

To: Common Council
From: John S. Weidl, City Manager
Date: 3/26/2025

Subject: Legal Clarification on Council Member Appointments to Committees under Ordinance § 2.12.011

Executive Summary

Following questions raised regarding the process for appointing Common Council members to committees, the City obtained a formal legal opinion (attached) to ensure our practices comply with the municipal code. Legal counsel has confirmed that Whitewater Municipal Code § 2.12.011 governs all appointments to boards, commissions, and committees—including those involving elected officials. Under this ordinance, the City Manager and the Common Council President jointly recommend all nominees, including council committee assignments, to the Common Council, which then formally appoints them. This interpretation corrects and clarifies past practice. While previous informal methods were often applied in good faith, they were not aligned with the ordinance that has long governed this process. This clarification ensures our continued compliance moving forward.

Background and Legal Review

Following conversations with Council members about the absence of a formal policy for committee appointments, I asked the City's Human Resources department to examine our code, policies, and recent past practice. Past methods, including preference rankings and informal processes were inconsistently applied and lacked alignment with municipal code. To clarify the governing framework, HR requested a formal opinion from legal counsel at von Briesen & Roper, s.c. That opinion, issued March 26, 2025, affirms that Whitewater Municipal Code § 2.12.011 governs all appointments, including those of elected Council members to internal City committees.

The ordinance

§ 2.12.011 – Appointment of board, commission and committee members.

- (a) The city manager and the common council president shall review all board, commission and committee applicants and recommend nominees to the common council.
- (b) After considering the candidates nominated to the various boards, commissions, and committees, the common council shall appoint the members of said boards, commissions, or committees.

The plain language of the ordinance makes no distinction between citizen and councilmember appointments. The language in subsection (c)—“this subsection shall not apply to the city council”—applies only to term limits and acknowledges that councilmembers serve by election. It does not exempt them from the appointment process defined in subsections (a) and (b).

Application and Moving Forward

Past practices, such as the use of spreadsheets and internal votes, while well-meaning, were not compliant with § 2.12.011. Moving forward, we will adhere to the ordinance as outlined by our legal counsel. Council members will continue to submit committee preferences via spreadsheet. While the



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nominating authority rests with the City Manager and the Council President, those preferences will be seriously considered to ensure alignment of interests, experience, and organizational needs.

To avoid operational conflicts, I recommend Councilmembers not serve concurrently on committees with overlapping responsibilities (e.g., CDA and PARC, or PARC and BZA). I will work directly with the Council President to implement this guidance during the nomination process. This is not a change in governance, nor a shift in authority—it is a return to the procedures already established by ordinance. We will continue to value collaboration while adhering to a transparent, consistent, and legally sound process.

Conclusion

The City Manager's Office will coordinate with the Clerk's Office to distribute committee preference forms in advance of the organizational meeting (see attached example). The Council will then consider formal nominations prepared by the City Manager and Council President, under § 2.12.011.

No action is required by the Council at this time.

Best, - JSW

A handwritten signature in black ink that reads "John S. Weidl".

John S. Weidl
City Manager, City of Whitewater



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From: Nicholas S. Cerwin <nicholas.cerwin@vonbriesen.com>

Sent: Wednesday, March 26, 2025 2:27 PM

To: Sara Marquardt <smarquardt@whitewater-wi.gov>

Cc: Kyle J. Gulya <kyle.gulya@vonbriesen.com>

Subject: Opinion regarding Ordinance 2.12.011- Appointment of Board, Commission and Committee Members

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Hi Sara,

You had sent a request to Kyle to provide an opinion regarding whether the appointments contemplated in ordinance 2.12.011 apply to council committee appointments. Kyle and I took a look at the ordinance and have concluded that yes, 2.12.011 does apply to council committee appointments. The more formal analysis is below:

Request: Whether Whitewater Municipal Code § 2.12.011 authorizes the City Manager and the Common Council President to recommend nominees to the common council for council committees, in addition to any other boards, commissions, or committees?

Answer: Yes, Whitewater Municipal Code § 2.12.011 grants the authority to the City Manager and the Common Council President to review all applicants for a board, commission or committee and then recommend candidates from that applicant pool to fill the open position on said board, commission or committee. The authority in § 2.12.011 extends to and includes nomination of councilmembers to various standing or sub-committees created by the city. The common council is then granted the authority to consider the candidates nominated by the city manager and common council president, and then the Council "shall appoint" the members of the board, commission, or committee.

Authority and Rationale:

Whitewater Municipal Code § 2.12.011 grants general authority for the City Manager and Common Council President to nominate applicants for boards, commissions, and committees, including appointment of councilmembers to various sub-committees or standing committees, and then to provide those nominations to the Common Council for final appointments. State law provides municipalities with discretion to regulate appointment to boards, commissions, and committees created by the municipality unless such process is enumerated in statute, such as the process in Wis. Stat. 62.13. As such, the Whitewater municipal code is the controlling source of information for this request.

The plain language of § 2.12.011 does not limit which boards, commissions, or committees fall under this appointment process. As such § 2.12.011 dictates the nomination and appointment process for all boards, commissions, or committees unless a separate mechanism is identified, whether in code or statute. For example, § 5.20.025 dictates the membership make-up of the Alcohol license review committee, but does not dictate how members are appointed. The process then falls to § 2.12.011. Alternatively, the Police and Fire Commission is created via § 2.28 and Wis. Stat. 62.13. Those sections



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do have specific language dictating appointment and therefore those sections would apply *instead* of § 2.12.011. Because the City of Whitewater has no other general appointment provision specific to appointment of councilmembers to specific subcommittees, §2.12.011 applies to those appointments.

Moreover, within § 2.12.011(c), the city's legislative body has identified that the councilmember appointments would fall within this process. Subsection (c) identifies certain term limits for committee, board, or commission appointments, unless otherwise specified by law. Importantly, this term limit subsection states that it "shall not apply to the city council," which is because the voters, rather than an individual, would hold the authority to determine who serves as a councilmember and how long they remain on the city council. All other sub-committees or standing committees of the city council would retain those term limitations identified in § 2.12.011(c), including any committees that councilmembers would apply and be nominated for by the city manager and common council president, and who would then subsequently be appointed by the common council.

Please feel free to reach out if you have any additional questions or follow up.

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