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MEMORANDUM

TO: Evan C. Goyke, City Attorney
Robin A. Pederson, Deputy City Attorney

FROM: Thomas D. Miller, Assistant City Attorney

DATE: August 27, 2025

RE: CCFN 241664 – Relating to common council approval of office of community wellness and safety (“OWCS”) director appointment

FACTS

Under the 2025 Positions Ordinance, the director of the office of community wellness and safety (“OCWS Director”) is a subordinate position within the department of administration (“DOA”). *See also* Milwaukee Code of Ordinances (“MCO”) 310-5.5 (assigning responsibility to the DOA Director to submit an annual report to the common council regarding OCWS operations). The administration recently filled the OCWS Director position, which was re-exempted by the Board of City Service Commissioners (“CSC”) in April 2025.

Multiple common council members have publicly expressed dissatisfaction with the process used to hire the OCWS Director and there may be interest in enacting the attached proposed ordinance (CCFN 241664), which would make the position a mayoral appointment requiring common council confirmation.

ISSUE

Is CCFN 241664 legal and enforceable?

CONCLUSION

No. The proposed ordinance violates the Wisconsin civil service law to the extent that it provides that the mayor shall appoint and the common council shall confirm the OCWS Director. If the common council desires to re-constitute the position as a mayoral appointee subject to common council confirmation, the common council could adopt an alternative ordinance establishing the OCWS as a “principal department.” See Wis. Stat. § 63.27. The new department would have to operate independently of the department of administration and the OCWS Director, as the new department head, could no longer be directed or controlled by the DOA Director.

ANALYSIS

Under the Wisconsin civil service law, “all appointments to subordinate offices, positions and employments in the several departments of the” City service are subject to the rules of the CSC, and “shall be made by the respective heads of such departments under and in conformity with the provisions of” the City service rules. Wis. Stat. § 63.26. Thus, all positions of employment are subject to the City service rules unless exempted:

Officers who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created and exists by reason of statute, the members of the board of school directors, persons enumerated in s. 63.53 (2), ***heads of principal departments of the city***, all members of the law, fire and police departments, permanent or temporary technical advisers and experts employed by the board of assessment under s. 32.52 (4), one private secretary of the mayor, ***the appointees of the mayor under s. 62.51*** and any other officers, clerks or employees in the service of the city whose positions, in the judgment of the city service commissioners, cannot for the time being be subjected, with advantage to the public service, to the general rules prepared under this chapter shall not be affected as to their election, selection or appointment by rules made by the commissioners.

Wis. Stat. § 63.27 (emphasis added).

The OCWS Director is a subordinate position of employment within the department of administration and does not fall within any of the specific statutory exemptions in section 63.27. Accordingly, the DOA Director is the appointing authority and, unless the CSC exempts the position, the DOA Director shall appoint in conformity with the CSC rules. The OCWS Director position does not fall within any of the specific exemptions to the City service rules in section 63.27. This is true for at least two reasons.

First, under the proposed ordinance, the OCWS Director would not be the “head of a principal department of the city” but instead would merely administer the OCWS “[u]nder the direction of the department of administration.” CCFN 241664; see *Johnson v. City of Milwaukee*, 147 Wis. 476, 482, 133 N.W. 627 (1911) (overruled on other grounds as

recognized by *McClutchey v. Milwaukee County*, 239 Wis. 139, 142-43 (1941). In *Johnson*, the Wisconsin Supreme Court held that the superintendent of street construction and repairing presided over a department that was subsidiary to the department of public works and therefore his appointment was subject to the civil service law. *Id.* The court emphasized that by law the superintendent was one of four subordinate officers who were “subject to the direction and control of” the commissioner of public works:

The word “principal” in the civil service law quoted must be given effect, and it is obvious here that the department over which [the superintendent] presides is subsidiary to that presided over by the commissioner.

147 Wis. at 482. Here, as well, the OWCS Director is not the head of a principal department under section 63.27 because the position is subject to the direction of the DOA Director.

Second, the OCWS Director does not fall within the exemption for “appointees of the mayor under section 62.51.” That statute provides that the mayor shall appoint, subject to common council confirmation, individuals to serve in the unclassified service in certain enumerated “public office[s].”¹ The OCWS Director, however, is not among the enumerated “public offices” in section 62.51(1)(a).

Section 62.51 “does not affect the authority of a 1st class city to abolish, consolidate or create a public office or other position.” § 62.51(4). In creating a “public office or other position,” however, the City must comply with the civil service law. Thus, to create a “public office” that is exempt from the CSC’s rules the City must make the “public office” the head of a principal department.

A contrary interpretation of section 63.27’s exemption for “appointees of the mayor under s. 62.51” that would allow the common council and mayor to exempt a public officer who is not the head of a principal department would conflict with the text of section 63.27 and the manifest purpose of the civil service law. *State ex rel. Hayden v. Arnold*, 151 Wis. 19, 30, 138 N.W. 78 (1912) (“by the civil service act, the legislature intended to go as far as practicable in placing all administrative officers, below those elected by the people, in the cities dealt with, under the merit system.”).²

¹ “Public office” means the following positions or their equivalent: city engineer; city purchasing agent; commissioner of building inspection, of city development, of health or of public works; director of administration, of budget and management, of community development agency, of employee relations, of office of telecommunications, or of safety; emergency management coordinator; employee benefits administrator; executive director of the commission on community relations; municipal port director; commissioner of assessments; director of liaison; city personnel director; executive director of the retirement board; executive director of the city board of election commissioners; city librarian; city labor negotiator; executive secretary of the board of fire and police commissioners; and supervisor of the central electronics board.” Wis. Stat. § 62.51(1)(a).

² Section 62.51(1)(a) includes several “public office[s]” that are not department heads, e.g. the budget and management director, the director of the office of telecommunications, and the employee benefits administrator. The Wisconsin Legislature, however, has plenary power to exempt officers and employees from the civil service law.

Under section 63.27, the decision to exempt “officers, clerks or employees[,]” other than those specifically exempted, resides with the CSC. The CSC exempted the OCWS Director position (formerly titled the Violence Reduction and Prevention Program Director) when it was housed within the Milwaukee Health Department. In 2022, the CSC re-exempted the position. See CCFN 220606. The CSC most recently re-exempted the OCWS Director position on April 22, 2025 (CCFN 241989). By requiring mayoral appointment and common council confirmation, the proposed ordinance works a *de facto* permanent exemption of the position, usurping the CSC’s statutory authority. Thus, we would have to return the file as not legal and enforceable.

Encl.

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