

Wisconsin law specifies that persons serving in appointive offices serve until their successors are appointed and qualify. Wis. Stat. secs. 61.23 and 62.09(5)(e).

E. COMPENSATION OF MUNICIPAL OFFICERS

When talking about matters of compensation with respect to municipal officers, it is useful to distinguish between salary, fringe benefits and expense reimbursements. Compensation for elective offices is governed by secs. 62.09(6)(am) (cities) and 61.193 (villages). For purposes of those sections, “compensation” is defined as “a salary, a per diem compensation for each day or part of a day necessarily devoted to the service of the [municipality] and the discharge of duties or a combination of salary and per diem compensation.”

1. Establishment of Salaries

In cities, the common council may, by a vote of three-fourths of all the members, order that salaries be paid the mayor and members of the council. Wis. Stat. sec. 62.09(6).

In villages, the village board may, by a three-fourths vote of all the members, determine that an annual salary be paid the village president and the trustees. Sec. 61.32.

The term “salary” has been defined by the courts as a “fixed, periodical compensation paid for services rendered.” *Geyso v. Cudahy*, 34 Wis.2d 476, 483, 149 N.W.2d 611 (1967).

2. Changing Officers' Compensation

Although the statutes require governing body members' salaries to be established by a three-fourths vote of the entire body, subsequent changes to the ordinance may be made without an extraordinary vote (*i.e.*, they may be made by a majority vote, unless local procedure dictates otherwise). Wis Stat. secs. 61.32 and 62.09(6). However, the salaries of governing body members may be changed only by ordinance.

Compensation for elective offices in cities and villages must be established before the earliest time for filing nomination papers for the office or, in villages that don't use nomination papers, before the date for the caucus is established under sec. 8.05(1). After that time, no change may be made in the compensation for the office that applies to the term of office for which the deadline applies. However, compensation for elective offices in newly incorporated municipalities can be established during the first term of office. The compensation established for an elective office remains in effect for ensuing terms unless changed.

In addition to the provisions under sec. 61.32 and 62.09(6), sec. 66.0505 provides that municipal governing body members who by virtue of the office held are entitled to participate in the establishment of the salary attending that office, shall not during the term of the office collect salary in excess of the salary provided at the time of that official's taking office. This provision is “of statewide concern” which means that municipalities are not able to deviate from it. The prohibition in sec. 66.0505 does not prohibit all mid-term increases; it just prohibits mid-term increases determined by current governing body members. That is to say, a governing body may decide that a salary increase will take effect at the beginning, or at some other time, such as after the first year, of the next term. This means, if seats are staggered, that newly elected officers could get paid a higher salary than officers continuing to serve out their terms. Although automatic cost-of-living

adjustments (COLAs) may be made for municipal employees and officers, they cannot be made for members of the governing body. Wis Stat. sec. 66.0507.

The question sometimes arises as to whether governing bodies can reduce their salaries mid-term. The answer is no. For a long time, the statutes governing cities and villages were inconsistent. The law pertaining to governing body member salaries in cities expressly prohibited increases while the law applicable to governing body member salaries in villages expressly prohibited both increases and decreases. 2009 Wis. Act 173 eliminated the inconsistencies and amended the statutes so that they prohibit any "change" in salary during the term. "Change" is a broad enough term to encompass both increases and decreases in salary.

Another question which sometimes arises is whether a municipal governing body may establish a range of salaries for municipal officers based on the number of years an incumbent has served in office. A compensation scheme which is based upon an elected incumbent's performance or length of service is of questionable legality. The Wisconsin Attorney General has opined that a county board lacked authority to establish a range of salaries for elected county officials based on performance or length of service. The attorney general reasoned that compensation must be attendant to the office, not the personal characteristics of the individual that holds that office at any particular time.³⁵

Another question that arises is whether a municipal governing body member can waive his or her annual salary. The answer is yes, provided the refusal complies with the procedures and time constraints set forth in sec. 66.0505(3). Under sec. 66.0503(3), a member or member-elect of a governing body may send written notification to the municipality's clerk and treasurer that he or she wishes to refuse to accept the salary he or she is otherwise entitled to receive. In order to be valid, the notification must be given within certain time frames. Initially, notification must be sent no later than 30 days after the officer's election is certified. The notification applies only to the taxable year in which the officer's election is certified or, if the elective officer's current taxable year ends within three months of his or her certification, the notification applies until the end of his or her next taxable year. For subsequent taxable years, the notification must be sent at least 30 days before the start of the elective officer's next taxable year to be valid, and the notification applies only to that taxable year although the notification may be renewed annually.

Once the clerk and treasurer receive written notification as described above, the treasurer may not pay the officer the salary he or she is otherwise entitled to receive during the time period to which the notification applies, beginning with the first pay period that commences after notification applies. Governing body members or members-elect who send the written notification described above may not rescind the notification. If the notification no longer applies, the municipal treasurer shall pay the elective officer any salary that he or she is entitled to receive, beginning with the first pay period that commences after the expiration of the notification.

One final note on governing body salaries; the state ethics law for local officials does not prohibit governing body members from voting to increase their own salary, benefits and/or expense reimbursements. An exemption in the state code of ethics for local officials allows local public officials to take action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses without violating the state ethics code. Wis. Stat. sec. 19.59(1)(d).

35. 80 Op. Att'y Gen. 258 (1992).