

BACKGROUND

In 2022, the Wisconsin Legislature passed a law completely revising the state's laws regarding LLCs and limited partnerships. (2021 Wisconsin Act 258.) Those changes significantly changed the relationship between members and agents of such LLCs.

Prior to passage of the new LLC law, members of LLCs were all agents of the LLC and had authority to bind the LLC to third parties. (See Wis. Stat. § 183.0301(1)(a) (2019-20).) Because of the new law, a member is no longer an agent of the LLC solely because they are a member. Additionally, the registered agent of an LLC is no longer automatically able to bind an LLC to a particular action. Instead, the registered agent is now only authorized to receive service of process, notices, or demands required or permitted by law to be served on a company. This means that the city can no longer assume that a registered agent has authority to bind an LLC to contracts or to terms in a permit or license.

To protect the City's interests when contracting with or issuing permits and licenses to LLCs, the City must be able to determine whether the person signing on behalf of the LLC has authority to bind the LLC. The best (but not the only) way to do that is for the City to obtain a copy of a Statement of Authority filed with the DFI. This form designates an individual as having the authority to bind an LLC in contract and to waive legal rights. This designation is important because if an entity contracts with the City to, for example, offer a special event, develop property, engage in construction activities, or operate a City-licensed business, the City requires the entity to hold the City harmless and, in some cases, to include the City of Sheboygan as an additional insured on the entity's liability insurance policy. Absent authority to bind the entity in such a way, the City assumes greater risk such as being named a defendant in a lawsuit against the entity if the complained-of conduct implicates City oversight.

The Statement of Authority is not the only document the City may rely on to ensure that the proper individual is binding an entity in contract with the City. For example, copies of Articles of Organization or Operating Agreements that have been filed with DFI would also suffice.

My office is not aware of any applicant that has been rejected for failure to provide adequate documentation. When the Clerk's Office runs into issues where obtaining a Statement of Authority is difficult, they will consult with the City Attorney's office to find alternate options. We are aware that some applicants have been frustrated by the City's request for proof of authority to bind. Usually, these applicants were not aware of 2021 Wisconsin Act 258 and they prefer that the City's practices remain as they were. This is exacerbated by the fact that there was a disconnect between the legislative branch of the state and the executive agencies of the state, especially the DFI. It appears there was little communication from the legislature regarding the impact of the state law change. That resulted in a significant increase in the workload at the DFI and increased waiting times for LLCs who either had not filed a Statement of Authority with the DFI or neglected to keep a filed copy of the Statement of Authority. Ultimately, however, the City has always worked with those applicants to educate them and allow time to secure and provide the requested documentation rather than rejecting the application outright.

RECOMMENDATIONS

The City Clerk and other city staff already have the authority to, in their discretion, choose to not require a filed Statement of Authority from a license applicant should that applicant show alternate documentation sufficiently proving that the person signing on behalf of the applicant-entity has authority to bind the entity in contract.

However, if the Common Council desires to establish a formal policy to guide staff in their review of applications and contracts, the City Attorney's Office suggests the following modifications to the resolution at issue:

- 1) Modify paragraph 3 to read as follows:

"No license will be issued until the applicant who is a corporation, limited partnership, limited liability partnership or limited liability company has been confirmed as a registered entity with WDFI; and, for applicant entities that are not a corporation, the applicant has authority to bind the applicant entity in contract. Such proof may take the form of a WDFI-filed stamped copy of

Form 501, Statement of Authority; Form 301, Statement of Partnership Authority- Limited Partnership; Form 502, Articles of Organization- Limited Liability Company; Form 601, Statement of Partnership Authority- General or Limited Liability Partnership; as such forms may be amended, replaced, or modified. If such entity is a foreign entity, such entity shall provide confirmation of authority to bind via such other documentation as may be approved by the City Attorney."

- 2) Strike paragraph 4 in its entirety (as the matters in that paragraph are now covered in paragraph 3.)
- 3) Strike paragraph 6 in its entirety.