

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV



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DATE: October 12, 2018

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
Milwaukee County Election Commission
City of Milwaukee Election Commission
Wisconsin Municipal Attorneys

FROM: Wisconsin Elections Commission Staff

SUBJECT: Court Document Templates for Extension of Polling Hours

Pursuant to Wis. Stat. § 6.78, polling hours are from 7 a.m. to 8 p.m. However, there are possible situations that could require a municipality to seek an extension of the time set for polling places to be open. For example, an emergency situation, inclement weather or flooding that obstructs traffic or access to the polling place, or a power outage could cause a polling place to close for a period of time.

In some cases, the polling location may be closed for a brief time early enough in the day that it may not be necessary to seek an extension of voting hours. But when a polling location is closed for a significant period of time, especially during the afternoon or evening hours, the municipal clerk should consider whether electors will have adequate opportunity to return to the polls and vote. If an extension of voting hours is necessary, it is the responsibility of the municipality to seek a court order authorizing an extension.

Wis. Stat. § 6.96 provides for an extension of voting hours by court order. While the statute refers to a federal court order, Wisconsin circuit courts have regularly determined that they also have inherent jurisdiction and authority to issue such orders. Time is of the essence in seeking a court order so that election inspectors, voters and the media can be advised whether voting hours will be extended. The Elections Commission has collected pleadings used by several municipalities in prior cases and created templates that can be used to initiate and facilitate court action to extend polling hours.

In such situations, it is important for the municipal clerk to immediately notify and consult with the municipal attorney to discuss the decision whether to extend voting hours and for how long. The extension should take into consideration the amount of time the polling location was closed and the time of day it was closed. The legal staff of the Wisconsin Elections Commission is also available to provide feedback and input and, if necessary, to appear by teleconference to discuss the relevant law and answer any questions of the Court during a hearing related to a petition. If the request must be filed after the courthouse has closed, the County Clerk, Sheriff's Department, or the WEC can help to locate a duty judge who is available after business hours.

To expedite requests to extend voting hours, attached are the following templates which can be tailored to particular circumstances. We recommend providing this information and the templates to

municipal attorneys prior to Election Day so that they may be prepared if it is necessary to petition for a court order to extend voting hours at a polling place.

1. PETITION

The petition for an extension of polling hours may be signed by the municipal clerk of the city, town, or village of the polling place in question. The petition should specify the location of the polling place for which the extension is requested and the specific time requested for the extension. The petition may also briefly state the reason for the request.

2. AFFIDAVIT

In support of the petition, it is helpful to file an affidavit, or sworn statement, from either the municipal clerk or the chief inspector of the polling location. The affidavit can provide more detailed information regarding the reason the polling location was closed and the length of the closure. An affidavit allows the Court to rely on a sworn statement of an election official and creates a record supporting the extension request.

3. STIPULATION

While not required, for partisan elections it may be helpful to seek agreement from the major political parties as to the extension request and the amount of extended time requested, if time permits. The WEC can assist municipalities in reaching out to representatives of the political parties. If time does not allow for a written stipulation, it is helpful to at least attempt to notify the major political parties in advance so that they have an opportunity to provide input or raise any concerns or objections with the Court. When time permits, a written or oral stipulation demonstrates to the Court that parties with potential interests in the extension request have been provided notice and an opportunity to be heard.

4. COURT ORDER

This is a template form for the Court to execute in granting a petition for the extension of polling hours. If the request is considered at an in-person court hearing, it is helpful to have multiple copies of the order available for the court file and the municipality's records.

5. NOTICE TO VOTERS

Wis. Stat. § 6.96 requires that election inspectors must provide an elector who casts a ballot during extended voting hours with a notice stating how the elector can obtain information regarding whether their ballot has been counted, in the event the court order is subsequently vacated. The statute requires that the WEC prescribe the information to be provided to the voter, which is outlined in this template.

Please contact the WEC if situations arise requiring an extension of the voting hours. WEC staff can be helpful in answering questions, facilitating requests and notifying the media. If you have any questions regarding this information or the attached templates, please contact the Help Desk at 608-261-2028 or elections@wi.gov.