is especially exciting because it will create accessible water-based recreation for people of all ages, abilities, and comfort levels and will restore a community pool back to locals and residents across the region.

Why now? After the last pool closed, there was a clear interest in a new facility, despite the high ticket price. There was a general appetite that the city needed to do more to support community facilities that serve families and children. It was as if an alarm was sounding that now was the time. We had waited long enough, and if we waited any longer we’d lose our opportunity. We analyzed the data and looked at the demographics of our surrounding communities and realized that this facility could, in fact, support a broader regional scale and interest.

The design was done by our partners at MSA Professional Services, Inc. and offers something for everyone, in every season. Along with the large aquatic center, the project will incorporate a new park with splash pad, tennis/pickleball courts, park shelter, playground, skate park, lighted geyser pad, ice skating, pedestrian paths, warming shelter, community room, and concessions. The area that serves as the aquatic center vehicular drop-off will become a recreational ice-skating circle with music, and the central building offers a year-round

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Community Gathering Room, heated restrooms, and the Aquatic Admissions lobby, which converts into a warming shelter in cold weather.

I have been so proud of our community and the grassroots support for a project of this scale. Fundraising is ongoing and the city council and residents realize that it's a fairly heavy lift. But, we also realize that when we take a good look at the city's history and continuum of investing in our own success, perhaps we haven't been doing enough. We were very fortunate to receive incredible support from local foundations, and support from individuals on top of the sizeable public investment by the city. We're also working to secure support from neighboring municipalities to allow their residents similar benefits to those of the city. In general, for every dollar received, we've been able to match at least one-and-a-half to two-times the amount. We've targeted large-dollar matches but have also hosted some fun community pop-up fundraising and awareness events such as brat fries and root beer float sales. Of course, there will be skeptics, and I can't claim that the road has been 100 percent easy, but I think the combination of timing, funding, public engagement, and being shovel-ready has helped generate a great deal of support.

The most important component has been clear, open communication and frequent community engagement. We've been sure to schedule many public presentations, showcase displays for the design, and solicit feedback, and encourage citizens to participate in fundraising efforts and social media campaigns. I think there is a natural enthusiasm for the project, but I also think I've been lucky. A supportive council and an exceptional group of young folks on the Mayor's Youth Council pledging it would be their generation to execute the plans for a new facility have helped generate enthusiasm for this community-changing project.

The Fruits of Labor

It's an exciting time to be in Wisconsin Rapids. These projects will result in so much more than colorful pages in a portfolio. One by one, we are rebuilding confidence and bringing a renewed sense of hope, optimism, and energy to our community. It has taken the vision and hard work of everyone to bring this to fruition. I am humbled by the level of trust that has been given to me by my constituents and am looking forward to seeing our city transform and prosper well into the future. It was my pledge and remains my focus. Visit us in Wisconsin Rapids – your exciting, emerging recreation destination.

About the Author:

Zach Vruwink, Mayor, City of Wisconsin Rapids. 2012-present. He is a proud graduate of the University of Wisconsin-Stevens Point. 1st Vice President-League of Wisconsin Municipalities and League of Wisconsin Municipal Mutual Insurance Board of Directors, and Mayor's Innovation Project Steering Committee member. Zach has prioritized efforts to transform Wisconsin Rapids' economy and attractiveness as a place to do business, visit, and raise a family. Contact Zach at zvruwink@wirapids.org. Contact MSA at <https://www.msa-ps.com/>



Learn More!

Mayor Vruwink and MSA will be presenting "Make Your Community a Recreation Destination" at the League's 121st Annual Conference.

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Repurpose Your Downtown Through Market Analysis

Jenny Erickson, Sharon Lezberg, Bill Ryan, Victoria Solomon, and Daniel Foth



Many communities are facing the challenge of declining or defunct business districts leaving local officials asking questions like “how do we create a culture that fosters, appreciates, and supports its business district’s revitalization” and “how do we do this with little available funding?”

These questions are complicated by the fact that Wisconsin’s downtown businesses, both big and small, continue to experience significant change in their customers, competition, and technology use. With the emergence of shopping centers in the ’70s, large format stores in the ’80s and ’90s, and now the internet in tandem with brick and mortar stores, businesses are seeking creative ways to reach existing and new customers.

To help address these challenges, UW Madison-Extension’s Local Government Center recently held a webinar “Repurposing our Downtowns: Strategies that Work.” UW Madison-Extension’s Bill Ryan, Sharon Lezberg, and Jenny Erickson spoke about their and Victoria Solomon’s successful community-led approach to downtown revitalization.

Working with UW Madison-Extension, each community highlighted organized a local study team that helped develop a market analysis providing customized recommendations using the *Downtown Market Analysis* (DMA). The UW approach is education-based, working with a study team of 6 to 8 people to carry out the work through a community-led research effort. UW educators facilitate discussions with the team to encourage them to articulate their ideas for repurposing their downtown, resulting in community-driven recommendations. This article highlights some of the important messages communicated during the webinar and important lessons learned in applying this approach.

Employing the DMA’s three-stage approach, each local study team tailors their community’s specific needs and interests, as follows:

- 1) Collect data on existing community demographics and business conditions;
- 2) The data collected helps the study team identify and understand potential opportunities for new/additional retail, services, entertainment, work-space, and housing;
- 3) Using the opportunities and the successes achieved by peer communities, the study team creates workable strategies using locally-led marketing, niche development, and creative building usage ideas to revive and redevelop downtowns and business districts.

Your community can utilize the DMA approach on its own or with help of your local Extension educator. The approach requires active involvement and commitment from business and community leaders, who are willing to learn from each other and creatively explore options that might make sense in their downtown.

Stage I - Market Data assembles community information from: Trade area(s), Demographics, Economic Analysis, Business Survey, Consumer Survey, Focus Groups, and Peer City Analysis

Stage II - Development Opportunities represents potential opportunities and applies a reality check for the various potential real estate sectors including: Retail & Services, Restaurants, Arts & Entertainment, Housing, Work Space, and Lodging

Stage III - Strategies provides guidance on developing realistic market implementation strategies including: Niche Development, Building Usage, Marketing, Business Retention, Entrepreneurship, Business Recruitment, and Benchmarking

Typically, a community-led DMA focuses on:

- Identifying retail, restaurant, and service business market opportunities
- Strengthening existing businesses
- Attracting new businesses that meet the community needs
- Improving resident and visitor experiences
- Improving the physical environment; and
- Developing community marketing and branding initiatives

Recent examples of locally-developed strategies resulting from a market-based analysis include: Cross Plains, Sauk Prairie, and Belleville. Each community, working with its UW-Extension educators and state specialists, used a community-led initiative whereby business and community leaders were actively involved in the research, analysis, recommendation, and implementation. They participated as a study team that met regularly to review, analyze, and interpret the market data, create potential development opportunities, and then develop strategies to take the identified opportunities to reality. An important question answered was: “what can be done to improve quality of life and repurpose downtowns to attract new forms of retail? The approach used by each community is noted below.

Village of Cross Plains MA

Cross Plains has developed new businesses and experienced a new community enthusiasm focused on repurposing its downtown into a family-oriented business district. Sharon Lezberg, UW Madison-Extension Dane County, worked with the Village of Cross Plains and the Cross Plains Area Chamber of Commerce to create the community-led research to support business development efforts. The focus on the downtown area reflected residents’ desire for businesses that cater to their needs; including restaurants that offer ethnic and healthy/locally sourced food, fine dining, and family-friendly places.



Key to the Cross Plains work was that its trade area is much larger than the village (4,000 population) and includes Black Earth and Mazomanie. This service area potentially serves over 14,000 people. US Highway 14 links Cross Plains, Black Earth, and Mazomanie. Its key commercial area issues included: a road that currently bifurcates downtown and impedes access, housing, and protecting the village’s natural resources. The goal was to find the right business mix for downtown. Resident and visitor surveys, community comparisons, and an analysis of retail and restaurant supply

led to the development of five key recommendations and their implementation through an Organizing for Action approach that incorporated village officials, chamber, and civic organizations.

Sauk Prairie Area DMA

Sauk City and Prairie du Sac (together often referred to as Sauk Prairie) are located on the Highway 12, 60, and 78 corridor which brings over 18,000 visitors daily. Sauk County Extension’s Community Development Educator, Jenny Erickson, worked on this community-led effort that was spearheaded by the Sauk Prairie Chamber of Commerce. The Sauk Prairie area DMA reaffirmed their redevelopment strategies related to recreation and local sourced foods including a new hotel and maximizing tourist activities.



Retail competition was seen with Madison, Baraboo, and the Wisconsin Dells. On the plus side, the newly developed Great Sauk State Trail has provided new visitor traffic to the area. The roundtable discussions made clear the plan needed to pull data on visitor and retail together.

The study team used trade area definition, workforce housing, market characteristics, comparison communities, an analysis of retail and restaurant demand and supply, and business interviewers. The study identified four recommendations and currently the chamber is working with the local governments, communities, and civic groups to move the recommendations forward.

Belleville DMA

Green County Extension’s Community Development educator, Victoria Solomon, and UW State Community Business Development Specialist Bill Ryan worked with this community-led effort that developed a new community branding, creating new enthusiasm to repurpose Belleville’s downtown and leading to the addition of new businesses.



Belleville is often described as a quiet little town in Dane and Green Counties and Dane County's last little community. The Village of Belleville wanted to create a business development tool that would support business attraction, retention, and expansion.

The study team consisted of the Village Administrator and key business leaders who worked with Extension's Solomon and Ryan. The team examined: geographic area; resident characteristics, businesses, workers, and visitors; a business inventory; peer community learning; and a community survey –

all leading to five recommendations. Residents expressed their repurposing ideas including attracting families through access to water views and family-oriented restaurants and retail. The village, together with local civic groups and others, is now implementing its Organizing for Action plan. Further, they wanted to take advantage of the Belleville Community Park, Lake Belle View and a state biking trail.

Common Themes to Successful Strategies

These examples are a microcosm of many Wisconsin repurposing success stories. Their successful strategies have common themes:

- A local, core study team that represents residents, local businesses, and government who can successfully do the work
- Downtowns and commercial areas can be revitalized and rejuvenated through repurposing
- The process can work for downtowns and commercial areas that are geographically small or large
- Surveys of residents, business owners, and recreational visitors help identify business and recreational users' needs and interests

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The lessons learned included:

- a) The study team needs to cast a wide net of participants. It works best when it includes key people needed to ensure implementation. This includes residents, local government officials, property owners, permitting agencies (local and state), recreation, tourism and chambers (if one exists), and planners (local, county, or regional).
- b) Recognize that implementation can be an imperfect effort that may require mid-course correction.
- c) Stick with it, keep the study team together start to finish, add others as new needs arise and adjust as ideas present themselves.

Many unique businesses are emerging that contribute to a downtown's evolving purpose. Identifying key market segments, finding the right business mix, creating an authentic niche, and use of technology require a solid market analysis. By working with UW Madison-Extension on a community-led research project that applies data and insight from the University, along with the experience of local leaders to develop a community-led market analysis, a community can create a roadmap to properly manage the direction of its downtown or business district.

Additional information can be found at: <https://fyi.extension.wisc.edu/downtown-market-analysis/> and <https://cced.ces.uwex.edu/downtown-and-business-district-economic-development/>. For more information, contact UW Extension's Community Development Specialist, Bill Ryan at 608-263-4994 or via email at william.ryan@wisc.edu

A recording of the webinar and the support materials can be ordered from the Local Government Website at: <https://lgc.uwex.edu/previous-lgc-programs-2019/>

About the Authors:

UW Madison-Extension State Community Business Development Specialist Bill Ryan has worked with hundreds of communities across Wisconsin on various community business development activities. County-based community development educators Sharon Lezberg (Dane), Jenny Erickson (Sauk), and Victoria Solomon (Green) have all worked with numerous communities on a variety of issues. Local Government Specialist Daniel Foth, using their presentation and work, wrote this article.



Learn More!

Errin Welty, Downtown Development Program Manager, Wisconsin Economic Development Corporation (WEDC), will moderate a discussion on downtown redevelopment with Ashland Chamber Director Mary McPhetridge and UW-Extension State Community Business Development Specialists Bill Ryan and Victoria Solomon at the League's 121st Annual Conference.

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How Does the 2019-2021 State Budget Affect Municipalities?

Curt Witynski, Deputy Executive Director, League of Wisconsin Municipalities



On July 3, much earlier than Capitol insiders had anticipated at the beginning of the session, Governor Evers signed the 2019-2021 state budget bill into law as Act 9. It provides, for the second budget in a row, significant increases in local transportation aids. The budget makes no changes, however, in funding for other key municipal programs like shared revenue, expenditure restraint, payments for municipal services, and recycling aids. Similarly, the budget makes no changes to levy limits.

Thanks to split party control of the state Capitol, Act 9 contains no policy items interfering with municipal powers, which sharply contrasts with the last three state budgets. Except for transportation aids, the state budget maintains the status quo for state-local relations.

This article describes in more detail provisions in the state budget affecting cities and villages. All items described in this article took effect on July 5, unless otherwise indicated.

Shared Revenue and Levy Limits

Shared Revenue. The new budget retains the same level of funding for the shared revenue program as the last state budget. A municipality's 2019 and 2020 payments should closely match its 2018 payments.

Levy Limits. The same strict levy limits that have been in place since 2011 were unaltered by Act 9. A municipality is allowed to increase its levy over the amount it levied in the prior year by the percentage increase in equalized value from net new construction. All of the exceptions and modifications to levy limits that exist in current law continue to apply (e.g., debt service levy exempt from levy limits; municipalities can exceed limits if approved by referendum).

Expenditure Restraint Program. Funding for this program remains at \$58 million, the same level it's been since 2003.

Local Transportation Aids

General Transportation Aids. The general transportation aids (GTA) program is the second largest program in DOT's budget and represents 25.7% of all state transportation fund appropriations in 2018-2019. The program helps cities,

villages, and towns offset the costs of local road construction, maintenance, traffic enforcement, and other transportation-related costs. The 2019-2021 state budget increases funding for the GTA program for cities, villages, and towns by \$35 million or 10%. This increases the funding level from \$348,639,300 to \$383,503,200 for 2020 and thereafter. The mileage aid rate is also increased by 10% from \$2,389 per mile to \$2,628 per mile for calendar year 2020 and thereafter.

All cities and most villages receive their GTA payments under the share of cost formula. Almost all towns are paid GTA on the rate per highway mile basis. DOT is statutorily required to distribute GTA funds first to towns under the rate per mile component of the program. Then, the remainder is distributed to cities and most villages on a share of cost basis.

An individual community's actual 2020 GTA payments will depend on application of the share of cost distribution formula. Municipalities on Share of Cost will receive a minimum 90% and maximum 115% of their 2019 GTA payment. The DOT calculates and mails to municipalities the estimate of their GTA payments by early October.

Supplemental Transportation Aids for Towns. The budget provides an additional \$2,500,000 annually from an annual, sum certain transportation fund appropriation to fund supplemental mileage aid payments for towns that are currently limited by the 85% of three-year average cost limitation under the general transportation aid program. This supplemental aid program allows certain towns to receive transportation aids equaling 100% of their transportation costs. (By comparison, cities and villages receiving GTA in 2019 under the share of cost formula received payments equaling only 16% of their total six-year average transportation costs.) This program sunsets on June 30, 2021.

Mass Transit Aids. The budget provides a 2% increase in mass transit operating assistance to each tier of mass transit systems for calendar year 2020 and thereafter. The increase in funding is to be distributed as follows: (a) \$321,000 in 2019-20 and \$1,283,900 in 2020-21 for Tier A-1; (b) \$84,300 in 2019-20 and \$337,400 in 2020-21 for Tier A-2; (c) \$122,400 in 2019-20 and \$489,700 in 2020-21 for Tier B transit systems;

and (d) \$26,000 in 2019-20 and \$103,800 in 2020-21 for Tier C transit systems. The statutory calendar year distribution amounts for 2020 and thereafter are set at \$65,477,800 for Tier A-1, \$17,205,400 for Tier A-2, \$24,976,400 for Tier B, and \$5,292,700 for Tier C.

Local Road Improvement Program (LRIP). The 2019-2021 state budget maintains current funding levels for the LRIP program.

New Local Government Transportation Grant Program. The state budget makes \$75 million in one-time general purpose revenue available to fund transportation grants for local governments.

According to DOT, the \$75 million will be split between local government types as follows: cities and villages will receive 25% of the funding (\$19,039,500), counties 36% (\$26,669,333), and towns 39% (\$29,291,167).

Funding for the Kaukauna Veterans Memorial Lift Bridge is also included in the program. The total estimated cost of the bridge project is \$2.2 million. The state is responsible for paying 80% of the cost of this project. According to DOT,

funding for the bridge project will be accomplished by taking \$500,000 from each local government group's allocation.

Grants will be available to local governments or groups of local governments on a competitive basis for projects statewide related to:

- Roads
- Bridges
- Transit capital and facility grants
- Bicycle and pedestrian accommodations
- Railroads
- Harbors

The program will pay up to 90% of total eligible costs with local governments providing the remaining 10%.

Other Local Aid, Grant, and Loan Programs

Recycling Grant Program. Funding for the municipal and county recycling grant program was not changed and remains \$19 million annually.

Payments for Municipal Services Program. Funding for the payment for municipal services program was kept the same

► p.13

DID YOU KNOW?



For over 100 years the shared revenue program has been a key component of Wisconsin's state and local financial relationship.

- ★ The county and municipal aid and utility aid programs, commonly referred to as the shared revenue program, combined with the expenditure restraint aid program, ranked as the sixth largest state general fund program in 2018-19, behind general elementary and secondary school aids, medical assistance, correctional operations, the University of Wisconsin system, and the school levy and first dollar tax credits.
- ★ Over the last 19 years, funding for the shared revenue program has been cut incrementally by \$94 million.
- ★ The formula for distributing shared revenue has not been used since 2003, which means that unless there is a cut in program funding, a community's shared revenue payment is the same amount that it received the year before regardless of any changes in equalized value or population the community may have experienced over the years.
- ★ Distribution of 2019 County and Municipal Aid and Utility Aid Payments:

Towns	\$53.3 million	(6.3%)
Villages	\$71.6 million	(8.7%)
Cities	\$544.8 million	(65.9%)
Counties	\$158.4 million	(19.2%)

Source: Legislative Fiscal Bureau 2019 Informational Paper on Shared Revenue

as under the prior budget, \$18,584,200 annually. The state uses this money to reimburse municipalities for police, fire and other services provided to tax-exempt state-owned properties. The program is administered by the department of administration and continues to be significantly underfunded.

State Aid for Tax-Exempt Computers. This program reimburses municipalities for lost revenues caused by the creation of personal property tax exemptions for computers, cash registers, and fax machines. The prior formula for calculating aid payments was repealed by the 2017-2019 state budget. In 2019, each community that received an aid payment in 2018 will receive an aid payment equal to that previous payment increased by the change in the inflation rate. Each year thereafter, communities will receive an amount equal to the 2019 aid payment amount.

Clean Water Fund and Safe Drinking Water Program

Clean Water Fund Bonding. The budget provides an increase in general obligation bonding authority of \$13,500,000 for the clean water fund program. The clean water fund program provides low-interest loans to municipalities for planning, designing, constructing, or replacing a wastewater treatment facility, or for nonpoint source pollution abatement or urban storm water runoff control projects.

Safe Drinking Water Bonding Authority. The state budget provides an increase in general obligation bonding authority of \$3,550,000 for the safe drinking water loan program. It authorizes DNR and the Department of Administration (DOA) to issue revenue obligations for the safe drinking water loan program in a manner consistent with the existing authority for clean water fund program revenue obligations. Under the budget, the current authorization for the state to issue up to \$2,526,700,000 in revenue obligations for the clean water fund program could also be used to issue revenue obligations for the safe drinking water loan program.

The safe drinking water loan program provides financial assistance to municipalities for the planning, design, construction, or modification of public water systems.

Safe Drinking Water 30-Year Loan Term. The budget authorizes the safe drinking water loan program to provide a maximum 30-year loan term, instead of the current maximum of 20 years, if the loan will be fully amortized not later than 30 years after the expected completion date of the project, and if repayment of principal and interest, if any, begins not later than 18 months after the expected completion date of the project that it funds.

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Cable Franchise Fee Reimbursement. The state budget mandates a reduction in municipal cable franchise fee percentages (technically referred to as Video Service Provider (VSP) fees) and requires the state to compensate municipalities for the lost revenue. Wis. Stat. section 79.097, as created by Act 9, provides as follows:

- Beginning on January 1, 2020, any Video Service Provider fee percentage rate a community assesses is reduced by 0.5%. If your community's VSP fee percentage is currently 5% of cable gross receipts, it will be 4.5%. If the percentage is currently 3% it becomes 2.5%.
- Beginning on January 1, 2021, the VSP fee percentage is reduced another 0.5%. If your VSP fee is currently 5% of gross revenues, it will become 4%. If your VSP fee is currently 3%, it becomes 2%.
- The state will replace the lost revenue to municipalities in 2020 by paying communities an amount equal to 0.5% of VSP gross receipts from 2018. The state will make the annual payment to municipalities on or before the 4th Monday in July 2020.
- The state will replace the lost revenue in 2021 by paying municipalities an amount equal to 1.0% of VSP gross receipts from 2019. The state will make the annual payment to municipalities on or before the 4th Monday in July 2021.

- The state will continue to replace the lost revenue each year after 2021 by paying municipalities the same amount they received in 2021.

Conclusion

Except for significant increases in local transportation aids, the 2019-2021 state budget is a status quo budget for cities and villages. While Governor Evers introduced a budget that increased funding for shared revenue and allowed communities to increase property tax levies by a minimum of 2 percent, the Legislature removed those and other items helpful to local governments.

Thanks to your lobbying efforts, however, there were no provisions interfering with municipal powers or other negatives for cities and villages in this budget.

About the Author:

Curt Witynski is the League's Deputy Director. He manages the League's lobbying program, representing the League before the Legislature, the governor's office, and state agencies. He writes the *Legislative Bulletin* and *Capitol Buzz* newsletters, organizes legislative material and the Budgeting Toolkit for the League's web page, and answers questions from the media and members about legislation that the League is following. Contact Curt at witynski@lwm-info.org



Learn More!

Curt will provide a Legislative Update and answer questions at the League's 121st Annual Conference.

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It's About TIME: Transportation Investment Moves Everything

Debby Jackson, Executive Director, Transportation Development Association of Wisconsin



Transportation investment moves everything, and hard work makes a difference.

From the buses in Racine to the Port of Green Bay to the rail lines in Superior to the Waukesha County Airport to the roads we use every day, Wisconsin's transportation network is the key to connecting goods to market and people to jobs.

This direct impact on Wisconsin residents and businesses is why the Transportation Development Association has promoted the vitality and safety of the state's transportation system – including public transit systems, airports, railroads, commercial ports, and roads – for almost 50 years. And why for the last four years TDA, the League of Wisconsin Municipalities and other partners have traveled the state talking with community leaders and residents, highlighting deteriorating system conditions and asking lawmakers to step forward with a plan to Just Fix It.

Thousands of local government officials and citizens participated in various Just Fix It presentations, town halls, and Rough Road Tours. We listened to each other and, together, we helped explain how the condition of Wisconsin's transportation system either moves us forward or holds us back.

We took an issue that historically hadn't been a hot button issue with voters (or state legislators) and propelled it to a top-three issue in every public opinion poll. Transportation was right up there with education and healthcare.

And our work paid off. The new state budget finally acknowledges the growing concerns of citizens and businesses and includes an increase of \$200 million a year in ongoing revenue, the largest increase in decades.

With the increased investment, Wisconsin can:

- Increase support for local roads and transit services.
- Move up more than 200 vital state highway rehabilitation projects around the state, stabilizing state highway conditions.
- Complete the Zoo Interchange and invest in other important modernization and safety projects, including Highway 23 and I-39/90.
- Reduce bonding to the lowest level in 20 years.

This bipartisan agreement was an important first step.

However, while this budget stops the system decline, it doesn't solve the problem.

Lawmakers have worked to make progress on many of our most pressing infrastructure needs. Now, it's TIME to work toward continued progress and Just Fix It so that Wisconsin's economy can reach its full potential.

TDA remains hopeful lawmakers will work together to establish an equitable, sustainable, ongoing revenue stream to meet our future transportation needs. This will be a continuing challenge, with high stakes.

So, we still have work to do. However, we come to this current challenge armed with the learnings of the last four years and a strong coalition. There haven't been better partners on this journey than local governments and the League. TDA looks forward to working with all of you to keep the spotlight on transportation.

Because TDA and the League know **Transportation Investment Moves Everything**. From dairy products and cranberries, to motorcycles and mining equipment; from military vehicles and microbrews to paper goods and manufactured houses, Wisconsin companies produce some of the best, most desired products in the world. Getting these goods to the marketplace requires sound transportation infrastructure. It's about TIME we implement a long-term plan that modernizes as well as maintains this vital network.

We also have a thriving tourism industry that depends on visitors being able to move easily and safely to bountiful festivals, lakes, cabins, and campgrounds across the state. And whether you drive to work over local roads, state highways, and the interstate or take the bus, every sector of our economy is hampered when commute times increase. It's about TIME we address this.

Our commitment to a healthy economic future demands we address our long-term mobility needs.

It's about TIME Wisconsin. TIME for the next step, a long-term solution – Just Fix It.

About the Author:

Debby Jackson is the Executive Director of the Transportation Development Association of Wisconsin. Founded in 1971, the Transportation Development Association of Wisconsin promotes the vitality and safety of the state's transportation system, including public transit systems, airports, railroads, commercial ports, and roads. Contact Debby at debby.jackson@tdawisconsin.org



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It's Not Supposed to Work Like That

Jerry Deschane, Executive Director, League of Wisconsin Municipalities

How many times have you wished there was a referee or professional advisor at your city council or village board meeting who could stand up and say, “Okay, stop. Let’s look at what just happened here.”? Or don’t you wish you could go back and resurrect that project that got tangled up in personality politics at the village board level; the one where the business owner threw up his hands and walked away? If you’ve been there, you’ll want to attend this year’s opening session of the League’s annual conference: a “Mock Board Meeting” facilitated by experts in board governance.

Mark Thorsby is a nationally-known expert in the art of governance. For several decades he has been advising both nonprofit and for-profit boards on the process of getting things done around a board table. Daniel MacLaughlin is the former Mayor of Orland Park, Illinois. The League has asked them to bring this good governance process to public policy debates. Using an *interactive, unrehearsed, and sometimes amusing process where everyone in the room plays a role*, Thorsby and MacLaughlin will help all of us learn some tips for getting things done using democracy.

Thorsby describes what you are about to experience as, “An entertaining, humorous, and deeply puzzling mock city council meeting played by random attendees at the conference. As a community, we will observe a ‘composite’ city council meeting that will look very familiar because it will cover both topics and behaviors that we have all seen – both good and bad. The session is designed to give each participant (and every attendee is a participant in one form or another in this exercise)

new insight into what is ‘really going on’ in our city council meetings.” There will be no dress rehearsals, though. None of the “city council meeting participants” will be notified or briefed in advance.

The session may be contrived, but the situations will feel very real. League Assistant Legal Counsel Maria Davis has provided Thorsby with several common topics that municipal governing bodies in Wisconsin experience. Those situations will form the basis for the mock agenda.

Thorsby has run this exercise many times for nonprofit groups. He says the phenomena this session creates is one where you gain greater insight and understanding by “being there, but not being there.” You are removed from your official surroundings so you see how dysfunctional things can be during the decision-making meetings of the governing body.

The exercise is designed to allow the participants to:

1. Examine examples of good and bad behavior by elected officials, municipal staff, and public participants in a board or council meeting.
2. Explore techniques for changing behaviors where it’s needed.
3. Understand concepts that support good governance and prevent, or at least discourage, bad governance behavior.
4. Identify behavior patterns that lead to bad governance.

Join us!



Learn More!

You can participate in the “Mock Board Meeting” at the Opening Session of the League’s 121st Annual Conference. As with all really good workshops, participants will learn a lot from one another as they are guided by Mark Thorsby and Daniel MacLaughlin.

One-Day Registration is available! Register now using the Registration Form on page 28 of this magazine or register online <https://www.lwm-info.org/731/Annual-Conference>

Warrantless Blood Draws of Unconscious Drunk Drivers

Maria Davis, Assistant Legal Counsel, League of Wisconsin Municipalities

The U.S. Supreme Court recently held that under the exigent circumstances doctrine, a warrantless blood draw may generally be taken from an unconscious person when police have probable cause to believe the individual committed a drunk-driving offense and their unconscious state deprived law enforcement of a reasonable opportunity to administer an evidentiary breath test.¹

Gerard Mitchell, the petitioner in *Mitchell v. Wisconsin*, was arrested on suspicion of drunk driving. After receiving reports that Mitchell was operating a vehicle while intoxicated, the responding officer found Mitchell who appeared visibly intoxicated. The officer administered a preliminary breath test and Mitchell registered a blood alcohol concentration (BAC) level of 0.24%. The officer transported Mitchell to the police station to administer an evidentiary breath test, but Mitchell was too incapacitated upon arrival and was taken to a nearby hospital for a blood test instead. Mitchell became unconscious during transport to the hospital. The blood draw, administered without a warrant while Mitchell was unconscious, showed a BAC level of 0.222%.

Mitchell moved to suppress the blood draw results arguing they were an unreasonable search prohibited by the Fourth Amendment. Wisconsin argued its implied consent law, which authorizes a blood draw from an unconscious motorist, rendered the search consensual despite Mitchell being unconscious. The motion to suppress was denied and Mitchell was convicted of two drunk-driving related offenses. The Wisconsin Supreme Court affirmed Mitchell's conviction. Mitchell

then petitioned the U.S. Supreme Court for review, asking the Court to decide whether Wisconsin's implied consent statute provides an exception to the Fourth Amendment warrant requirement.

Sidestepping the implied consent aspect of the question presented, a four-justice plurality held that when police have probable cause to believe an unconscious person committed a drunk-driving offense, a warrantless blood draw will almost always be permitted under the exigent circumstances exception to the Fourth Amendment. Exigent circumstances exist when "there is a compelling need for official action and no time to secure a warrant."² Justice Alito, writing for the plurality,³ noted that although *Missouri v. McNeely*⁴ held the fact that BAC levels are always dissipating at a continuous rate does not by itself create an exigent circumstance, a dissipating BAC level combined with some other factor creating a pressing health, safety, or law enforcement need does give rise to an exigent circumstance. An individual's unconscious state will likely be accompanied by a host of other factors requiring law enforcement officers' immediate attention – delaying their ability to get a warrant for a blood draw. The plurality did note that in an unusual case a defendant may be able to show their blood would not have been drawn if police were not seeking BAC evidence and that police could not have reasonably judged seeking a warrant would interfere with other pressing needs or duties. Because Mitchell did not have the chance to make such arguments, the case was ultimately remanded.

Justice Thomas concurred in the judgment, but wrote a separate opinion stating that the Court should have overruled *McNeely* and applied a bright line rule that the constant dissipation of alcohol in the blood stream does, by itself, create an exigency when police have probable cause to believe an individual committed a drunk-driving offense. However, Justice Alito's plurality opinion is the controlling decision.

The League filed an amicus brief in this case, written by Douglas Hoffer, Deputy City Attorney for Eau Claire, due to its potential impact on Wisconsin municipalities. Although the Court did not address the particular implied consent question, the *Mitchell* decision is nonetheless an important victory for Wisconsin municipalities as it reduces the risk of losing important evidence due to blood draw delays in OWI cases and provides prosecutors with a positive exigent circumstances decision that could be useful in a variety of OWI contexts.

Police 313

About the Author:

Maria Davis provides legal assistance to municipal attorneys and officials through telephone inquiries, written opinions and briefs, workshop presentations, and published articles. She also assists in writing League handbooks and planning the Municipal Attorney's Institute. Maria joined the League staff in 2018 after working in the City of Madison's Office of Real Estate Services upon graduating law school in 2015. Contact Maria at mdavis@lwm-info.org

1. *Mitchell v. Wisconsin*, 139 S. Ct. 2525 (2019).

2. *Id.* at 2534.

3. A plurality opinion occurs when the justices are unable to reach a traditional majority consensus (e.g., 5-4) regarding both the judgment of the Court and underlying rationale for that judgment, but more justices agree with one judgment/rationale than any other. In *Mitchell*, five justices agreed with the judgment of the court, but only four of those five agreed with the underlying rationale.

4. *Missouri v. McNeely*, 569 U.S. 141 (2013).

Municipal Immunity for Discretionary Acts Survives – For Now

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

The League of Wisconsin Municipalities participated as *amicus curiae* in *Pinter v. Village of Stetsonville*,¹ an important case concerning municipal immunity before the Wisconsin Supreme Court. Wisconsin Statute § 893.80(4) prohibits suits from being brought against municipalities or their officials, agents or employees for “acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.” Wisconsin courts have long interpreted that language as providing municipalities with immunity for *discretionary* acts. The good news? That longstanding interpretation survives – for now.

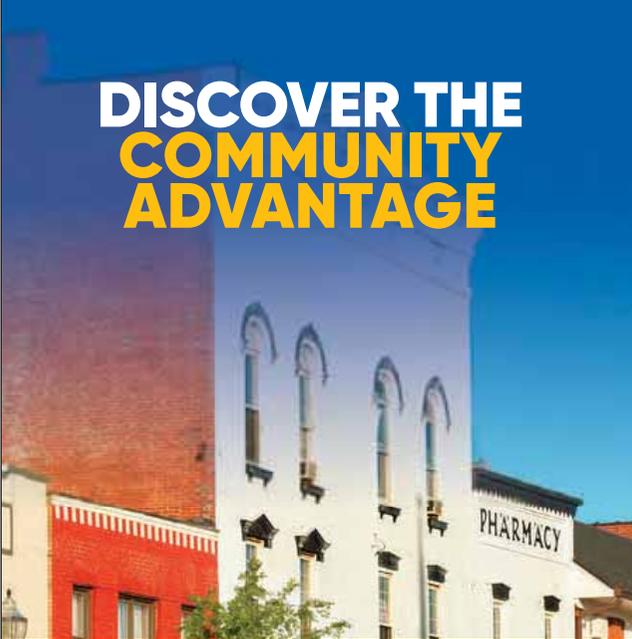
Alan Pinter sued the Village of Stetsonville (Village) for negligence and private nuisance after wastewater backed up into his basement following a period of heavy rain. Pinter claimed the Village knew wastewater would back up into his basement if the wastewater in the Village’s system exceeded a certain level, and that employees operating the system had a ministerial duty, based on a former village employee’s orally relayed guideline, to bypass the system and pump the wastewater into a ditch when that level was reached. Additionally, Pinter claimed the Village’s negligent maintenance of its sewer system allowed

water from outside sources to infiltrate and overwhelm the system, causing the backup in his basement; however, he presented no expert testimony supporting that claim. At issue in the case was (1) whether the Village had a ministerial duty to follow the former village employee’s oral guideline regarding when to pump wastewater out of the lift station; and (2) whether expert testimony was necessary to prove legal causation.

The Court held the former village employee’s guideline regarding when to pump wastewater out of a village lift station did *not* rise to the level of

1. *Pinter v. Village of Stetsonville*, 2019 WI 74.

► p.20



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a ministerial duty because it was not “absolute, certain and imperative,” and was not adopted by any lawmaking body. The Court noted that Department of Natural Resource (DNR) regulations underscore the discretionary nature of deciding when to bypass a treatment system. The applicable regulations prohibit pumping untreated water into a public waterway unless the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; there are no feasible alternatives to the bypass; and the municipality reports the bypass to the DNR. In deciding whether to bypass, Village staff considers a number of variables including whether the water is still rising, whether it is still raining, and the viability of using a pump truck. Accordingly, the Village was immune from liability for the sewage backup because the village staff’s decision to first haul wastewater by truck from its overwhelmed facility before directly pumping it into a nearby ditch was discretionary. The Court also held that expert testimony was necessary to determine whether the village’s wastewater system was the legal cause of the sewage backup because the “nuances and complexities of storm water infiltration into the municipal sewer system ... are outside the realm of ordinary experience and lay comprehension.” *Pinter*, ¶66.

Although the Court’s decision was favorable for municipalities, it was a close decision. Four justices agreed the village was immune from liability under Wis. Stat. § 893.80(4) for a discretionary act. Three justices dissented. Justice Dallett, joined by Justices Kelly and R. Bradley, dissented criticizing the majority for “continu[ing] to apply a framework for governmental immunity that creates an artificial, impracticable distinction between a ministerial duty and discretionary act.” The dissent said village employees were not “making any laws or exercising any judgments related to government business” or “making balanced policy decisions for wastewater management on behalf of the Village for which the protection of immunity was intended.” The dissent also said the need for expert testimony should be evaluated on a case-by-case basis and that “water infiltration, wastewater disposal system overflows, seepage of wastewater into homes, and related issues are all within the capability of jurors to understand and do not require any specialized knowledge or experience.” *Id.*, ¶¶ 72, 78, and 86.

If one additional justice joins the dissenters, the group will go from minority to majority on the issue of discretionary immunity. After serving on the Wisconsin Supreme Court for 43 years, Justice Shirley Abrahamson recently

departed the bench. It is unclear where newly elected Justice Brian Hagedorn will fall on this issue but if he agrees with the dissenting justices in *Pinter*, then we are likely to see a significant narrowing of municipal immunity when the Court next considers a case involving interpretation of § 893.80(4).

Liability 436

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. Claire joined the League staff in 1992. Contact Claire at cms@lwm-info.org



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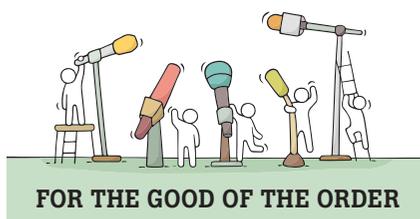


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20 Basic Parliamentary Motions

	To do this	Say this	Does this Motion interrupt?	Do you need a second?	Is it debatable?	Can it be amended?	What vote is needed?
1	Open discussion	I move that...	No	Yes	Yes	Yes	Majority
2	Change a motion	I move to amend by...	No	Yes	Yes	Yes	Majority
3	Change debate rules	I move to limit/extend debate as follows...	No	Yes	No	Yes	2/3
4	Lay on the table	I move to table...	No	Yes	No	No	Majority
5	Reconsider a previous action	I move to reconsider the vote on... (must be made within time limits)	Yes	Yes	Yes	No	Majority
6	Take up a matter previously tabled	I move to take from the table...	No	Yes	No	No	Majority
7	Repeal previously adopted motion	I move to rescind...	No	Yes	Yes	Yes	Majority w/ notice
8	Postpone indefinitely	I move to table the motion.	No	Yes	Yes	No	Majority
9	Postpone to time certain	I move to postpone (table)... until...	No	Yes	Yes	Yes	Majority
10	Defer action/commit	I move to refer the matter to committee.	No	Yes	Yes	Yes	Majority
11	Suspend rules	I move to suspend the rules to...	No	Yes	No	No	2/3
12	End debate	I move the previous question.	No	Yes	No	No	2/3
13	Roll call vote	I call for a division.	Yes	No	No	No	No vote
14	End meeting	I move to adjourn.	No	Yes	No	No	Majority
15	Enforce rules	I rise to a point of order...	Yes	No	No	No	Chair**
16	Challenge a ruling of the chair	I appeal the chair's decision.	Yes	Yes	Yes	No	Majority
17	Take a break	I move to recess for/until...	No	Yes	No	No	Majority
18	Request information	Point of information...	Yes	No	No	No	Chair**
19	Request rules help	Parliamentary inquiry...	Yes	No	No	No	Chair**
20	Complain about heat, noise...	I rise to a question of privilege...	Yes	No	No	No	Chair**

* Based on Robert's Rules of Order 11th Edition

** The chair does not vote but responds to the inquiry or requests assistance for a response.

This table is an updated version of the table on page 3 of *Governing Bodies: Parliamentary Procedure 395R1*.



the ICE has increased its enforcement activities, including a significant expansion of Form I-9 workplace audits.

Ideally, employers have a written I-9 compliance policy and all managers responsible for completing the form are trained on the policy and its requirements. The policy and training help to minimize errors on completing the form, and show an employer's commitment to compliance in the event of a worksite audit. Employers should also annually, or on some other regular basis, conduct a self-audit of their I-9 forms.

Corrections can be made to I-9 forms. Employers are only permitted to correct errors on Sections 2 and 3 of the form. If there are errors on Section 1, the employee is the only person permitted to make those adjustments.

The person responsible for fixing errors should date and initial the changes. If errors are extensive, the affected section should be redone on a new form and attached to the original I-9 form. An entirely new form can be completed if there are major corrections to be made (<https://www.uscis.gov/i-9-central/complete-correct-form-i-9/correcting-form-i-9>).

In addition to I-9 requirements, the IRCA also prohibits employers from knowingly hiring or continuing to employ persons who are not authorized to work in the U.S. Additionally, ICRA prohibits discrimination against individuals based on national origin or citizenship status in hiring, recruitment, referrals, and discharge. There are additional penalties for violating these provisions. Information can be found in

the Handbook for Employers by the U.S. Citizenship and Immigration Services: <https://www.uscis.gov/i-9-central/handbook-employers-m-274>

This article is for informational purposes only and is not intended to provide legal advice. Any policy and compliance issues regarding the I-9 requirements should always be discussed with an employment law attorney.

Employees 352

This monthly column offers HR basics, best practices, and compliance information. If you would like to see a particular subject addressed in a future column, please contact Lisa at bergersen@pewaukee.wi.us



Learn More!

Lisa Bergersen will be presenting HR 101 as one of the three Deep Dives that open the League's 121st Annual Conference on Wednesday, October 23.

One-Day Registration is available! Register now using the Registration Form on page 28 of this magazine or register online <https://www.lwm-info.org/731/Annual-Conference>



Local Government Environmental Cost Recovery Tools

Ted A. Warpinski & Todd Farris, Davis|Kuelthau, s.c.

Many local governmental units (“LGUs”) may still be dealing with old municipal dumps and most have abandoned contaminated properties ripe for development if sources of funds to clean them up can be identified. It is time to look again at the tools available to recover investigative and remediation costs from the parties responsible for the contamination. In addition, older liability policies (before the absolute pollution exclusion was added to most policies in 1986) insuring the municipality may provide a significant source of funds to clean up old municipal dumps.

Section 292.33

Wisconsin Stat. § 292.33 provides LGUs with a cause of action to recover cleanup costs from “responsible persons” for a property acquired through property tax foreclosure, condemnation, for the purpose of slum clearance or blight elimination and under other listed circumstances.¹ Responsible persons include a person who at the time the property was acquired by the LGU possessed or controlled the hazardous substance that was discharged at the property as well as the person who caused the discharge.² This description of responsible persons mirrors the language in Wis. Stat. § 292.11(3), which is commonly referred to as the Wisconsin Spill Law. “Possession and control” has been interpreted to mean ownership of the property where the contamination exists.³

There are limitations on the amounts that can be recovered. For example, one who “caused” the contamination is liable only for their proportional share of costs.⁴ And, those in possession and control,

which is typically the person from whom the LGU acquired the property, are limited to amounts the LGU cannot recover from those who caused the contamination.⁵ In all cases, recoverable costs are reduced by the fair market value of the property after completion of remedial activities at the property.⁶

A cost recovery action under § 292.33(2) must be commenced within six (6) years after completion of remedial activities at the property.⁷

Section 292.35

Wisconsin Stat. § 292.35 is a potential tool for an LGU to recover investigative and cleanup costs for a municipally-owned property that was historically used by third parties to dispose of hazardous substances. The statute is designed to encourage an LGU and a responsible party to agree on an allocation of investigative and remedial costs without litigation.

Section § 292.35 includes a detailed pre-litigation negotiation process after the LGU gives notice to a party the LGU believes may be responsible for contamination at a municipally-owned property, provides each party with the opportunity to comment on the draft remedial action plan and submits an offer(s) to settle.⁸ A party’s liability under the statute is based upon the party’s percentage contribution to the contamination at the site.⁹ If all of the parties are unable to resolve the matter directly, an “Umpire” is appointed by Wisconsin Department of Natural Resources (“WDNR”) to conduct what amounts to a mediation.¹⁰ If the

mediation is not successful, the Umpire submits a report to WDNR making a recommendation regarding the design and implementation of the remedial action plan and making a recommendation on the allocation of costs to each non-settling responsible party.¹¹ WDNR can approve the report as submitted or require modifications. Once the report is finalized, the LGU and the remaining responsible parties have 60 days to accept or reject the Umpire’s approved allocation of costs.¹²

If this process fails to resolve the entire matter, the LGU has a right of action against each responsible party who rejects the approved allocation of costs.¹³ If the LGU accepts the Umpire’s recommendation and a responsible party rejects it, and the LGU later recovers an amount that equals or exceeds the approved allocation, the LGU is entitled to recover litigation expenses including expert and reasonable attorney’s fees incurred in the litigation.¹⁴

Insurance

One potentially significant source of funds to pay for investigative and remediation costs incurred by an LGU are pre-1987 liability policies (and umbrella policies) that insured the LGU during times when coverage was “triggered.” The Wisconsin Supreme Court ruled several years ago that “responsible party” letters from the regulatory agency directing a party to investigate and clean up contamination are the equivalent of a lawsuit and that environmental cleanup costs are covered damages under typical general liability policies.¹⁵ Liability

▶ p.25

1. See Wis. Stat. §§ 292.33(2) and 292.11(9)(e)1m.

2. Wis. Stat. § 292.33(3).

3. See *State v. Mauthe*, 123 Wis.2d 288, 301, 366 N.W.2d 871 (1985).

4. Wis. Stat. § 292.33(4)(d)1.

5. Wis. Stat. § 292.33(4)(d)2.

6. Wis. Stat. § 292.33(4)(b).

7. Wis. Stat. § 292.33(7).

8. Wis. Stat. §§ 292.35(2r) and (3).

9. Wis. Stat. § 292.35(9)(c).

10. Wis. Stat. §§ 292.35(3) and (4).

11. Wis. Stat. § 292.35(6)(a).

12. Wis. Stat. § 292.35(6)(b).

13. Wis. Stat. § 292.35(9)(b).

14. Wis. Stat. § 292.35(8)(b)1.

15. See *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 264 Wis.2d 60, 665 N.W.2d 257 (2003).

insurers did incorporate an “absolute pollution exclusion” into most policies starting around 1986, but coverage under policies issued without the absolute pollution exclusion can still be triggered. Most general liability policies require that the damage occur during the policy period, but where the contamination may have occurred over many years, this means that multiple years of coverage may be available. For example, if an LGU owned a dump site where wastes were disposed during the 1960s, liability policies issued to that LGU in the 1960s may still provide coverage.

For this reason, it is recommended that LGUs search their own records for evidence of old insurance policies and, where property may have been acquired later by an LGU, to attempt to get records of policies that may have been issued to parties that formerly owned the property. There are services available, like PolicyFind for example, that engage in insurance archeology to search municipal and industry records to identify

and locate lost or mislaid liability policies providing defense and indemnity coverage to the LGU. If policies are identified, the LGU, working with legal counsel, can determine if coverage may be available and tender the claim as appropriate. Experienced insurance litigation counsel is recommended to respond to policy defenses which insurers inevitably raise because of the passage of time.

About the Authors:

At Davis|Kuelthau, s.c., our experienced attorneys have successfully represented municipalities and private parties in municipal cost recovery proceedings, in insurance matters involving the use of older CGL policies to fund investigative and remedial activities, and in coverage disputes and litigation. If you have questions, please contact Ted Warpinski at (920) 431-2236, twarpinski@dkattorneys.com, or Todd Farris at (414) 225-1487, tfarris@dkattorneys.com

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2019 Local Government 101 Registration Form

Mail: League, 131 W. Wilson St., Ste. 505, Madison, WI 53703 or Fax: 608-267-0645
OR REGISTER ONLINE AT www.lwm-info.org

Name (please print) _____ Position _____
 Municipality/Company _____ Email _____
 Street Address _____ City _____
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Please indicate which location you will attend

I need accommodations regarding a disability or dietary restriction. We will contact you to make arrangements.
Registration Fee: \$90 (member) or \$115 (non-member) per person (Note-this includes the Workbook & Lunch.)
 Registration deadline for each workshop is five business days prior to that event. Sorry, we cannot accept registrations by phone.

I am paying by CHECK (*payable to League of Wisconsin Municipalities*) I am paying by Visa MasterCard

Card Number _____ Expiration _____ Security Code _____

Signature _____

THE FINE PRINT:

Only staff members and officials from cities and villages that are currently members of the League of Wisconsin Municipalities may register as members. Registration fees, minus a \$10 processing fee, are refundable when cancellation is given 5 days in advance of the workshop.

Local Government 101 Agenda	8:30 a.m. Registration
	9:00 a.m. Welcome
	9:15 a.m. Organization & Powers of Cities and Villages
	10:00 a.m. Recognizing and Avoiding Conflicts of Interest
	11:00 a.m. Budgeting & Financial Oversight
	12:15 p.m. Lunch (included)
	1:00 p.m. Procedures for Local Government Meetings
	2:45 p.m. Managing Public Works Activities
	4:00 p.m. Adjourn

May 10 - Pewaukee: Ingleside Hotel
May 17 - Eau Claire: Lismore Hotel
May 31 - Madison: Holiday Inn at the American Center
June 21 - Appleton: Red Lion Paper Valley
June 28 - Ashland: Best Western Chequamegon Hotel
September 13 - Waupaca: Par 4 Resort



Did you know? The published Legal FAQs are taken directly from the extensive library of resources on the League's website. Have a question? Try the search function on the website and get an answer. <http://www.lwm-info.org>

Public Records FAQ 5

Does an email message sent to or by a municipal employee or official constitute a public record under the public records law?

Yes, in most cases. Wisconsin's public records law broadly defines "record"

to include any material on which written, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved that has been created or is being kept by an authority (e.g., municipal department, official or office). "Record" excludes materials that are purely the personal property of the custodian and are unrelated to his or her office. Wis. Stat. § 19.32(2).

The *substance* of an email determines whether it is a record – not its location. Accordingly, an email is a public record subject to disclosure when the message content relates to government business/activities, unless an exemption applies. This is true regardless of whether the email is sent from a personal or government account or stored on a personal or government device.

Purely personal emails sent or received by employees or officers on an authority's computer system, evincing no violation of law or policy, are generally not subject to disclosure in response to a public records request. However, personal emails may take on a different character, becoming subject to potential disclosure, if they are used as evidence in a disciplinary investigation or to investigate misuse of government resources. A connection would then exist between the personal content in the emails and a government function, such as a personnel or ethics investigation.

Emails and other electronic records of an authority must be retained for the required time period, which is generally seven years in the absence of a records retention ordinance establishing an alternative approved retention period. (rev. 7/19)



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Legal Captions

Employees 352

HR Matters column article by Lisa Bergersen discussing requirements related to the federal I-9 employment verification form that must be completed for all paid employees.

Police 313

Under the exigent circumstances exception to the Fourth Amendment, a warrantless blood draw may generally be taken from an unconscious person when police have probable cause to believe the individual committed a drunk-driving offense and their unconscious state deprived law enforcement of a reasonable opportunity to administer an evidentiary breath test. *Mitchell v. Wisconsin*, 139 S. Ct. 2525 (2019)

Liability 436

Former village employee's oral guideline about when to bypass wastewater system did not create ministerial duty because it was not "absolute, certain and imperative," and village was immune under § 893.80(4) for sewage backup in resident's

basement because staff's decision to first haul wastewater by truck from the overwhelmed facility before directly pumping it into a nearby ditch was discretionary. Expert testimony was necessary to raise genuine issue of material fact as to whether village's alleged negligent maintenance of sewer system caused backup since nuances and complexities of storm water infiltration into municipal sewer system were outside realm of ordinary experience and lay comprehension. *Pinter v. Village of Stetsonville*, 2019 WI 74.

Liability 437

Legal article highlighting Wis. Stat. § 292.33, which provides local governments with a cause of action to recover cleanup costs from "responsible persons" for a property acquired through property tax foreclosure, condemnation, for the purpose of slum clearance or blight elimination and under other listed circumstances. Authored by Ted Warpinski and Todd Farris, Davis|Kuelthau, s.c.

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- Pamela

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121st League Annual Conference Registration

KI Center/Hyatt Regency, Green Bay

October 23-25, 2019

Early Bird Discount through September 13, 2019

Name _____ Title _____

The Municipality/Company You Represent _____

Street Address _____

City _____ State _____ Zip code _____

Phone number _____ email _____

I need arrangements to accommodate a disability or dietary need. (We will contact you to make those arrangements.)

	Member* Until 9-13-19	Non-member Until 9-13-19	Member*	Non-member
Full Conference Registration	<input type="checkbox"/> \$225	<input type="checkbox"/> \$270	<input type="checkbox"/> \$260	<input type="checkbox"/> \$305
Wednesday Only Registration			<input type="checkbox"/> \$90	<input type="checkbox"/> \$110
Thursday Only Registration			<input type="checkbox"/> \$150	<input type="checkbox"/> \$180
Friday Only Registration			<input type="checkbox"/> \$90	<input type="checkbox"/> \$110

Bringing a guest? No Yes Name: _____ \$50

Please note: Guest registration covers both Conference Receptions and Thursday's Run/Walk. There is no Guest Program this year.

Please tell us which of the following events you'll be attending:

- Wednesday Deep Dive #1 Northern Renewal—Tour of Green Bay and Ashwaubenon
- Wednesday Deep Dive #2 Human Resources 101
- Wednesday Deep Dive #3 Innovative Housing Solutions
- Wednesday Mini Bar** A New Round of *FUN*damentals for Municipal Attorneys
- Thursday morning WEA Trust Walk/Run (7:00 a.m. start)
Please circle the Walk/Run t-shirt size you would like: **S M L XL XXL**
If you are bringing a guest to the Walk/Run, please circle your guest's size: **S M L XL XXL**
- Thursday Municipal Networking Reception (4:30 p.m.)
- Friday Scrambled Eggs & Politics Breakfast (7:30 a.m.)

Total Due: _____/Payment information:

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**Staff members and officials from cities and villages that are currently members of the League, League Business Partners and representatives from organizations exhibiting at this conference may register at the member rate.*

***The Mini Bar workshop is geared towards newer municipal attorneys but seasoned attorneys are likely to find value as well. The workshop is anticipated to provide 4 CLE credits. Anyone may attend, but content will be presented with the assumption that participants have a law background.*

Registration fees, minus a \$10 processing fee, are refundable if the League is notified of the cancellation by October 18, 2019.

Online Registration: www.lwm-info.org

Fax: 608-267-0645

Questions? Call 608-267-2380

Mail: League of Wisconsin Municipalities

131 West Wilson Street, Suite 505

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2019 Municipal Assessors Institute

September 16-18, 2019

Best Western Premier Waterfront Hotel & Convention Center, Oshkosh

Registration Deadline: September 9, 2019

Agenda

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Monday, September 16

8:00-9:00	Breakfast, Registration	
8:30-9:00	Moderators' Meeting	
9:00-9:30	Welcome Address / General Session / WAAO Business Meeting	
9:30-12:30	Mediation on Excessive Assessment	LAW/MGMT
12:30-1:30	Lunch (on your own)	
1:30-4:30	Concurrent Workshops	
	Lakeshore Valuation	APPRAISAL
	Property Tax Litigation Update 2019	LAW/MGMT
5:30	Reception	
6:00	Banquet, WAAO Awards, Social Hour	

Tuesday, September 17

8:00-9:00	Breakfast, Registration	
9:00-12:00	Concurrent Workshops	
	If Houses Could Talk	APPRAISAL
	Equalization Overview & Assessors Role in Equalization Process	LAW/MGMT
12:00-1:30	Lunch (on your own)	
1:30-4:30	Concurrent Workshops	
	If Houses Could Talk <i>(continued)</i>	APPRAISAL
	Working with Different Generations	LAW/MGMT
Evening	Hospitality Suite	

Wednesday, September 18

8:00-9:00	Breakfast	
9:00-12:00	Concurrent Workshops	
	GIS Parcels: From Listing to Analysis	LAW/MGMT, APPRAISAL
	Act 68	LAW/MGMT
12:00	Adjourn	

Register online at <http://lwm-info.org/762/Municipal-Assessors-Institute>

\$190 Member Tuition, \$220 Non-Member Tuition (Staff and officials from cities and villages that are currently members of the League and League Business Partners may register as members.)

Registration deadline September 9, 2019.

Hotel reservations: Call Best Western at 920-230-1900. Use booking ID Assessors Institute League of Wisconsin Municipalities to receive the block rate of \$82 Single / \$92 Double. Room block held until August 26, 2019, or until the group block is full, whichever comes first.



2019 Plumbing Inspectors Institute

November 6-8, 2019

Lake Lawn Resort, Delavan

\$155 Member Tuition, \$185 Non-Member Tuition (Staff and officials from cities and villages that are currently members of the League and League Business Partners may register as members.)

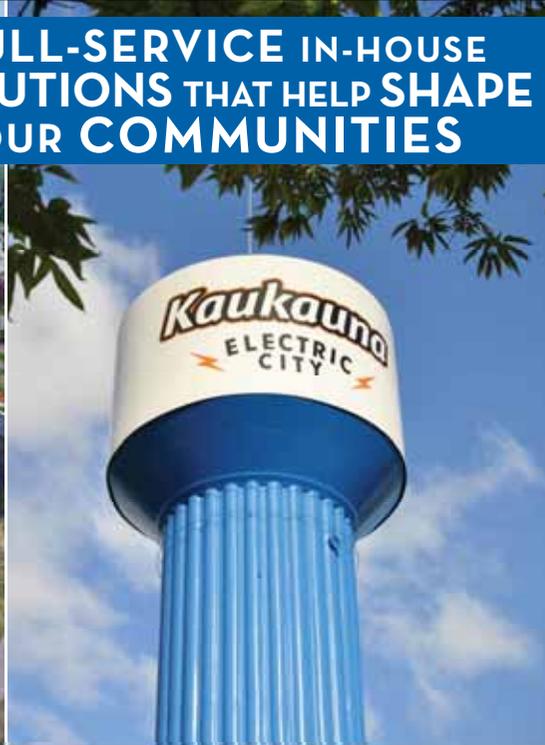
Hotel Information: Make reservations directly with Lake Lawn Resort at 800-338-5253. \$113-\$133 depending on room type. Use booking ID *Plumbing Inspectors Institute* to receive the block room rate. Deadline for room reservations at the block rate is October 16, 2019, or until group block is sold out, whichever comes first. 72-hour cancellation policy. Check-in is at 4:00 p.m. Check-out is at 11:00 a.m.

Agenda and Registration Online at: <http://lwm-info.org/800/Plumbing-Inspectors-Institute>

Registration Deadline: October 30, 2019



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2019 League Workshops, Institutes, and Conferences

EVENT	DATES	LOCATION	LODGING	REGISTRATION FEE
Local Government 101*	September 13	Waupaca	Par 4 Resort • 1-day workshop Usually does not require overnight stay but small block is available	\$90 Member
Municipal Assessors Institute*	September 16-18	Oshkosh	Best Western Premier Waterfront Hotel & Convention Center • 920-230-1900 \$82 single/\$92 double ID: Municipal Assessors Institute LWM	\$190 Member \$220 Non-Member
Annual Conference and Engineering & Public Works Institute*	October 23-25	Green Bay	KI Center/Hyatt Regency • 800-233-1234 \$82 single-quad ID: League of WI Municipalities	\$225 Member \$270 Non-Member
Police & Fire Commission Workshop*	November 1	Stevens Point	Holiday Inn Hotel & Convention Center 1-day workshop Usually does not require overnight stay	\$130 Member \$155 Non-Member
Plumbing Inspectors Institute*	November 6-8	Delavan	Lake Lawn Resort • 800-338-5253 \$113-\$133 depending on rm type ID: Plumbing Insp Institute	\$155 Member \$185 Non-Member

* Register now at www.lwm-info.org



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In Transition

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CONGRATULATIONS



Sharon Eveland, City of Clintonville Administrator, recently received the **Wisconsin City/County Management Association (WCMA) Futures Award** in part for her work in gaining council approval to implement paid maternity, parental, and adoption leave. Her nominator noted, “Her family-friendly work in this area has garnered national attention and makes Clintonville a leader in both the public and private sectors. It takes vision, leadership, and even courage to tackle such a progressive policy in a rural, small town community. Sharon has set an example for all WCMA members with her work in this area.”

The **WCMA Outstanding Program Award** was presented to the City of Waukesha and Kevin Lahner, City Administrator to recognize the City of Waukesha’s “Leading Waukesha” Program, representing an investment in the city’s employees with the hopes that they will invest themselves in their jobs, their department, and in their community. The program was designed to develop skills needed for successful leadership at all levels and in all departments of the organization. The goals include:

- Develop the next wave of leaders for the city;
- Create a culture that supports leadership and training;
- Allow the city to speak the same language across the organization;
- Help break down department barriers;
- Train employees that they can lead from wherever they sit in the organization.



The Leading Waukesha program has been a success since its implementation. The first program was offered in the Spring of 2017 and since then there have been four sessions of the program. There are currently 45 graduates of the program working for the city. The graduates of the program have stepped up in numerous ways throughout the organization and have taken a variety of leadership roles throughout the city, which is the overall goal of the program.

CONDOLENCES

Superior. Former Mayor Bruce Hagen, who twice served as the city’s mayor, first from 1975 to 1987, and then from 2011 to 2017, when he retired from the post midway through his fifth term in office, died in July after a lengthy illness. Between his tenures as mayor, he went on to serve in state government as chief of staff to Gov. Tommy Thompson, deputy secretary of the Department of Workforce Development, an unemployment insurance administrator and director of intergovernmental relations. Rani Gill, the mayor’s chief of staff said, “One of the things he always said is you don’t work for me, you work with me, which is the best that a boss can ever say to you.”





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