

PROPOSED AMENDMENTS TO WMC 2.04.020

Vacation of the Office of Alderperson; Selection of Replacement

PURPOSE

The following proposed amendments address three gaps in the staff-proposed redline of WMC 2.04.020 that are not resolved by the current draft:

1. The absence of an affirmative obligation on an alderperson to notify the Council and City Clerk when a vacancy has occurred.
2. The absence of an independent notification obligation on city administration or the City Attorney's office if they become aware of a vacancy.
3. The absence of defined conditions, timelines, and disclosure requirements governing de facto service under Section A(3).

These amendments are intended to complement, not replace, the proposed redline. They are submitted for Government Affairs Committee consideration and are offered in the spirit of ensuring the amended ordinance reflects the transparency obligations the Council and the residents of each aldermanic district are owed.

PROPOSED AMENDMENT 1: Alderperson Notification Obligation

Gap Identified

The current draft amends Section A(2) to require a prospective vacancy declaration, but only where an alderperson intends to vacate in advance. There is no provision requiring an alderperson to notify the Council or City Clerk when a vacancy has already occurred — i.e., when they have already moved out of district.

Proposed Language — New Section A(6)

Add the following as Section A(6):

A(6) Alderperson Duty to Notify.

When an alderperson's residency changes in a manner that triggers a vacancy under Section A(1)(b) or A(1)(c), the alderperson shall notify the City Clerk in writing no later than five (5) business days following the effective date of the change in residency. The written notification shall state:

- (a) The date on which the change in residency occurred;
- (b) The alderperson's new address; and
- (c) Whether the new address is within or outside the City of Wauwatosa.

Upon receipt of such notification, the City Clerk shall promptly inform the Common Council and the Government Affairs Committee that a vacancy has been created, consistent with Section D(1).

PROPOSED AMENDMENT 2: Administration and City Attorney Notification Obligation

Gap Identified

The current draft assigns notification duties to the City Clerk upon the creation of a vacancy, but does not address the circumstance in which city administration or the City Attorney's office becomes

independently aware of a vacancy before the Clerk has been formally notified. This gap permits a situation in which administration has knowledge of a vacancy while the Council does not.

Proposed Language — New Section A(7)

Add the following as Section A(7):

A(7) Administration and City Attorney Notification Obligation.

If the City Administrator, City Attorney, or any officer of the City becomes aware that an alderperson's residency has changed in a manner that triggers a vacancy under Section A(1)(b) or A(1)(c), and no written notification from the alderperson has been received by the City Clerk, such officer shall promptly notify the City Clerk of the known or reasonably believed change in residency. The City Clerk shall thereupon treat such notification as equivalent to a vacancy notification for purposes of Section D(1) and shall inform the Common Council and the Government Affairs Committee accordingly.

No legal advice provided by the City Attorney's office regarding an alderperson's residency status shall constitute grounds for withholding notification to the Common Council that a vacancy has occurred or may have occurred.

PROPOSED AMENDMENT 3: Conditions and Limits on De Facto Service

Gap Identified

Section A(3) of the current draft permits an alderperson who has moved to another district within Wauwatosa to serve in a de facto capacity until a successor is elected or appointed. This provision is undefined in its scope and contains no:

- (a) Maximum duration for de facto service;
- (b) Requirement that the Council be informed before or during the de facto period; or
- (c) Limitation on the authority exercisable during the de facto period.

Without these guardrails, Section A(3) as drafted authorizes indefinite de facto service with no Council oversight — the precise circumstance this ordinance revision is intended to prevent.

Proposed Language — Amended Section A(3)

Replace the current Section A(3) with the following:

A(3) De Facto Service — Intra-City Residency Change; Council Authorization Required.

When an alderperson changes their residency from the aldermanic district in which they were elected to another aldermanic district within Wauwatosa, the alderperson shall have no authority to exercise the duties or voting rights of the office unless and until the Common Council has affirmatively authorized de facto service by majority vote. De facto service shall not be presumed, automatic, or self-executing. The following conditions govern any Council-authorized de facto period:

- (a) The alderperson shall have provided written notification to the City Clerk in accordance with Section A(6) prior to any Council vote on de facto authorization;
- (b) The Common Council shall vote on whether to authorize de facto service no later than the next regular Council meeting following notification of the vacancy under Section D(1). The vote and the Council's stated reasons shall be recorded in the minutes;

(c) De facto service authorized by the Council shall not exceed ninety (90) days from the date of vacancy, unless the Common Council has separately voted, pursuant to Section C, to hold the vacancy open pending the next regularly scheduled election or a special election, in which case authorized de facto service may continue until a successor is elected or appointed;

(d) The Common Council may, by majority vote, revoke or limit de facto authorization at any time, for any reason, which determination shall be recorded in the council minutes; and

(e) Nothing in this subsection shall be construed to validate de facto service that occurred prior to Council authorization, except as may be required by applicable law.

SUMMARY OF PROPOSED ADDITIONS

The three amendments proposed above may be summarized as follows:

A(6) — Alderperson must notify the City Clerk in writing within 5 business days of a residency change that triggers a vacancy.

A(7) — If administration or the City Attorney's office becomes independently aware of a vacancy, they must notify the City Clerk; legal advice does not justify withholding that notification from the Council.

A(3) (amended) — De facto service is permissible only after notification to the Council; is capped at 90 days absent a Council election vote; and may not be retroactively validated by advice that preceded Council notification.

These amendments are intended to ensure that the Common Council — and through it, the residents of each aldermanic district — is never again excluded from knowledge that a vacancy exists in a seat it has constitutional and statutory authority to fill.