CHARTER ORDINANCE O - 4 - 09

A CHARTER ORDINANCE RELATING TO APPOINTMENT OF THE CITY ASSESSOR

Introduced by Alderman Pack

The Common Council of the City of Menasha does ordain as follows:

SECTION 1: Charter Ordinance O-28-83 is repealed and recreated to read as follows:

Home Rule Provision. The City of Menasha hereby elects, pursuant to sec. 62.09, Wis. Stats., and Chapter 66, Wis. Stats. to provide for the appointment of the assessor.

SECTION 2: Charter Ordinance Provisions. This ordinance shall be deemed to be an amendment of the Charter of the City of Menasha relating to the term of the office of assessor and sec. 62.09(1) of the statutes of the State of Wisconsin being a part of the general charter law of the City of Menasha, Wisconsin shall not apply to the assessor insofar as statutory terms conflict with this ordinance.

SECTION 3: How selected. The Mayor shall appoint the assessor, with confirmation by the Common Council. A firm may be designated as City Assessor.

SECTION 4: Term: There shall be no specific term designated for the City Assessor.

SECTION 5; This is a charter ordinance and shall take effect sixty (60) days after its publication unless within such sixty (60) day period a referendum petition is filed as provided for by s. 66.0101 Wis. Stats. In such event, this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereon.

Passed and approved this _____ day of _____, 2009.

_____
Donald Merkes, Mayor

ATTEST:

_____
Deborah A. Galeazzi, City Clerk

Attorney's Note: This is a charter ordinance and requires an affirmative vote of two-thirds of the Common Council. It has been recommended by the Ad-Hoc City Attorney Search Committee.

City of Menasha • Office of the City Attorney
Jeffrey S. Brandt, City Attorney

MEMO

TO: Common Council
Mayor Merkes

FROM: CA/HRD Brandt JSB

SUBJECT: Charter Ordinances

DATE: January 12, 2009

Since there are three Charter Ordinances being introduced, I wish to provide information on the procedure regarding Charter Ordinances. I have set forth the text of s. 66.0101 Wis. Stats. in its entirety which provides for the procedure on creating, repealing and amending Charter Ordinances. This is a redraft of a memo I submitted to the Common council dated May 18, 2006.

66.0101

**66.0101 Home rule; manner of exercise.**

66.0101(1)

**(1)** Under article XI, section 3, of the constitution, the method of determination of the local affairs and government of cities and villages shall be as prescribed in this section.

66.0101(1m)

**(1m)** In this section, "charter ordinance" means an ordinance that enacts, amends or repeals the charter, or any part of the charter, of a city or village or that makes the election under sub. (4).

66.0101(2)

**(2)**

66.0101(2)(a)

(a) A city or village may enact a charter ordinance. A charter ordinance shall be designated as a charter ordinance, requires a two-thirds vote of the members-elect of the legislative body of the city or village, and is subject to referendum as provided in this section.

66.0101(2)(b)

(b) A charter ordinance that amends or repeals a city or village charter shall designate specifically the portion of the charter that is amended or repealed. A charter ordinance that makes the election under sub. (4) shall designate specifically each enactment of the legislature or portion of the enactment that is made inapplicable to the city or village by the election.

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66.0101(3)

**(3)** A charter ordinance shall be published as a class 1 notice, under ch. 985, and shall be recorded by the clerk in a permanent book kept for that purpose, with a statement of the manner of its adoption. A certified copy of the charter ordinance shall be filed by the clerk with the secretary of state. The secretary of state shall keep a separate index of all charter ordinances, arranged alphabetically by city and village and summarizing each ordinance, and annually shall issue the index of charter ordinances filed during the 12 months prior to July 1.

66.0101(4)

**(4)** A city or village may elect under this section that any law relating to the local affairs and government of the city or village other than those enactments of the legislature of statewide concern as shall with uniformity affect every city or every village shall not apply to the city or village, and when the election takes effect, the law ceases to be in effect in the city or village.

66.0101(5)

**(5)** A charter ordinance does not take effect until 60 days after its passage and publication. If within the 60-day period a petition conforming to the requirements of s. 8.40 and signed by a number of electors of the city or village equal to not less than 7% of the votes cast in the city or village for governor at the last general election is filed in the office of the clerk of the city or village demanding that the ordinance be submitted to a vote of the electors, it may not take effect until it is submitted to a referendum and approved by a majority of the electors voting in the referendum. The petition and the proceedings for its submission are governed by s. 9.20 (2) to (6).

66.0101(6)

**(6)** A charter ordinance may be initiated under s. 9.20 (1) to (6), but alternative adoption of the charter ordinance by the legislative body is subject to referendum under sub. (5).

66.0101(7)

**(7)** A charter ordinance may be submitted to a referendum by the legislative body, under s. 9.20 (4) to (6), without initiative petition, and becomes effective when approved by a majority of the electors voting in the referendum.

66.0101(8)

**(8)** A charter ordinance enacted or approved by a vote of the electors controls over any prior or subsequent act of the legislative body of the city or village. If the electors of any city or village by a majority vote have adopted or determined to continue to operate under either ch. 62 or 64, or have determined the method of selection of members of the governing board, the question shall not again be submitted to the electors, nor action taken on the question, within a period of 2 years. Any election to change or amend the charter of any city or village, other than a special election as provided in s. 9.20 (4), shall be held at the time provided by statute for holding the spring election.

66.0101(9)

**(9)**

66.0101(9)(a)

(a) The legislative body of a city or village, by resolution adopted by a two-thirds vote of its members-elect may, and upon petition complying with s. 9.20 shall, submit to the electors under s. 9.20 (4) to (6) the question of holding a charter convention under one or more plans proposed in the resolution or petition.

66.0101(9)(b)

(b) The ballot shall be in substantially the following form:
Shall a charter convention be held?
YES (BALLOT BOX) NO (BALLOT BOX)
If a charter convention is held what plan do you favor?
PLAN 1 (BALLOT BOX) PLAN 2 (BALLOT BOX)
[Repeat for each plan proposed.]
Mark an [X] in the square to the RIGHT of the plan that you select.

66.0101(9)(c)

(c) If a majority of the electors voting vote for a charter convention, the convention shall be held pursuant to the plan favored by a majority of the total votes cast for all plans. If no plan receives a majority, the 2 plans receiving the highest number of votes shall be again submitted to the electors and a convention shall be held pursuant to the plan favored by a majority of the votes cast.

66.0101(9)(d)

(d) A charter convention may adopt a charter or amendments to the existing charter. The charter or charter amendments adopted by the convention shall be certified, as soon as practicable, by the presiding officer and secretary of the convention to the city or village clerk and shall be submitted to the electors as provided under s. 9.20 (4) to (6), without the alternative provided in s. 9.20 (4) to (6), and take effect when approved by a majority of the electors voting.

66.0101(10)

**(10)** Nothing in this section shall be construed to impair the right of cities or villages under existing or future authority to enact ordinances or resolutions other than charter ordinances.

66.0101(11)

**(11)** Sections 62.13 and 62.50 and chapter 589, laws of 1921, and chapter 423, laws of 1923, shall be construed as enactments of statewide concern for the purpose of providing uniform regulation of police and fire departments.

66.0101(12)

**(12)** Every charter ordinance enacted under s. 66.01, 1943 stats., which was adopted by the governing body prior to December 31, 1944, and which also was published prior to that date in the official newspaper of the city or village, or, if there was none, in a newspaper having general circulation in the city or village, shall be valid as of the date of the original publication notwithstanding the failure to publish the ordinance under s. 10.43 (5) and (6), 1943 stats.

66.0101 - ANNOT.

**History:** *1999 a. 150 ss. 18 to 27; Stats. 1999 s. 66.0101.*

66.0101 - ANNOT.

*A charter ordinance must be legislative in character before it can be validly initiated by direct legislation. Save Our Fire Department Paramedics Committee v. Appleton, 131 Wis. 2d 366, 389 N.W.2d 43 (Ct. App. 1986).*

66.0101 - ANNOT.

*The city of Milwaukee cannot, by charter ordinance, adopt s. 62.13 (5) (b) since s. 62.13 deals with a subject of state-wide concern; it cannot do so under s. 62.03 since that requires the adoption of whole statute sections. 58 Atty. Gen. 59.*

As you can tell by reading this statute, this procedure has intentionally been designed to be complex. A checklist or flow chart would be:

1. Charter ordinance is introduced.
2. Charter ordinance requires a 2/3 vote of the legislative body.
3. Charter ordinance must be published as a class 1 notice. (One time)
4. Charter ordinance does not become effective until 60 days after passage and publication.
5. Charter ordinance must be legislative in character.
6. Petition may be filed within the 60 day period between publication and effective date signed by not less than 7% of the votes cast for governor at the last general election, demanding a referendum.
7. If filed, effective date may not be until approved by a majority of the electors voting in the referendum.
8. Charter ordinance may be submitted by Common Council for referendum prior to enactment, if desired by Common Council.

I have enclosed the Charter Ordinances O – 4 – 80, O – 21- 80, O – 28 -83 and O – 49 -88 with the following table:

| Charter Ordinance | Adopted | Periods of appointment | Who | Vote |
|---|---|---|---|---|
| Atty - O – 4 – 80 | 2/5/80 | May 1, 1982 – April 30, 1985 | Steffens | 10-0 |
| | | May 1, 1985 – April 30, 1988 | Steffens | 10-0 |
| | | May 1, 1988 – July 19, 1990 | Steffens | 10-0 |
| | | July 20, 1990 – April 30, 1991 | Brandt | 9-0 |
| | | May 1, 1991 – April 30, 1994 | Brandt | 10-0 |
| | | May 1, 1994 – April 30, 1997 | Brandt | 8-0 |
| | | May 1, 1997 – April 30, 2000 | Brandt | 7-0 |
| | | May 1, 2000 – April 30, 2003 | Brandt | 7-0 |
| | | May 1, 2003 – April 30, 2006 | Brandt | Voice |
| | | May 1, 2006 – April 30, 2009 | Brandt | 8-0 |
| Clerk – O – 21 -80 | 5/20/80 | May 1, 1983 – April 30, 1985 | Zielinski | 6-3 |
| | | May 1, 1985 – April 30, 1988 | Zielinski | 10-0 |
| | | May 1, 1988 – April 30, 1991 | Zielinski | 8-2 |
| | | May 1, 1991 – July 1, 1994 | Zielinski | 10-0 |
| | | August 17, 1993 – April 30, 1994 | Smogoleski | 7-0 |
| | | May 1, 1994 – April 30, 1997 | Smogoleski | 8-0 |
| | | May 1, 1997 – April 30, 2000 | Smogoleski | 8-0 |
| | | May 1, 2000 – April 30, 2003 | Smogoleski | 7-0 |
| | | May 1, 2003 – April 30, 2006 | Smogoleski | Voice |
| | | July 1, 2004 – April 30, 2006 | Galeazzi | 7-0 |
| | | May 1, 2006 – April 30, 2009 | Galeazzi | 8-0 |
| Assessor - O – 28-83 | 11/1/83 | May 1, 1984 – April 30, 1987 | Prellwitz | Voice |
| O - 49-88 | 12/20/88 | January 23, 1986 – April 30, 1987 | Ellis | Voice |
| | | May 1, 1987 – April 30, 1988 | Ellis | No vote |
| | | May 1, 1988 –April 30, 1991 | Ellis | No vote |
| | | May 1, 1991 – April 30, 1994 | Ellis | 10-0 |
| | | May 1, 1994 – April 30, 1997 | Ellis | 8-0 |
| | | May 1, 1997 – June 3, 1998 | Ellis | 8-0 |
| | | September 8, 1998– April 30, 2000 | Heiden | 8-0 |
| | | May 1, 2000 – April 30, 2003 | Heiden | 7-0 |
| | | May 1, 2003 – January 13, 2006 | Heiden | Voice |

On December 20, 1988, the Common Council adopted O – 49 -88 that provided for the term of the Assessor to run with the terms for City Attorney and City Clerk. However, I found no formal appointment of Marie Ellis from January 23, 1986 until May 1, 1991.

CHARTER ORDINANCE NO. 0-4-80

AN ORDINANCE PERTAINING TO THE OFFICE OF CITY ATTORNEY. REQUESTED BY ALDERMAN HUGH E. GEIBEL.

Section 1. That pursuant to Chapter 66.01 and 62.09 (3) (b) 3 City of Menasha hereby elects to amend the charter ordinance of said city to make the office of City Attorney Selective rather than Elective for a period of three (3) years commencing May 1, 1982.

Section 2: All ordinances in conflict with this ordinance are hereby repealed.

Section 3: This is a charter ordinance and shall take effect Sixty (60) days after its passage and publication unless within such Sixty (60) day period a referendum petition as provided by Section 66.01 of the Wisconsin Statutes shall be filed, in which event this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereof.

Passed and approved this 5th day of Feb., 1980.

Victor V. Wiecki

Victor V. Wiecki, Mayor

ATTEST: Raymond C. Zielinski

Raymond C. Zielinski, City Clerk

CHARTER ORDINANCE NO. O-21-80

AN ORDINANCE FOR REMOVING THE OFFICE OF CITY CLERK FROM THE POPULAR VOTE.

Requested by Alderman Robert Vanevenhoven.

SECTION 1: That pursuant to Chapter 66.01 and 62.09 (3)(b) 3 City of Menasha hereby elects to amend the charter ordinance of said city to make this office of City Clerk Selected by the Common Council rather than Elective for a period of three (3) years commencing May 1, 1982.

SECTION 2: All ordinances in conflict with this ordinance are hereby repealed.

SECTION 3: This is a charter ordinance and shall take effect Sixty (60) days after its passage and publication unless within such Sixty (60) day period a referendum petition as provided by Section 66.01 of the Wisconsin Statutes shall be filed, in which event this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereof.

Passed and approved this 20th day of May, 1980.

Victor V. Wiecki
Victor V. Wiecki, Mayor

ATTEST: Raymond C. Zielinski
Raymond C. Zielinski, City Clerk

CHARTER ORDINANCE 0-28-83

A CHARTER ORDINANCE ENACTED UNDER THE HOME RULE POWERS OF THE WISCONSIN STATUTES BY PLACING THE ASSESSOR ON AN APPOINTED BASIS.

Requested by the Personnel Committee.

The Common Council of the City of Menasha do ordain as follows:

SECTION 1: Home Rule Provision. The City of Menasha hereby elects, pursuant to sec. 62.09 (1) and Chapter 66 of the statutes of the State of Wisconsin, to provide that the term of the office of assessor shall be on an appointed basis.

SECTION 2: Charter Ordinance Provisions. This ordinance shall be deemed to be an amendment of the Charter of the City of Menasha relating to the term of the office of the assessor and sec. 62.09 (1) of the statutes of the State of Wisconsin being a part of the general charter law of the City of Menasha, Wisconsin shall not apply to the term of office of the assessor insofar as the statutory terms conflict with this ordinance.

SECTION 3: How Selected. The assessor shall be nominated by the Personnel Committee which shall act as a screening committee. Such nomination shall be made to the Mayor. The Mayor may either accept or reject the nomination. If accepted, the nomination and selection must be confirmed by the Common Council.

SECTION 4: Term of Office. The term of office shall be for a period of three (3) years commencing with the date of the first appointment.

SECTION 5: This is a charter ordinance and shall take effect sixty (60) days after its passage and publication unless within such sixty (60) day period a referendum petition as provided by sec. 66.01 of the Wisconsin Statutes shall be filed, in which event this ordinance shall not take effect until it shall have been

submitted to a referendum vote of the electors and approved by a majority of the electors voting thereof.

SECTION 6: All ordinances in conflict with this ordinance are hereby repealed.

Passed and approved this 1st day of November, 1983.

Thom A. Ciske, Mayor

ATTEST: Raymond C. Zielinski

Raymond C. Zielinski, City Clerk

City Attorney's Note: Passage of this ordinance requires a two-thirds vote of all the members of the Common Council.

CHARTER ORDINANCE AMENDMENT - O-49-88

A CHARTER ORDINANCE AMENDMENT AMENDING THE CHARTER ORDINANCE ENACTED UNDER THE HOME RULE POWERS OF THE WISCONSIN STATUTES BY PERTAINING TO THE OFFICE OF CITY ASSESSOR.

REQUESTED BY: Personnel Committee

The Common Council of the City of Menasha does ordain as follows:

PART 1: Section 4 of Charter Ordinance 0-28-83 entitled "Term of Office" is hereby amended to read as follows: The term of office shall be from the date of appointment until May 1, 1991. Thereafter the term of office shall be for a period of three (3) years.

PART 2: This is a Charter Ordinance and shall take effect sixty (60) days after its passage and publication unless within said sixty (60) day period a referendum petition as provided by Section 66.01 of the Wisconsin Statutes shall be filed, in which event this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of electors voting thereon.

PART 3: All ordinances in conflict with this ordinance are hereby repealed.

Passed and approved this 20th day of December, 1988.

Joseph F. Laux

Joseph F. Laux, Mayor

ATTEST: Raymond C. Zielinski

Raymond C. Zielinski, City Clerk

CITY ATTORNEY'S NOTE: Passage of this ordinance requires two-thirds vote of all members of the Common Council.

Explanation: The present City Assessor was appointed to fill the unexpired term of Jerry Prellwitz, which unexpired term ended May 1, 1987. Despite repeated warnings to the powers to be, I pointed out that the present assessor had not been re-appointed for a 3-year term from May 1, 1987 and there is no such thing as holding over by virtue of your office. The term ends on a date certain period.

What this ordinance does is makes the appointed members of the City administration (Assessor, Clerk and Attorney) terms expire on the same date; in this case May 1, 1991. In all other respects the original Charter Ordinance 0-23-83 which was passed on November 1, 1983, remains in full force and effect. This means the Assessor is selected under the terms of the Charter Ordinance in which the Personnel Committee acts as a screening committee and nominates to the Mayor and the Mayor may either accept or reject the nomination. If accepted, the nomination must be confirmed by the Common Council, which are the provisions of the Charter Ordinance.