



Wisconsin Elections Commission

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DATE: November 1, 2021

TO: All Wisconsin Election Officials

FROM: Megan Wolfe, Administrator

SUBJECT: Notification of Non-Candidacy Posting Requirements and Filing Deadline

2021 Wisconsin Act 33 created requirements for filing officers to publicly notice when an incumbent files a Notification of Non-Candidacy with their office or if an incumbent fails to file a Declaration of Candidacy by the filing deadline. This requirement is applicable to municipalities who use nomination papers and those who use caucus to nominate candidates for the Spring Election. Procedures for both methods of nominating candidates are explained further in this memorandum.

In addition, staff has received numerous questions about the filing deadline for non-candidacy forms given that the deadline is on Friday December 24, 2021 this year when many municipal, county and school district offices are closed in observance of the holiday. We have provided some guidance on administering that deadline as part of this memorandum.

I. Non-Candidacy Posting Requirement

Where nomination papers are used:

If a filing officer receives a notification of non-candidacy from an incumbent, the filing officer is now required to promptly post public notice of that fact on their website, or, if they do not have a website, they can post that information in at least 3 different locations within the jurisdiction. In addition, if an incumbent fails to file a declaration of candidacy by the filing deadline of 5:00 p.m. on January 4, 2022, the filing officer is now required to post that information on their website or in 3 locations within the jurisdiction. Wis Stat. §§ 8.10(2)(am) and 120.06(6)(b)3m.

In jurisdictions where nomination papers are required, if an incumbent does not file either a notification of non-candidacy by December 24, 2021 or nomination papers and a declaration of candidacy by 5:00 p.m. on January 4, 2022, the filing deadline for that office is extended by 72 hours from the original deadline for all candidates except the incumbent. Wis Stat. §§ 8.10(2)(a) and 120.06(6)(b)3.

Where caucus is used:

If a filing officer receives a notification of non-candidacy from an incumbent, the filing officer is now required to promptly post public notice of that fact on their website, or, if they do not have a website, they can post that information in at least 3 different locations within the jurisdiction. In addition, if an incumbent fails to file a declaration of candidacy by the filing deadline of 5 days after notification of nomination after a caucus, the

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filing officer is now required to post that information on their website or in 3 locations within the jurisdiction. Wis Stat. § 8.05(1)(j)2m.

In jurisdictions where caucus is used, if an incumbent is nominated at caucus but does not file either a notification of non-candidacy or a declaration of candidacy by 5:00 p.m. on fifth day after notification of their nomination from the caucus, the filing deadline for that office is extended by 72 hours after the original deadline for all candidates certified at caucus except the incumbent. Wis. Stat. § 8.05(1)(j)2.

II. Non-Candidacy Filing Deadline

The statutory deadline for incumbents to file a written notification stating that they do not intend to run for reelection to their current office (notification of non-candidacy) with the filing officer is the 2nd Friday preceding the due date for filing nomination papers. This year, that deadline falls on Friday, December 24, 2021, with one exception for state officeholders noted below.

State officeholders. For incumbents currently holding a state office, the deadline is extended to Monday, December 27, 2021 as all state offices are closed per statute on December 24. With that statutorily required closure, the Commission (state office) is not open to accept non-candidacy filings on that date. Wis. Stat. § 230.35(4).

County, municipal, school district officeholders. For incumbents currently holding a county, municipal* or school district office, the deadline is 5 p.m. on December 24, 2021. This day is not a state holiday, and there is no statute that requires that county, municipal or school district offices to be closed on that date, therefore the filing deadline for a non-candidacy notification remains at 5 p.m. on December 24, 2021. Wis. Stat. § 8.10(2)(a). This is similar to situations in which other filing deadlines have fallen on non-state holidays like Good Friday where some offices may be closed in observance of a holiday. The Commission has consistently advised that unless a filing deadline falls on an official state holiday (Wis. Stat. § 995.20), the filing officer must be available to accept a filing that is due on that date.

**Except for incumbents in towns and villages that use caucus, where the non-candidacy deadline is the 5th day after they have been notified of being nominated at the caucus.*

III. Outreach to Incumbents Prior to Non-Candidacy Deadline

To help manage this deadline, WEC staff recommends that in early December clerks send the non-candidacy form, along with a short explanation, to all incumbents. The notification of non-candidacy form (EL-163) is available for download from the Wisconsin Elections Commission website. <https://elections.wi.gov/forms/el-163-fillable>. This reminder to incumbents will help inform and remind them of the deadline and the filing requirements.

Please note that a notification of non-candidacy may be filed electronically and there is no requirement for the document to be sworn or notarized. Statute only requires that the incumbent provide written notification they are not a candidate for the office they currently hold by the filing deadline.

If you have any questions concerning this memorandum, please contact the Help Desk at 608-261-2028 or elections@wi.gov.