



REQUEST TO REVIEW MUNICIPAL COURT OPERATIONS AND STAFF

From the City of Kaukauna Municipal Court
The Honorable Carley N. Windorff

INTRODUCTION

On August 2, 2022, this body was presented with a memo from the Mayor regarding the standards of the judiciary that cited, among other issues, a lack of responsiveness from the court. I have since become aware of other feedback from other city leaders that I believe are symptoms of the city's growth and the need to overhaul the court. I believe that this department needs to be more highly compensated and more fully staffed than is currently being provided. As detailed more fully below, I believe that an immediate increase to the salary of the judge, increase to the hours of the court clerk, and the addition of a bailiff, would empower the court to better serve our community. I am respectfully and specifically requesting that:

1. The governing body clarify whether it is their intention to move the municipal judge's office and change the setup of municipal courtroom.
2. The municipal judge annual stipend be increased to \$91,000.
3. The hours of court clerk be increased to 30-32 hours.
4. A bailiff or armed guard be provided for court sessions pursuant to Wis. Stat. 755.17(2).

LEGAL ANALYSIS

1. Municipal Judge Office.

- a. It was my interpretation that, at the August 2, 2022 city council meeting, the council declined to take action on the mayor's request to combine or move the offices of the court clerk and judge.
- b. Since the August 2, 2022 meeting the mayor has, upon advice of City Attorney Kevin Davidson, indicated that he wants to move the office of the municipal judge to the privacy room/meeting room off of the council

chambers/municipal courtroom. I have requested clarification from Attorney Davidson for any legal authority related to this matter. On August 29, 2022, I specifically requested that Attorney Davidson issue a written legal opinion pursuant to [Wis. Stat. 62.09 \(12\)\(c\)](#) (stating “[t]he attorney shall when requested by city officers give written legal opinions, which shall be filed with the clerk.”). As of this writing, I am not aware of any legal authority upon which his advice was based, nor am I aware of any written response to my request.

- c. It is my understanding that [Kaukauna Municipal Ordinance 1.16](#) and [Wis. Stat. 62.11\(5\)](#) expressly state that city council “shall have the management and control of the city property, finances, highways, navigable waters, and the public service, shall have power to act for the government and good order of the city, for its commercial benefit and for 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.”
- d. Mayoral duties are specifically outlined in [Kaukauna Municipal Code 1.11](#) and [Wis. Stat. 62.09\(8\)](#).
- e. State law regarding Municipal Court is detailed in Wis. Stat. [Ch 755](#) and [800](#).
- f. My review of these statutory provisions suggests that it is the city council who has the management and control over the city property and finances, and is expressly required by Wis. Stat. Ch. 755 to
 - i. Provide the municipal judge with “[an office or appropriate workspace](#),” and
 - ii. “shall provide a courtroom for a municipal court, which shall be in an adequate facility. The courtroom shall be in a public building if a suitable public building is available within the municipality and shall be located in an area separate from the police department by design or signage. [The courtroom shall be designed and furnished to create and promote the proper atmosphere of dignity, safety, and decorum for the operation of the court.](#)”
 - iii. I believe that the current configuration of court clerk and judicial offices next to each other, in a secure area near the court storage

room, is the most appropriate configuration of this department, taking into consideration the current legal duties and responsibilities of this office, as outlined in Wis. Stat. 755 and 800, and taking into account the decorum and appearance of the court.

- iv. To move the judges office to the conference room within the courtroom would deviate from every other courtroom I have ever been to, from municipal courts to the Supreme Court, where judges enter the courtroom from a secure area from behind the "bench and bar." I currently enter the courtroom to preside over cases from the northernmost door near the council fridge. The proposal to move my office to the conference room off of the courtroom would mean that I would be popping out of the opposite side of the courtroom, in a relatively non-secure and non-confidential area, to preside over cases.
- v. When court is not in session, the council chambers are used for a variety of other meetings, which would be disruptive to that workspace.
- vi. I would be physically removed from my new court clerk, and this would impair my ability to support her in her training period. I believe this move would also impair our ability to foster as engaged and congenial a relationship as I have previously enjoyed with the two prior court clerks.
- vii. I have a number of workspace goals and needs, as outlined in more detail in subsection 2, regarding my proposals for the future compensation and workload of the court. I do not believe this proposed move adequately considers these factors.
- viii. I personally do not believe that this proposed move would promote the proper atmosphere of dignity, safety, and decorum in our city's court.
- ix. These objections to the authority of the mayor to order such a move, as well as my expressed objections and articulations of the legal duties and responsibilities of my judicial office, have been disregarded by the mayor and the city attorney.
- g. I request that the governing body clarify whether they believe such a move of the court is appropriate given all of these factors, and when considering the below request to increase the compensation and responsibilities of the court.

2. Municipal Judge Salary.

a. **Legal Authority.** There are several laws that expressly allow council to increase the current municipal judge's salary/stipend prior to the next budget cycle. I have "hyperlinked" the laws so that you may click on the blue text and be taken directly to the online version of the city code or state statute.

- i. [Kaukauna Municipal Code 1.08](#) governs the salaries of elected officials. It provides that "[s]alaries of all elected and appointed officials, including members of boards and commissions, shall be as determined by the city council from time to time, provided that the salary of the mayor and members of the council shall not be increased during their terms of office."
- ii. [Kaukauna Municipal Code 1.15](#) specifically governs the Municipal Judge and Municipal Court. Subsection 4 "Salary" specifically provides that "[t]he municipal judge shall receive a salary as determined from time to time by the council, which shall be in lieu of fees and costs. No salary shall be paid to the judge for any time during his term for which he has not executed and filed his official bond and oath as required by subsection (5) of this section."¹
- iii. [Wisconsin Statute 755.04](#) specifically governs municipal judge's salaries. It provides that "[t]he governing body shall fix a salary for the judge. The salary may be increased by the governing body before the start of the 2nd or a subsequent year of service of the term of the judge, but shall not be decreased during a term... Salaries may be paid annually or in equal installments as determined by the governing body, but no judge may be paid a salary for any time during the term during which the judge has not executed and filed his or her official bond or official oath, as required by s. 755.03."
- iv. [Wisconsin Statute 755.03](#) governs the municipal judge's bond and oath. It specifically states that

¹ See Kaukauna Municipal Code 1.15(5), "Bond; oath. The municipal judge shall execute and file, with the clerk of the county circuit court, the oath prescribed by Wis. Stats. § 757.02 and a bond in the penal sum of \$1,000.00."

(1) The judge shall, after election or appointment, take and file the official oath as prescribed in s. 757.02(1) and at the same time, if required to do so by a city's, village's, or town's governing body, execute and file an official bond to be fixed by the governing body. If the governing body does not require the judge to execute and file an official bond, the governing body shall obtain a dishonesty insurance policy or other appropriate insurance policy that covers the judge, in an amount fixed by the governing body, in lieu of the bond requirement. The governing body shall pay the costs of the bond or insurance policy. No judge may act as such until he or she has complied with the requirements of sub (2).

(2) Within 10 days after a municipal judge takes the oath, the judge shall file the oath and, if required to do so as described in sub. (1) the official bond with the clerk of the city, town or village where the judge was elected or appointed. If the municipal judge is elected under s. 755.01 (4), the judge shall file copies of the oath and bond with each applicable municipal clerk. The judge shall file a certified copy of the oath with the office of director of state courts within the 10-day time period after the judge takes the oath.

I have attached a copy of the most current status of the judicial bond. *See* Attachment 1, West Bend Mutual Insurance Policy Bond Number 2399698. I do not believe the Clerk of Outagamie County Circuit Court accepts or retains any municipal judge's oath and bond anymore, based on a recent telephone inquiry I made with that office. It is my understanding that the Kaukauna Municipal Code Section 1.15 (last updated in 2011) was not updated after the amendments made to this statutory section Wis. Stat. 755.03 (last updated in 2019). Should the council desire to amend the municipal code to reflect its practice and the current version of Wis. Stat. 755.03, I move the governing body to amend Kaukauna Municipal Code 1.15(5) be revised to mimic the language in Wis. Stat. 755.03. My bond continues to be current with no lapse in coverage. Please contact me should the governing body require additional information or documentation on the oath and bond matter, as it involves other sections of city code and records retention issues.

- v. According to Kaukauna Municipal Code, Sections 1.08 and 1.15, I do not believe Council must wait for the 2023 budget to be finalized to increase the salary paid to the municipal judge. I was reelected in 2020 for a four-year term. That term began on May 1, 2020. I was eligible under Wis. Stat. 755.04 for a salary increase starting May 2021. As of September 12, 2022, I believe Council is legally able to increase the salary of the municipal court judge.

b. *Salary Increase Request.*

i. Historical Judicial Salary:

- 1. According to my review of the adopted budgets [available online through our website](#), the annual salaries for the municipal judge have historically been the following.

- a. 2022: \$11,499
- b. 2021: \$11,219
- c. 2020: \$11,219
- d. 2019: \$10,887
- e. 2018: \$10,551
- f. 2017: \$10,289
- g. 2016: \$10,107
- h. 2015: \$9,942
- i. 2014: \$9747

- 2. I do not believe there has historically been any substantial change to the municipal judge's salary in decades, despite multiple increases in salaries and hours to positions whose workload feeds directly into the court (e.g., police and inspection).

ii. [The 2022 Budget](#)

- 1. I have prepared for the governing body the following list of department head salaries, organized from highest to lowest, from the 2022 City Budget:
 - a. Director of Public Works: \$116,696
 - b. Finance Director: \$111,671

- c. Fire Chief: \$111,671
 - d. Police Chief: \$111,671
 - e. City Attorney: \$103,823
 - f. Library Director: \$100,010
 - g. Planning/Community Development: \$91,494
 - h. Mayor: \$87,582
 - i. Street Superintendent: \$85,751
 - j. Community Enrichment Director: \$85,669
 - k. Human Resources Director: \$85,627
 - l. Senior Building Inspector: \$80,214
 - m. Naturalist: \$71,091
 - n. City Clerk: \$70,548
 - o. The Municipal Judge salary is the lowest department head salary, at \$11,499.
2. Not only is the Municipal Judge salary the lowest department head salary (by an extremely disparate figure of \$59,049 less than the City Clerk), it is also one of the lowest in the entire organization. According to my review of the 2022 Budget, the Municipal Judge barely makes more than crossing guards. The only other city employees who are paid less than the municipal judge are crossing guards (\$8,036/year), alderpeople (\$4200/year), and police and fire commissioners (\$900/year).
 3. I do not point the council to these figures to disparage or devalue any other positions within this organization, but to highlight the disparities in skillsets and experience required of each position.
- iii. **Statewide municipal justice salaries:** The Wisconsin Municipal Judges Association has not published its report on statewide self-reported salaries of municipal judges since 2020. Given the extreme challenges posed by the COVID pandemic to the court system in the year 2020, I do not believe that information would be accurate in today's dollars. I do not believe that information

would accurately represent current demographics of area and statewide municipal courts, and I do not believe it would be helpful to today's consideration of the increase to Kaukauna's municipal judge salary and responsibilities that I propose, below.

iv. **Other financial information from the Wisconsin Court System:**

1. [Circuit Court Judges are paid an annual salary of \\$155,023.](#) On a rough estimation of 40/hours a week, that averages out to about \$75/hour.
2. [Court appointed attorneys make \\$100 an hour.](#)
3. The other attorney in this organization, the City Attorney, makes \$103,823.
4. I am requesting that the council increase the judicial salary to \$91,000.

CITY OF KAUKAUNA

2022 BUDGET

DIVISION: GENERAL GOVERNMENT

DEPARTMENT: MUNICIPAL JUDGE

TITLE OF POSITION	NUMBER OF FULL-TIME EQUIVALENTS		2021 BUDGET	2021 ESTIMATED ACTUAL	2022 PROPOSED BUDGET
	2021	2022			
Judge	**	**	11,499	11,499	11,848
Clerk of Courts	0.50	0.50	18,949	18,949	20,873
Deputy Clerk of Courts	**	**	380	380	380
TOTAL	0.50	0.50	30,828	30,828	33,101

** FTE calculation not readily determined due to the nature of the position

- v. **Summary of reasons for salary increase:** The budget for Municipal Judge has been listed since at least 2014 as “**FTE not readily determined due to the nature of the position.” Kaukauna’s court is generally considered a “weekly” court, i.e., court is generally

held weekly.² The judge is paid a \$11,499 annual salary. On just a weekly basis alone, that salary equals out to \$958.25 a month, or approximately \$240 a week.

1. **Historical hours worked:** On a VERY conservative estimate, this position has historically averaged out to about 10 hours a week, with 8-9 hours spent in-office on Tuesdays for court from roughly 8am-5pm, and then about an hour or so the remainder of the week for general administrative duties or emails, etc. On a very conservative estimate of 10 hours a week, at \$240 a week, that averages out to approximately \$24 an hour. Morerecently, I have been spending 15-20 hours a week in this position, which reduces my hourly rate even more.
2. I believe that 10 hours a week does a disservice to this city and this department's expectations and current and future needs.
3. **Realistic hourly workload:** I believe this position realistically requires at least 20-30 hours a week.
4. **Specific salary request:** I propose the council set an approximate rate of \$70/hour. This is less than an hourly estimation for circuit court judges, and is significantly less than private or court-appointed attorneys make. Taking an average of 25 hours a week at \$70/hour over 52 weeks, I come up with \$91,000/annually. Considering what other department heads make, considering what kinds of specialized degrees and training those positions may or may not require, considering what other attorneys in this organization and statewide make, and considering the needs of this office and my identified goals (see below), I believe that this figure more appropriately reflects the hourly staffing needs of this position, as well as my unique skillset and specialized legal training and experience.

² The court is slated to hold court every other Tuesday for the remainder of 2022, as the number of citations have decreased since 2020 due to the COVID pandemic. I believe 2020-2022 will be outlier years, data-wise. I anticipate 2023 levels returning to pre-pandemic numbers, if not more given the rise in population, a return to pre-pandemic police citations issued, and an increase in citations from the staffed building and code inspector positions.

5. **Previous specialized legal experience and training:** I respectfully request that the governing body increase my compensation to reflect the unique skillset I bring to this position and this city. I believe this will result in an increase of the quality of services provided to the public.
- a. As an attorney with previous and extensive experience in the justice system, I am uniquely positioned to improve the justice services we offer as a community. The city benefits from my strong command of criminal law, criminal procedure, evidence, and legal knowledge.
 - b. I have previous experience in all aspects of the justice system – criminal prosecutor, criminal defense attorney, civil litigator, and administrative and employment law. I am passionate about serving my hometown and using my legal knowledge and experience to improve our community’s quality of life. Since law school, I have been actively engaged in proactive justice system measures to address root causes of crime. I utilize this knowledge and experience base to deploy creative sentencing alternatives to prevent recidivism. I am interested in increasing the city’s community-based responses to ordinance violations in order to increase the quality of life for residents and visitors.
6. **Goals for increased compensation:** I believe increasing the compensation for this position would result in my being able to accomplish a number of goals I have for this position that, if implemented appropriately, could be long-lasting improvements and cost-saving measures.
- a. **Overhaul penal code:** I am interested in overhauling the city’s fine structure and penal code. I believe the current fine structure is much lower than many area and statewide municipalities, but have not had the time to devote to this project. I believe an overhaul of the current fine structure would result in not only increased revenue from higher default fines, but would also serve a large deterrent purpose that

would have exponentially positive cost-saving benefits across our municipal services. Taking on a project to review, refine, and implement penalties will take more time than the current 10 hours a week.

- b. **Refine inspection processes:** The governing body has now created and staffed the two inspection positions, in addition to the ever-increasing caseload influx from the police department as our city's population continues to boom. Not only do I anticipate an increasing caseload from the police department, but it is my understanding that there are roughly twelve current properties that are anticipated to hit the pipeline to municipal court from inspection. The inspection cases tend to require more court involvement, and I am interested in creating standard operating procedures for abatement orders to give teeth to the inspection positions. I believe an increase to the judicial compensation will ensure appropriate enforcement of the increased police and inspection positions.
- c. **Community service program:** I am interested in creating a community service program that is specifically run by municipal court. Just anecdotally, the types of residents who appear before me, both juvenile and adult, often present with co-existing mental health needs. Indigence/lack of resources to pay fines is also a common request made in court. I wish I could order community service in lieu of or in conjunction with fines, but there is a lack of programs that directly benefit our city to which I can refer offenders. I am uniquely situated to create and run a community service/restorative justice program that addresses multiple issues facing our neighbors and our city government. The City benefits from my longstanding research and experience in this field, and if I were appropriately compensated, I would be able to setup and maintain a strong community service program. This is a program that I have

informally discussed with many of our city leaders, and on which I have received positive feedback. I am currently unable to afford to implement this program on the current judicial salary.

- i. When the city undertook its most recent rebrand, one of the statistics found on the business cards states that “Kaukauna features one of the highest ratios of acres of greenspace per capita in the Fox Cities region. Over 450 acres of protected parks, trails, and open spaces are available for residents and visitors to explore and enjoy.”
- ii. I personally utilize gardening to improve my physical and mental health. [Gardening is scientifically proven to lead to increased physical and mental health.](#) I personally often utilize Kaukauna’s parks, trails, and greenspaces with my family. I am currently pursuing my [master gardener](#) and [Wisconsin native plant](#) certifications, and am interested in developing a community-based restorative justice program that would have defendants, volunteers, and other community groups install and maintain native plant species in city parks and greenspaces. [Many types of native plant species and groupings help control erosion and pollution, are low maintenance, result in cost and time savings to our streets crews, and benefit native pollinators and local biodiversity.](#) Currently, there is a lack of community service programs post-COVID that have the bandwidth to accept or supervise offenders, and an increase to my (and my clerk’s) hours/compensation would result in my ability to personally be able to implement this program in our community.
- iii. I have been very inspired by [Riverview Garden’s restorative justice](#) model, and am

interested in creating a similar model more tailored to the City of Kaukauna. Not only would this program increase the [biodiversity and aesthetics of our parks and greenspace](#), it would provide juvenile and adult offenders with a physical and mental health benefit, [lifelong vocational skillsets](#), [deeper ties to our community and shared spaces](#), and [an increased sense of personal accountability](#).

- c. I respectfully request that council increase my compensation so I can adequately address the current and anticipated increases to my workload, and to undertake these identified projects to increase the quality of service to our community.

3. Hours of Court Clerk:

- a. For all of the reasons previously expressed, I believe that the increased workload, both from new inspection positions, as well as the identified goals and proposed community service program, would also necessitate an increase to the hours of the court clerk.
- b. I also remind council of the stated complaints the mayor has previously brought to council. I believe staffing the court with a court clerk who is here for 30 hours instead of 20 would ameliorate the customer-service and public facing issues and complaints that have persisted for several years now. Questions for municipal court are complex and require detailed responses, and I agree with other leaders and employees that other departments shouldn't have to staff the court when the clerk is not here. I believe increasing the hours for the court clerk would ameliorate this issue and provide adequate support for these identified issues.
- c. The stipend for the deputy court clerk had previously been \$1500 a year. There has not been a deputy clerk appointed since 2018 or 2019. I believe council could incorporate those unused savings to offset the cost going forward of increased hours.
- d. The new court clerk, Carrie Salmi, has expressed interest in being classified as a 30-32 hour a week employee.

4. Bailiff:

- a. I request that council also provide an armed guard or officer for court sessions pursuant to Wis. Stat. 755.17(2) (stating "Upon request of the

municipal judge, the governing body shall provide an armed guard or officer for court sessions.”)

- b. I have previously informally spoken with Chief Graff about his department’s ability to staff court sessions. I believe pulling an officer from their duties for court would be cost-prohibitive, and unduly burden the police department. I believe that I would be able to find a number of retired law enforcement officers in the area who could serve as an “armed guard,” however I respectfully defer to the council’s discretion on how to fund and staff this position.

I sincerely appreciate your consideration of this lengthy request to overhaul our municipal court. I genuinely appreciate your dedicated service and commitment to our community, and I look forward to answering any additional questions or concerns you may have about these requests.

SIGNED THIS 12TH DAY OF SEPTEMBER, 2022

/s/ THE HONORABLE CARLEY N WINDORFF

DISTRIBUTION:

- 1. Mayor
- 2. City Attorney
- 3. City Council Members

Attachments: West Bend Mutual Insurance Policy Bond Number 2399698