

Structure of Madison City Government

TASK FORCE ON THE STRUCTURE OF CITY GOVERNMENT

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Purpose of this Presentation

- Provide a brief history of municipal law.
- Describe the current status of municipal law.
- Outline the specific forms of city government allowed by state statute.
- Discuss the current form of Madison City Government.
- Discuss other key government functions.
- Answer questions.

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Cities are Creatures of the State

“Cities are bodies politic and corporate, established by law to assist in the civil government of the state and to regulate and administer the internal or local affairs of the territory within their corporate limits. Cities have only such powers as are *expressly granted to them by the legislature and such others as are necessary and convenient to the exercise of the powers expressly granted.*”

City of Milwaukee v. Raulf, 164 Wis. 172, 159 N.W. 819 (1916).

Commonly referred to as Dillon’s Rule, “a canon of statutory construction from common law that calls for the strict and narrow construction of local government authority.” Eugene McQuillin, *Municipal Corporations*, § 4:11 (3d ed. 2014) .

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Creating Cities

- Prior to 1923, Wisconsin cities were incorporated by special charters.
- In 1924, the legislature adopted the General Charter Law, repealing all special charters and providing a specific statutory procedure for incorporation with an exception for first class cities.
- Cities created by special charter before 1924 were automatically created by General Charter and allowed all the rights and powers under original charter.

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Empowering Cities

Constitutional Home Rule

- In 1924, in addition to passing the charter law, the Legislature also passed the Constitutional Home Rule Amendment (Art. XI, sec. 3) granting cities constitutional authority to govern local affairs: **“Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to *such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village.* The method of such determination shall be prescribed by the legislature.”**
- Though not absolute, this power, as originally crafted, was to be subject to only two restrictions: 1. Other provisions of the constitution and 2. legislature enactments that are of statewide concern and that apply uniformly across the state.

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Empowering Cities

Statutory Home Rule

- In addition to the Charter law and constitutional amendment, the Legislature also passed sec. 62.11(5), Wis. Stats., which is known as the statutory home rule provision:

“Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and or the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language.”
- As drafted, statutory home rule was intended to grant broad powers to local governments to control local affairs, subject only to express withdraws of that authority by the Legislature.
- *Hack v. Mineral Point*, 203 Wis. 15, 233 N.W. 82 (1931): Giving cities all the power the legislature could give them, unless specifically taken away.

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Empowering Cities

Together, the constitutional amendment and enactment of Wis. Stat. Sec. 62.11(5) changed Wisconsin from a Dillon Rule State to a Home Rule State.

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Gutting Local Power

- As crafted, constitutional home rule made sense.
 - Matters of local concern → different rules in different cities.
 - Matters of statewide concern → a single rule, enacted by the Legislature, applying uniformly across the state.
- As crafted, sec. 62.11(5) statutory home rule made sense.
 - Broad grant of power to manage and control the cities property, finances, highways, etc., and to enact ordinances that do not conflict with state legislation.
- In practice, however, the Supreme Court and Legislature have gutted local control.
 - In almost 100 years, two instances where constitutional home rule authority has been upheld.
 - A bipartisan effort.
 - Getting worse in recent years.

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Gutting Local Power

- State Preemption

- When the state enacts specific legislation taking away local control.
- Often happens when state catches wind of a local doing something the state (ie., current legislature) doesn't like. For example, in the early '90s Milwaukee and Madison both introduced gun control ordinances that would have banned, among other things, handguns and sawed-off shotguns. In response, the Legislature enacted the firearm regulation preemption statute:

"no political subdivision may enact an ordinance or adopt a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a *firearm...unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute.*"
Wis. Stat. § 66.0409(2) (2013)(emphasis added).

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Gutting Local Power

- Federal Preemption of State and Local Law
- Supremacy clause of the U.S. Constitution gives the federal government the power to preempt state and local laws as long as it is acting within the powers granted it under the Constitution. *California Div. of Labor Stds. V. Dillingham*, 519 U.S. 316, 325 (1997).
- "State [or local] laws that 'interfere with, or are contrary to the laws of congress, made in pursuance of the constitution' are invalid." *Wisconsin Public Intervenor v. Morteier*, 501 U.S. 597, 604 (1991).
- Two kinds of federal preemption: Express and Implied.
- Example of federal preemption issue: Immigration.

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So, What's Left of Local Control?

- Current status of home rule and state preemption of local powers.
 - Constitutional home rule authority rarely upheld.
 - Supreme Court quick to ignore statutory home rule authority and find conflict between local action and state law.
 - Between 2011 and 2016, the Legislature took action 128 different times to specifically restrict or preempt local powers, or impose unfunded mandates on local government.
- Home rule usually survives only where an issue is not a statewide concern and there is no uniformity to the state legislation.
- Current U.S. administration suspicious of local control on some issues, like immigration. See sanctuary cities.

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And, how does it relate to government structure and this Task Force?

A Question that raises another question:

What local government structure is best suited to respond to the challenges presented by dwindling local control?

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Types of Local Government

- Many types of local government.
 - Cities
 - Villages
 - Towns
 - Counties
 - Special types

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Forms of City Government

- Statutes provide for specific forms of all government
- Specific forms of City government allowed by statute:
 - Mayor-Council System (sec. 62.01-62.26)
 - City Manager System (sec. 64.01-64.14)
 - Commission System (sec 64.25-64.40)

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Madison's Structure

- **Created by special charter in 1856:** "...and the people now inhabiting and those who shall inhabit said district, shall be a municipal corporation by the name of the City of Madison, and shall have the general powers hereinafter specifically granted..." City of Madison Charter, 1856.
- **Organized in Mayor-Council Structure in 1856:** Originally created with a Mayor and 12 alderpersons (4 wards; 3 alderpersons per ward). City of Madison Charter, 1856.
- **Still organized in Mayor-Council Structure:** "The government of the City of Madison is organized and constituted under Wis. Stat. ch. 62 providing for the City Mayor and Aldermanic plan with a Common Council composed of twenty (20) alderpersons, on (1) from each aldermanic district." M.G.O. Sec. 3.01.

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Mayor

- **Member of Common Council.** Wis. Stat. Sec. 62.11(1).
- **Presides** over Common Council meetings. Wis. Stat. Sec. 62.11(1); M.G.O. Sec. 2.20(1).
- **Breaks ties.** Wis. Stat. Sec. 62.11(1).
- **Veto Power.** M.G.O. Sec. 3.03(2); Wis. Stat. Sec. 62.09(8)(c).
- As a member of the Common Council, the Mayor can sponsor ordinances and resolutions.

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Mayor

- "...The Mayor shall be **elected every other odd numbered year for a term of four (4) years**. The Mayor shall devote his/her entire time to the duties of the office of Mayor. The Mayor shall have the general supervision of all City officers and heads of department in the performance of their official duties." M.G.O. Sec. 3.03(1).
- "The Mayor shall be the **chief executive officer...[and] take care that city ordinances and state laws are observed and enforced and that all city officers and employees discharge their duties.**" Wis. Stat. Sec. 62.09(8)(a).
- "The Mayor's staff **shall consist of up to four (4) positions of Deputy Mayor**, and other personnel authorized by the Common Council." M.G.O. Sec. 3.03(3).
- Make **Board, Commission, and Committee appointments** by ordinance.
- Other **duties as set by statute and ordinance**.
- "Head of police and fire departments." Wis. Stat. Sec. 62.09(8)(d).
- See *State ex rel Davern v. Rose*, 140 Wis. 360, 122 N.W. 751 (1909) comparing executive powers of the mayor to the executive powers of the governor or President.

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Executive Agencies

- **28 City Officials and Department or Division Heads**
 - Some departments are primarily external (Parks, Streets, Assessor, Traffic and Parking, Metro Transit, etc.).
 - Some departments are primarily internal (Finance, Attorney, Fleet, IT, HR, etc.).
 - Some departments have a mix of both internal and external functions (Civil Rights, DPCED, Treasurer, etc).

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Agency and Department Heads

- Mayor appoints department heads subject to Common Council Confirmation.
- 5-year contracts.
- Duties outlined in various places.
 - Ordinances.
 - Statutes.
 - As assigned by the Mayor.

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Agency and Department Types

- Assessor (by state law)
- Attorney (by state law)
- Director of Department of Civil Rights (by city ordinance)
- City Clerk (by state law)
- Engineer (by state law and city ordinance)
- Finance Director (by state law, "Comptroller")
- Fire Chief (appointed and disciplined by PFC, no term limit)
- Fleet Superintendent (by city ordinance)
- Human Resources (by city ordinance)

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Agency and Department Types

- Information Technology (by city ordinance)
- Library (By state law)
- Monona Terrace (by city ordinance)
- Metro Transit (by city ordinance)
- Parks (by city ordinance)
- Planning, Community and Economic Development (by state law and city ordinance)
 - Building Inspection
 - Community Development
 - Economic Development
 - Housing Operations
 - Planning and Zoning

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Agency and Department Types

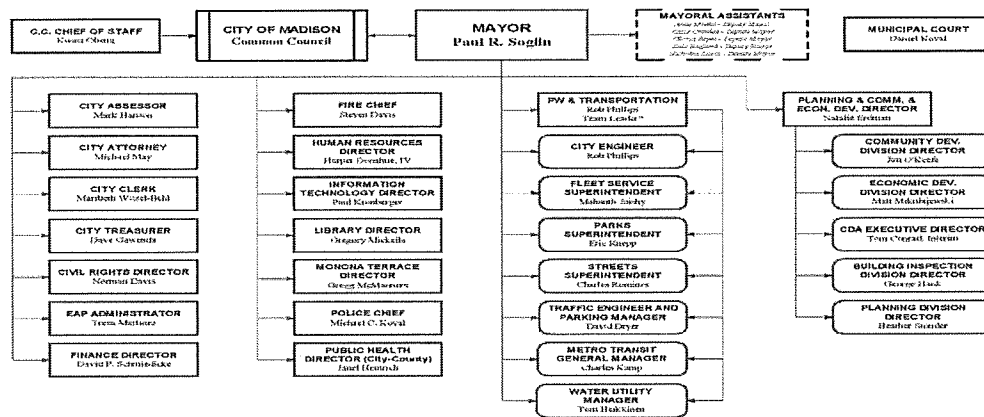
- Police Chief (by state law, appointed and disciplined by the PFC)
- Public Health Madison Dane County (a merged health department)
- Public Works (by ordinance, although city no longer has an actual department)
- Streets (by city ordinance)
- Traffic and Parking (by city ordinance)
- Treasurer (by state law)
- Water Utility (by city ordinance)

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Location of City Government

- Most of the city's agencies are physically located in offices downtown.
 - City-County Building
 - Madison Municipal Building
- Others are spread across the city.
 - Libraries
 - Fire departments
 - Police stations
 - Water Utility
 - Metro Transit
 - Streets
 - Fleet Service
 - Parks
 - Public Health
 - Engineering

The Government Tree



Common Council

- Legislative Branch of Madison's Government
- Composed of 20 alderpersons
 - 1 per district
 - Districts set after each census
- Elections held every two years
- President and Vice President of Common Council elected by the Council for 1-year terms every April.
- Staff
 - Full time Chief of Staff
 - Legislative Policy Analyst
 - Two additional staffpersons

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Common Council

Duties and responsibilities of the Common Council as allowed by state law. Remember Wis. Stat. 62.11(5):

Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and or the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language."

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Common Council

- Enact Ordinances and Pass Resolutions
 - Ordinances = Law → M.G.O. Sec. 2.24
 - Resolutions = Policy → M.G.O. Sec. 2.25
- Confirm Mayoral Appointments
- Adopt Budgets
- Voting
 - Rule of Eleven
 - Extra-Majority votes

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Common Council

- Some observations
 - Madison's Council is very large compared to its number of residents
 - Small number of residents represented by each alder as compared to ratio of representation in other cities.
 - State law allows cities to change the size of a Council
 - State law allows up to two alders per district
 - State law allows at-large seats on the Council
 - Structure of Council may affect minority representation
 - Current Council has highest representation of people of color ever.

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The Legislative Process

- Resolutions set city policy or take action on a distinct item (set city policy, authorize contracts).
 - Any staff member may draft resolutions.
- Ordinances enact local law that affects the general public.
 - Only the City Attorney may draft.
- All ordinances and resolutions must have a member of the Common Council sponsor and are given a legislative ID number to be placed on each Agenda.
- All ordinances and resolutions receive a fiscal note from the Finance Department.
- Resolution or Ordinance introduced by the Common Council and referred to a future meeting for adoption.
- Most ordinances and resolutions are referred to various Boards, Commissions, or Committees before returning to the Common Council for adoption. This may result in the introduction of Substitutes or Alternates.
- Some ordinances require public hearings.
- Adoption of ordinance or resolution requires at least 11 votes, regardless of how many members are present.
 - Some items require a 2/3 majority vote (14 votes).
 - Appropriations require a 3/4 majority vote (15 votes).

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Separation of Powers Between Mayor and Common Council

- Division of authority between the Mayor and Alderpersons under state law and city ordinances is analogous to the doctrine of separation of powers found in the U.S. and State Constitutions.
- Government designed so that “Ambition must be made to counteract ambition.” James Madison, *Federalist* No. 51.
- Recommended Reading: Formal Opinion 2017-003, City Attorney Michael P. May, discussing the doctrine of separation of powers as it relates to the powers of the Mayor and Common Council in the City of Madison.
- <http://www.cityofmadison.com/attorney/documents/2017opinions/Opinion2017-003.pdf>

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Boards, Commissions, and Committees

- Currently 102 Boards, Commissions and Committees (“BCC”).
 - Vast majority are permanent.
 - Some are ad hoc and done by Resolution (like this Task Force!).
- M.G.O. Sec. 33.01 provides definitions, procedures, and general rules applicable to the City’s BCCs.
- Emphasis on Resident Participation (the “Residents’ Branch” of government).
- Estimated number of BCC positions = 845.
- On average, roughly 500 different individuals (residents and alders) required to fill the City’s BCCs.
- Mayor’s office is always recruiting potential members.
- Multiple appointments common (ie., same person on multiple BCCs).
- Number of members on any BCC range can range from 7-19+.

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Boards, Commissions, and Committees

- Key Definitions
 - “Sub-unit” means any board, commission, committee, or subcommittee.
 - “Board or Commission” means a Sub-unit of the City that is given some independent power to make determinations on behalf of the City of Madison. Examples include the Plan Commission, Board of Estimates, and Zoning Board of Appeals.
 - “Committee” means any Sub-unit other than a board or commission, and generally is limited to making recommendations or reports to the Mayor or Common Council or some other body. Any Sub-unit called a task force, work group or similar name is a Committee.
 - “Subcommittee” means a Sub-unit made up of members of the parent Sub-unit.
- Degree of authority varies.
- Final decisions appealable to other BCCs or to the Common Council.
- Ultimately, city decisions (but not recommendations!) are subject to review on Certiorari by the Circuit Court.

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Municipal Court

- Wisconsin Statutes authorize Cities to have municipal courts, with "exclusive jurisdiction over an action in which a municipality seeks to impose forfeitures for violations of municipal ordinances of the municipality."
- Cities are not required to have a municipal court.
- Madison elected to establish a municipal court. See M.G.O. Sec. 3.16.
- Municipal Court meets in the City-County Building (Common Council room) but city ordinance allows the Municipal Judge to other locations if approved by the Common Council.
- Madison Municipal Judge elected to 4-year terms.
- Municipal judge may 1) Impose forfeitures to municipal ordinance violations, 2) Order payment of restitution for violations of ordinances that prohibit conduct, and 3) Issue civil warrants and inspection warrants.

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Budget

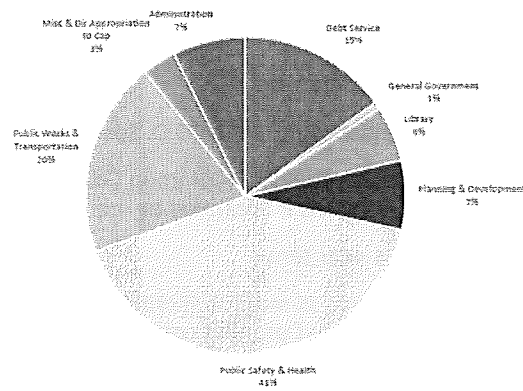
- Key Policy Document for the City.
- Operating and Capital Budgets.
- Must be approved in November for tax bills in December.
- Limited sources of revenue and limitations imposed by the State.
- Mayor proposes; Finance Committee and Common Council disposes.
- No line item veto.

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Budget

Expenditure by Function – 2018 Adopted City Operating Budget

Expenditure by Function



Questions?

