




MEMORANDUM

To: Mayor Richards and City Council Members

From: Scot E. Simpson, City Administrator 

Date: December 7, 2011

Re: December 13 City Council Workshop: Utility Board Ordinance

After lengthy discussions with the Utility Commission at three recent workshops, the City Council has requested that an alternative to the current Utility Commission organization be provided for discussion and possible action.

BACKGROUND

The structure of the utility management has changed from a board to commission twice in the past 50 years. The first commission was created in 1962 after years of the City Council acting as the utility board. The utility operated under the commission format until January, 1984, when it was changed back to an advisory board. In 1992, the Council approved a request from the board to revert back to a commission.

The period since 1992 has been marked with significant effort on the part of the City Council and Utility Commission to identify their respective roles regards to the responsibility of owning and operating the City's electric, water, and sewer utilities. This involved numerous attorney opinions and long memos each with differing viewpoints from various City Administrators and Utility Managers. It also involved at least two draft ordinances of the City Council to change the utility ordinance, once in 1997 and once in 2000, and both ordinances were tabled by the City Council. The first most closely resembled an advisory board. The second sought to retain a strong role for the Commission in solely the management of the electric utility.

It is clear that the City Council can take several courses of action to exercise its general control over the utility department. The primary options include: 1) delegating complete management and oversight authority to an independent Commission, 2) preserving a commission but reserving certain powers and duties by use of separate ordinances dealing with specific topics and duties, 3) the complete elimination of any

appointed oversight board, and finally 4) an advisory board with duties and responsibilities as determined by the Council. As indicated before, the City has organized its management and oversight of the utilities several ways over the past fifty years. It is up to the City Council how it would like to organize it over the next fifty years.

DISCUSSION

The City Council is considering a more active role in the management of the electric, water and sewer utilities for itself and for key staff. The current commission structure takes its form from §66.0805 Wis. Stats. and gives the commission the responsibility for the management and supervision of the utilities, to appoint and establish compensation of a manager, the power to let bids and enter contracts, and the power to make rules and regulations governing its proceedings and operation of the department. It has rate setting authority for the water and electric utility. As a non-regulated utility, the sewer rates are approved by the City Council.

Stronger Commission

Since there was consensus by the Council that a reduced role in the management of the utility department is not desired, no significant discussion of a stronger, more independent commission is included in this memorandum. The benefits of such an arrangement have previously been included in countless memorandums from the City's past. The primary advantage outlined in these memos is the idea that an independent commission is isolated from "politics" and acts more "business-like." The primary drawback of an independent commission is lack of connection, coordination, and shared vision with other vital city services. Another drawback is giving final authority to set rates to an appointed rather than elected board.

City Attorney Thiel has prepared an opinion dated October 20, 2011 which provides guidance on the ability of the City Council to limit the statutory powers of the commission by adoption of ordinances that could "establish limitations on the breadth of the commission's supervision of the operation and entire management of the utilities." Through specific ordinances limiting the statutory powers, the Council could provide direction regarding policies and procedures, including purchasing, budgeting and general operations. Some of the statutory powers given to a commission may not be changed without moving away from a statutory board. The primary one is the appointment of a manager and employees.

Retain Commission- Modify Ordinance

This option would preserve the Commission structure but reserve additional powers for the Council. The primary drawback is the confusion caused by using the Commission name but varying from the statutory roles of the Commission. The Council

has expressed concern over the reporting structure of current utility staff. If the Council seeks to appoint or have key staff appoint the utility staff, then this is not a very viable alternative. However, the Council could retain the Commission and issue more ordinances regarding compensation plans, policies, etc. The Council could also require rates and budgets to be approved by Council without eliminating the Commission's role in hiring the Utility General Manager and other staff.

Council as Commission

This option would eliminate a separate formal oversight board for utility department. The City of Oconomowoc has operated under such an arrangement for nearly twenty years. In Oconomowoc, finance, customer service, and other professional services are provided under the direction of the City Administrator while a Superintendent (who directly reports to the Administrator) directs the day-to-day utilities operations. This arrangement is the most efficient way to organize policy oversight. However, the City of River Falls has several advisory boards, committees, and commissions now in other vital service areas that benefit the policy governance role of the City Council and provide a focus group and advocacy group for those services.

Advisory Board

An alternative to the commission structure is an advisory board available under §66.0805(6). This board could be structured in the same manner as the current commission, maintaining the current members. The difference would come from the powers outlined in the ordinance, generally making the utility board subject to Council approved policies and procedures as other departments of the City. Therefore, the powers vested in the board would be those given by the Council, rather than through the statutes. This change would bring more items back to the City Council for approvals, such as purchases and contracts as outlined in the purchasing policy, approval of the annual utility budgets, and rate setting authority.

An Advisory Board allows the City to retain the custodian, advocate, and focus group roles of the current Commission but manage day-to-day operations and long-term planning in a more coordinated fashion similar to other vital city services.

The City utilizes several boards, committees, and commissions to assist the Council and staff in their work. In most circumstances, the Council holds the tax and rate setting authority, approval of the organization of the departments and selection of key management staff.

The City Council has authorized the City Administrator to be responsible for day to day operations of the City, to act as the personnel officer and to handle all personnel issues for employees. With a change in structure to a utility board, the ultimate responsibility

for all employees, including the utility department, will be placed with the City Administrator. Implementing an Advisory Board does not eliminate the need for a strong manager for utility operations. However, it is likely that citywide finance and human resource duties would be the primary responsibility of the Finance Director and Human Resource Director, respectively.

ADVISORY BOARD DRAFT ORDINANCE

Based on the workshop discussions and my understanding of the Council's vision for the future, I have drafted an Ordinance that would retain the basic structure of the current Commission while utilizing the more flexible Advisory Board model of ordinance. Specifically, the draft ordinance 1) emphasizes the Finance Director's role in managing the finances of the utilities (included in current Commission ordinance as "City Clerk"), 2) reserves appointment of the Utility General Manager and other employees of the utility department, 3) modifies the term of office to three-years (same as 1984 Advisory board). The ordinance maintains a strong role for the board in recommending rates and budgets, and managing operations subject to organizational policies and procedures. It also preserves the board's role as an advocate for these municipal services.

CONCLUSION

The current structure has led to duplication of efforts by and among City departments. It has also negatively impacted the organization's culture in a way that impacts our ability to ensure a high performance workforce that values teamwork and effective communication across all departments. As the City is generating a long-range staffing and funding model to ensure the long-term viability of its vital services, many opportunities to collaborate, consolidate, and share resources have been pursued. The current structure tends to produce, as a default, duplicative processes, equipment and service purchases, and communication efforts. Many "low-hanging fruit" ideas have been implemented. Now, a more concerted effort to ensure collaboration and coordination of the use of precious resources (both financial and human) is required.

For a functional picture of how the organization would look with these changes, I have provided a draft organizational chart. I have also attached a few info sheets and historical documents that may be of assistance in preparing to discuss this topic.

I look forward to discussing the draft ordinance and Council's direction at the December 13 workshop at 5pm in the Training Room.

Chapter 2.64 - UTILITY ADVISORY BOARD

Sections:

- 2.64.010 - Creation.
- 2.64.020 - Terms of members.
- 2.64.030 - Eligibility.
- 2.64.040 - Organization.
- 2.64.050 - Duties of officers.
- 2.64.060 - Salaries.
- 2.64.070 - Powers and duties.
- 2.64.080 - Funds.
- 2.64.090 - Vacancies.

2.64.010 - Creation.

There is created a board of seven members, which board shall be known and designated as the River Falls Utility Advisory Board.

(Charter Ord. Dated 11-9-99 (part): prior code § 1.41(1))

2.64.020 - Terms of members.

The utility board shall consist of seven members. One of the seven members shall be an alderperson, who shall serve on the board as a voting member without additional compensation and whose term shall be for one year. The remaining six members shall be residents of the city, each of whom shall serve a three-year term; provided, however, that the members first appointed shall expire successively two each year on each succeeding May 1st. Members of the board shall be appointed by the mayor, subject to confirmation by the council.

(Prior code § 1.41(2))

2.64.030 - Eligibility.

- A. No more than one member of the city council shall, during the term for which they are appointed, be eligible for a position on the board.
- B. Each member must be a citizen of the city. At such time as he or she should move outside the city limits, he or she shall resign his or her membership on the board.
- C. No person shall be appointed to the board who has relatives closer than the second degree by blood or marriage employed in any city office or work crew. Temporary, paid-on-call, seasonal and election workers will not be considered employees for purposes of this section.
- D. No person shall be appointed to the board, nor shall any person serve on the board, who has a financial interest, directly or indirectly, in any business, firm, enterprise or corporation whose interests conflict or are in competition with, directly or indirectly, any utility of the city. The membership of any officer on the board shall be deemed vacated from the time such conflict of interest may have arisen and all actions of such officer in regard to any matter having thereafter come before the board shall become null and void.

(Prior code § 1.41(3))

2.64.040 - Organization.

A. Immediately after their appointment and qualification, members of the board first appointed and on or before June 1st in each year thereafter, the members of the board shall organize by choosing from their number a president and a secretary who shall hold such offices until their successors are chosen and qualified.

B. The president or majority of the members shall call at least one regular meeting per month, plus special meetings as needed to perform the duties of the board. (Prior code § 1.41(4))

2.64.050 - Duties of officers.

A. The duties of the president shall be to preside at all meetings of the board and to perform the duties appropriate to this office as the board may direct.

B. The duties of the secretary shall be to keep true and correct minutes of all proceedings of the board, to notify the members of the board of all meetings and to perform the secretarial duties of the board.

C. Each of the foregoing officers shall perform such other duties as may be prescribed by law, by direction of the board or by resolution of the city council.

(Prior code § 1.41(5))

2.64.060 - Salaries.

The board members shall receive such salary or other compensation as may be fixed from time to time by the city council.

(Prior code § 1.41(6))

2.64.070 – Powers and duties.

A. The board shall advise the Council on matters regarding public utility property, plant, equipment owned by the city for the conduct of the electric, water, sewer, storm sewer, and telecommunications utilities, its facilities and infrastructure, subject to the general control and supervision of the city council and its designees. In particular make recommendations regarding:

1. Rates required to ensure the long-term ability of the City to provide safe, reliable, and affordable utility service.
2. Capital expenditure recommendations as part of the CIP process.

B. The utility board shall meet with city council as requested.

C. On a monthly basis, the board shall supply the city council with a copy of all minutes of the board which have been prepared and approved.

D. The Board shall not adopt, nor shall the Utility conduct itself in a practice in any manner contrary or inconsistent with such general policies and procedures of the City.

(Charter Ord. Dated 11-9-99 (part): prior code § 1.41(7))

2.64.080 - Funds.

A. The Finance Director or designee shall act as the cashier and chief clerk of the board and it shall be his or her duty to receive, deposit and issue receipts for all moneys derived from the operation of the utility plant and business. As such cashier, he or she shall also properly safeguard in lawful manner all moneys while in his or her possession and keep appropriate accounts of all moneys received and disbursed by him or her and all business transactions conducted by the board. Such accounts shall be recorded in the manner and form prescribed by the Wisconsin Public Service Commission and shall be open to the public. He or she shall give surety bond for the honest and faithful performance of his or her duties in such amount and upon such conditions as the City Council may from time to time direct, such bond to be executed by a surety company lawfully authorized to do business as such within the state or by such other sureties as the City Council may approve.

B. The city council shall review and authorize all expenditures and any receipts collected by the utilities. Rate structures and any changes must be authorized by the city council.

The income from the ownership and operation of public utilities by the city shall be used or invested in accordance with the City's investment policy, and per the provisions of §66.0603, Wis. Stats.

2.64.090 - Vacancies.

In the case of a vacancy for any reason whatever, the appointment of the board member to fill special meeting called for that purpose or not later than the next regular council meeting. The city council by majority vote may revoke the appointment of any member who is neglectful to his or her duties after giving him or her reasonable opportunity to be heard.

(Prior code § 1.41(9))

Perceptions – Clarified about modifying the current ordinance

- *Utility revenue would be used to fund operations other than those related to the provision of utility service*

Per Wisconsin Statutes, the revenue of the utility funds must be first used for operations, maintenance, depreciation, and debt service of that utility. Any surplus funds may be used for other purposes, but requires the approval of the City Council. The City conforms with generally accepted accounting principles, and follows the fund accounting rules as outlined by the public service commission and the State of Wisconsin. Each fund is treated as a separate entity, with segregated balance sheets and income statements. The accounting standards remain regardless of the structure of the board.

Moody's Investor Service through their rating analysis downgraded the sewer utility in 2010 due to insufficient revenues. The rating of the water utility was also held down by Moody's in 2011 due in part to "Shared management with River Falls Sewer Utility (A1) which violated its rate covenant in fiscal 2009". A significant review of the finances of the water and sewer utility should be done to maintain the current rating in the short term and work toward a future rating upgrade for these funds.

- *The City Administrator can and will assume all current duties of the Utility General Manager*

Although staffing models are constantly reviewed over time to ensure the best use of resources, no current staffing plan anticipates the elimination of a strong utilities operations manager. Much like the roles of other current Division Heads, a Utility Manager serves as a leader for a significant portion of the City's operation. The City Administrator is asked by the Council to link the goals of the organization to those of elected officials, recommend overall strategy, guide resource allocation, coordinate economic development, drive innovation, manage external relations, and serve as a gap filler in the case of critical absences or departure of key management staff. In a smaller organization, like New Richmond, one person may be asked to fill both roles. It is not likely that this would be the case in River Falls other than for short transition periods.

- *Modifications to the Utility Commission ordinance changes the ownership status or employment status of current assets and employees of the utility department*

All property, plant, and equipment is the property of the City of River Falls currently. All employees of the utility department are employees of the City of River Falls. This is unchanged by modifications to the ordinance related to the Utility Commission.

- *There will be no oversight of the utilities, aside from the Council, if the Commission is modified or eliminated*

Although the City Council enjoys significant “home rule powers” those powers are checked by an assortment of agencies, regulators, and the use of accepted business practices. Water and electric rates are regulated by the Wisconsin Public Service Commission. Environmental operations are regulated by the Wisconsin Department of Natural Resources, the City subscribes to Generally Accepted Accounting Principles (GAAP) and is regulated in various ways by several other state and federal agencies. Oversight also comes in the form of the public through many required public outreach events like public hearings and reports. One can argue that reserving more responsibility for the Council actually places the oversight closer to the people of River Falls since they are held accountable every two years through elections.

- *The City has no skills or experience outside current utility staff in managing public utilities*

Several of the City’s current key staff, including the City Administrator and Assistant City Administrator/Finance Director have experience working with public utilities including regulated and unregulated utilities in Wisconsin. The change in the structure of the board does not change the day to day operations of the utility department, and existing personnel will remain in place to use their expertise in the management of the department.

- *The current model is the predominate model used by other utilities of similar size in Wisconsin.*

Using similar sized Wisconsin communities/utilities who we typically compare ourselves to (WPPI’s largest 13). Six (Cedarburg, Kaukauna, Menasha, Reedsburg, Sturgeon Bay, and Waunakee) utilize the strong statutory Commission format. Reedsburg includes a significant telecommunications business and reserves the rate setting authority for the City Council. Reedsburg, Menasha, and Sturgeon Bay reserve 40% of the seats for elected officials.

Of the remaining seven:

Four (Hartford, Oconomowoc, Plymouth, and Two Rivers) have the Council or City Manager act as the Policy Board. Stoughton has a majority of commissioners being from the Council. Waupun has 40% of seats made up by elected officials and the Council reserves rate setting authority. New Richmond reserves the hiring of the General Manager for the Council hires General Manager and it has a combined Administrator/General Manager position.

This again, reinforces the case that each community can make its own decision about the most appropriate way to provide policy oversight of its utilities.

Timeline

Events related to the City's utility department organization and management

1885	City incorporated
1894	Water works formed
1900	Electric Company formed
1930	Municipal Sewer Plant established
Pre-1962	City Council acted as the utility board
1962	Utility Commission (Ord. 801)
1980	Wisconsin Public Power Inc. System (later WPPI Energy) created with River Falls as member-owner
1984	Utility Advisory Board (Ord. 1983-21)
1989	River Falls signs long term contract with WPPI
1990	Utility Administrator position and Organizational Chart Evaluated
1990	Fund Accounting System Reviewed
1992	Utility Commission (Ord. 1992-13)
1992	Utility Commission adds Vice-President and its own Controller
1996	City Engineer Duties and Responsibilities Clarified
1997	Biosolids Processing Agency Created
1997	Council considered changing to Utility Board solely responsible for Electric (Ord. 1997-20 (Tabled))
1998	Stormwater Utility Created – Under direction of City Engineer with special 3-member appeals committee appointed by Mayor

- 1998 Land Purchase Authority Clarified (solely with City Council)
- 1999 Treasurer Duties and Responsibilities Clarified
- 1999 City Council creates Telecommunications Utility (dormant) and adds to Utility Commission's responsibilities
- 2000 Council considered changing to Utility Board Ord. 2000-2 (Tabled)
- 2009 City Council implements a hiring freeze and designates City Administrator responsible for reviewing all new positions and new hires.
- 2010 Bond Rating review by Moody's Investor Service results in downgrade for sewer utility
- 2011 Moody's Investor Service confirms General Obligation rating of Aa2, water utility at A1
- 2011 Power Plant decommissioned.
- 2011 Council and Utility Commission holds a series of joint workshops to discuss vision for department cooperation
- 2011 City Attorney confirms the City Council's ultimate responsibility and authority for the operation and management of the City's utilities. The opinion emphasizes that the utilities are departments of the City not independent operating units.
- 2011 City Council directs staff and City attorney to draft alternative ordinance clarifying Council expectations for fiduciary and management responsibilities for the utility department.

Summary of Larger WPPi Community Utilities Management Table - Scot

CITY	POP.	CUSTOMERS	Policy Board	Hire Utility Manager	Rate Approval	Elected Officials on Commission
Menasha	17,353	8,874	Strong Stat. Based Commission	Commission	Commission	2 of 5
Oconomowoc	15,759	8,509	Council	Council	Council	n/a
Kaukauna	15,462	14,000	Strong Stat. Based Commission	Commission	Commission	2 of 7
River Falls	15,000	5,838	Stat. Modified Commission	Commission	Mixed	1 of 7
Hartford	14,223	6,247	Council	Council	Council	n/a
Stoughton	12,611	8,700	Stat. Modified Commission	Council	Commission	4 of 7
Wausaukee	12,097	4,928	Strong Stat. Based Commission	Commission	Commission	2 of 7
Two Rivers	11,712	6,156	City Manager	City Manager	Council	n/a
Cedarburg	11,412	6,017	Strong Stat. Based Commission	Commission	Commission	1 of 7
Waupun	11,340	4,233	Stat. Modified Commission	Commission	Commission	3 of 7
Reedsburg	9,200	4,822	Strong Stat. Based Commission	Commission	Mixed	2 of 5
Sturgeon Bay	9,144	8,872	Strong Stat. Based Commission	Commission	Commission	3 of 7
Plymouth	8,445	7,864	Council	Council	Council	n/a
New Richmond	8,375	4,353	Ordinance Based Commission	Council	Council	0 of 5

