



**CITY ATTORNEY**

*Jenna Merten*

2000 North Calhoun Road  
Brookfield, Wisconsin 53005-0595  
(262) 787-3525 - Fax (262) 796-6671  
merten@ci.brookfield.wi.us

March 19, 2024

Wisconsin Elections Commission  
P.O. Box 7984  
Madison, WI 53707-7984

Re: Michelle Luedtke's Answer to Andrew Yunker's complaint

Dear Commission,

Please find attached Michelle Luedtke's Answer to Andrew Yunker's complaint, along with 3 attached exhibits. I have also enclosed an Affidavit of Mailing indicating that I mailed a copy of the Answer and Exhibits to Andrew Yunker.

If you have any questions or concerns, please contact me.

A handwritten signature in blue ink that reads "Jenna Merten".

Jenna Merten  
City Attorney

Cc: Andrew Yunker

ANDREW YUNKER,

Complainant,

Case No. EL 24-23

v.

MICHELLE LUEDTKE,

Respondent.

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**ANSWER OF RESPONDENT MICHELLE LUEDTKE**

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**NOW COMES** Respondent, Michelle Luedtke by City Attorney Jenna Merten, both duly sworn, reserving all jurisdictional objections and objections to competency, and as and for its Answer to said Complaint, dated February 28, 2024, deposes and states to the Commission the following:

**FACTUAL BACKGROUND:**

Complainant Andrew Yunker (“Yunker”) is registered to vote at 17830 West North Avenue, Brookfield, WI, which is located in the City’s District 5, Ward 14 voting district. On February 20, 2024, the City of Brookfield held a primary election for the alderperson race in District 5; it was the only District with a primary in the City. The City does not have a central count and does not have an alternate absentee ballot drop off location, pursuant to Wis. Stat. § 6.855. (*See* Exh. 3., repeal of central count ordinance) Yunker requested an absentee ballot for that election on February 9, 2024 and received it on or about February 12, 2024. Included with his absentee ballot was an instruction sheet that contained, among other information, instructions on how to return the absentee ballot. (*See* Exh. 1). Specifically, the instructions stated

that “Unless you are a voter with a disability, you must personally return your own ballot to the Clerk’s Office. It must be received by the Clerk with enough time for the Clerk to deliver it to your polling place **no later than 8:00 p.m. on Election Day.**” The instructions do not state anything about returning one’s ballot to their polling place. The ones Yunker attached to the complaint are not the City’s instructions.

On February 20, 2024, Brookfield City Clerk Michelle Luedtke (“Luedtke”) was present at the Public Safety Building, located at 2100 North Calhoun Road, which was the only polling place for the election. At some point during the time the polling place was open, Yunker approached Luedtke while she was working at the polling place and tried to give her his absentee ballot, along with his wife’s absentee ballot. Luedtke told Yunker that she could not receive any absentee ballots at the polling place and that his wife needed to drop hers off at the Clerk’s Office, located at 2000 North Calhoun Road, because he could not perform that task for her. Yunker argued with her and eventually decided to vote in-person because he was at the polling place. Following the guidance promulgated by the Wisconsin Elections Commission, Luedtke spoiled Yunker’s absentee ballot so that he would not have his vote counted twice. After voting in person, Yunker left the polling place.

#### **PROCEDURAL HISTORY:**

Yunker filed a sworn complaint with the Wisconsin Elections Commission on or about February 28, 2024. Yunker never mailed or served Luedtke a copy of the complaint. On March 1, 2024, Commission staff attorney Brandon Hunzicker emailed a copy of Yunker’s complaint to the City Clerk email account. The City does not have any knowledge whether any review under Wisconsin Administrative Code Section EL 20.04 was conducted.

#### **ANSWER AND RESPONSE TO COMPLAINT**

**Allegation #1: The City Website contained incorrect information about polling locations when Yunker viewed the website on his phone.<sup>1</sup>**

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<sup>1</sup> Yunker does not allege how the City’s purported incorrect information on its website violates any election-related laws or is the fault of Ms. Luedtke; nevertheless, rather than allow false information to perpetuate, Ms. Luedtke is addressing it in her response.

**Answering Allegation #1**, Luedtke denies that the City’s website contained incorrect information about polling locations and affirmatively states the website was correct. Yunker is a resident of District 5, Ward 14 and votes at the Public Safety Building. Yunker alleges that he believed Brookfield Central High School was his polling location because it contained a number 5. (See Compl., p. 3). However, Yunker also admits that he could not recall his district or his ward number despite the ward being written on the mailing label on the absentee ballot that he was holding. Contrary to his claim, the website correctly stated that the Ward 14 polling location was at the Public Safety Building. (See Exh. 2.) Complainant’s inability to recall his actual ward and properly comprehend the City’s website is not Luedtke’s error.

**Allegation #2: Michelle Luedtke abused their election official discretion and/or violated laws regarding election administration of absent voter ballots including: Wisconsin State Statutes 6.87(6), 6.86(6), 6.88(1), 6.88(2), 6.88(3)(b), 6.85, 6.20, 12.13(3)(c).**

**Answering Allegation #2:** Luedtke denies that she abused her election official discretion and denies violating any laws regarding election administration of absent voter ballots. Luedtke affirmatively states that she properly adhered to all laws regarding elections.

The crux of Yunker’s complaint is based upon the premise that he was an absentee voter. However, that premise is false. An absentee voter is one “who for any reason is unable or unwilling to appear at the polling place in his or her ward or election district.” Wis. Stat. § 6.85(1). Yunker’s appearing at his polling place on Election Day renders him an in-person voter, not an absentee voter. As such, Yunker’s allegations that Luedtke violated § 6.87(6) (absentee voting procedure); 6.86(6) (methods for obtaining an absentee ballot); 6.88(1), (2), and (3)(b) (voting and recording the absentee ballot); § 6.20 (absent electors); and § 6.85 (absent elector; definition) fail entirely.

The absentee voting instructions mailed to Yunker are consistent with the law regarding absentee ballots. The instructions sent to Yunker specifically state that the ballot must be returned to the City Clerk’s office. (Exh. 1.) Further, the instructions state that the ballot must be received by the clerk with enough time for her to deliver it to the polling place no later than 8:00 p.m. (Exh. 1.)

Nowhere in the instructions does it state that Yunker could return his ballot and his wife's ballot to the polling place. The entire point of the absentee voting law is to serve those voters who cannot or will not attend their polling place on Election Day. Yunker completely disregarded the law and the absentee instructions by bringing his absentee ballot and his wife's absentee ballot to the polling place. Yunker's errors and failure to follow instructions were the sole cause of his inability to cast his absentee ballot.

Yunker's allegations that Luedtke violated Wis. Stat. § 12.13 are also false. While Complainant does not expound on how he believed Luedtke violated this statute, one can assume that it was based upon Luedtke's spoiling Yunker's absentee ballot at the polling place when he decided to vote in person. Again, by Yunker appearing in person at the polling place and choosing to vote in person, Yunker could no longer vote absentee. If Luedtke did not destroy Yunker's ballot after he decided to vote in person, Yunker would have committed election fraud by voting twice. If Luedtke were to have accepted his ballot at the polling place, Luedtke would have violated state law by accepting an absentee ballot from an in-person voter. Luedtke's actions essentially saved Yunker from his own ignorance and prevented him from committing voter fraud.

### **AFFIRMATIVE DEFENSES**

As and for its affirmative defenses to Yunker's Complaint, the Respondent, Luedtke, states as follows:

1. Upon information and belief, the Complaint fails to state a claim upon which relief can be granted against the Respondent.
2. The Commission lacks subject matter jurisdiction over Yunker's complaint because Yunker failed to mail or personally serve Luedtke with a copy of the complaint in compliance with Wisconsin Administrative Code Section EL 20.03(6).

3. The Commission lacks competency over the Yunker's complaint because Yunker failed to mail or personally serve Luedtke with a copy of the complaint in compliance with Wisconsin Administrative Code Section EL 20.03(6).

4. Yunker's complaint is barred by the statute of limitations.

5. Luedtke reserves the right to supplement her answer to assert any affirmative defenses which may be disclosed during discovery or hearings herein.

**WHEREFORE**, Respondent, Michelle Luedtke, hereby demands judgment as follows:


1. Dismissing Yunker's Complaint upon its merits and with prejudice;
2. For costs, disbursements, and attorneys' fees of this action allowed by law; and
3. For further relief as ordered by the Commission.

Dated at Brookfield, Wisconsin, this 19th day of March, 2024.


CITY OF BROOKFIELD  
Jenna Merten, City Attorney  
Attorney for Michelle Luedtke

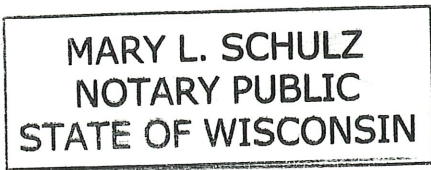
I, Michelle Luedtke, being first duly sworn upon oath, state that I personally read the above answer and that the answer is true and correct based on my personal knowledge and, as to those answers stated on information and belief, I believe them to be true. See sworn signature on next page.

Dated this 19<sup>th</sup> day of March, 2024.


  
Jenna Merten

Subscribed and sworn to before me  
This 19th day of March, 2024.


  
Notary Public-State of Wisconsin  
My commission expires 9-30-25

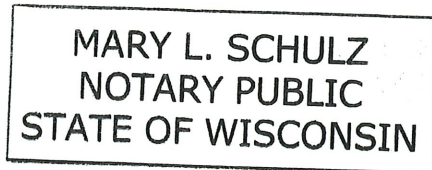


Dated this 19<sup>th</sup> day of March, 2024.

  
Michelle Luedtke

Subscribed and sworn to before me  
this 19th day of March, 2024.

  
Notary Public-State of Wisconsin  
My commission expires 9-30-25



P.O. Address  
2000 North Calhoun Road  
Brookfield, WI 53005  
262-787-3635  
[merten@ci.brookfield.wi.us](mailto:merten@ci.brookfield.wi.us)



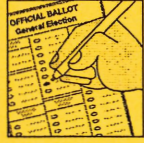
# Uniform Instructions for Wisconsin Absentee Voters



**STEP 1** Read and follow the instructions on your ballot.  
Mistakes may prevent your votes from being counted.

**STEP 2** You must vote your ballot in the presence of an adult witness:

- Mark your ballot in the presence of your witness.
- Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.



**Who can be a witness?**

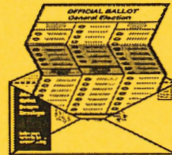
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

**Who cannot be a witness?**

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk. The Clerk's Office can be your witness during in-person absentee voting.

**STEP 3** Refold your voted ballot and place it inside of the return envelope.



**STEP 4** Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed.  
Do not use tape!

**STEP 5** Fill out the required sections of the absentee return envelope.

**STEP 6** Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot to the Clerk's Office. It must be received by the Clerk with enough time for the Clerk to deliver it to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk's office.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

**Required Elements**

**VOTER**

Your voter information  
*(may already be complete)*

Signature

**WITNESS**

Signature

Printed Name

Address

**Official Absentee Ballot Certificate & Application**

**1. CLERK or VOTER must complete this part**

**Voter Information**

City Name: \_\_\_\_\_  
 Precinct Name: \_\_\_\_\_  
 Trust Name: \_\_\_\_\_  
 Name (Last, First, Middle): \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 Country: \_\_\_\_\_ City: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip: \_\_\_\_\_ Home: \_\_\_\_\_ FAX: \_\_\_\_\_

**2. VOTER must complete this part**

I certify, under penalty of the penalties for false statements of law, that I (or my spouse) am:

- a resident of the ward or all the other wards of the municipality for the county of the ward or other wards; district or election district; precinct;
- not voting at any other location in this election;
- not unable or unable to appear at the polling place on Election Day, or have changed my residence only in the last 30 days and have not yet moved into the new residence;
- displayed the ballot unmarked to the witness and in the presence of the witness person required for this part of the ballot and under the knowledge of the witness that the voter has not voted and is a voter under a 4-R (S) if requested assistance, shall have their home;
- transported the ballot and this to the original or a copy of that request.

X  
 Voter Signature: \_\_\_\_\_  
 I certify that the voter is unable to sign this return due to a disability and I, the witness, am not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.

**Witness Information**

X  
 Witness Signature: \_\_\_\_\_  
 Witness Printed Name: \_\_\_\_\_  
 Witness Address (Street, Box, P.O., Apt.): \_\_\_\_\_



## Getting Assistance

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If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not “assistance.”

### With your absentee return envelope

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the *Certification of Assistant* section.
- Your assistant may also serve as your witness.

### With your ballot

- Your assistant must sign in the *Certification of Assistant* section.
- Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

## Ballot Damage & Mistakes

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If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



## Voter Photo ID

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- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

[myvote.wi.gov/en-us/My-Municipal-Clerk](https://myvote.wi.gov/en-us/My-Municipal-Clerk)

**If you have any questions, please contact your municipal clerk for assistance.**

### Municipal Clerk Contact Information

Michelle Luedtke

(Name of Municipal Clerk)

City of Brookfield

(Name of Municipality)

**Phone:** 262-782-9650

**Email:** [CityClerk@ci.brookfield.wi.us](mailto:CityClerk@ci.brookfield.wi.us)

**Fax:** None

### State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: [elections@wi.gov](mailto:elections@wi.gov)



Check absentee ballot return status, find voter information, and more on [MyVote.wi.gov](https://MyVote.wi.gov)

### Uniform Instructions for Wisconsin Absentee Voters

EL-128 | Rev 08-2023 | Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 53707-7984 | (608) 261-2028 | [elections.wi.gov](https://elections.wi.gov) | [elections@wi.gov](mailto:elections@wi.gov)



# ELECTIONS

## ELECTION DATES

### 2024 (Regularly Scheduled Elections in Even Numbered Years)

1. Third Tuesday in February (2/20/2024)
2. First Tuesday in April (4/2/2024)
3. Second Tuesday in August (8/13/2024)
4. First Tuesday following the first Monday in November (11/5/2024)

### 2025 (Regularly Scheduled Elections in Odd Numbered Years)

1. Third Tuesday in February (2/18/2025)
2. First Tuesday in April (4/1/2025)
3. No Fall Elections

## ELECTION POLLING PLACES

Voting Hours are from 7:00AM to 8:00PM. Bring your photo ID.

Alderman District	Wards	Location
1	1, 2, 3	Brookfield East High School 3305 Lilly Road
2	4, 5, 6, 22	Brookfield Central High School 16900 Gebhardt Road

Alderman District	Wards	Location
3	7, 8, 9	Brookfield Central High School 16900 Gebhardt Road
4	10, 11, 12	Sharon Lynne Wilson Center for the Arts 3270 Mitchell Park Drive
5	13, 14, 15	Brookfield Public Safety Bldg., Courtroom 2100 N. Calhoun Road
6	16, 17, 18	Brookfield Conference Center 325 S. Moorland Road
7	19, 20, 21	Brookfield Conference Center 325 S. Moorland Road

## MYVOTE WISCONSIN

You can find out where you vote, what is on your ballot, register to vote, request an absentee ballot, track your absentee ballot, and see your voting history by visiting <https://myvote.wi.gov>.

## OTHER ELECTION-RELATED ITEMS

- [Absentee Voting](#)
- [Election History](#) - Going back to 1991, see what the turnout has been in the City of Brookfield.
- [Election Notices](#) - Use this link to find legal postings about elections.
- [Election Signs](#) - The election is over. When will residents be required to remove the signs?
- [Election Results](#) - Unofficial results from Election night can be found on the Waukesha County Clerk's website. The Official City of Brookfield Election results are posted after the Board of Canvass has been completed and can be found in Election Notices above.
- [Poll Worker Information](#)
- [Registering to Vote](#)
- [Sample Ballot](#) - MyVote
- [Voter Information](#)
- [Ward Map](#)

If you need additional information, contact the City Clerk's Office.

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 Government Websites by CivicPlus<sup>®</sup>

Select Language 







# EXHIBIT 3

## ORDINANCE #2791-22 OF THE CITY OF BROOKFIELD, WISCONSIN

Committee: Legislative and Licensing  
Committee Date: March 15, 2022  
Committee Recommendation: 5-0

Public Hearing: n/a  
Council Date: April 5, 2022  
Council Action: Adopted 14-0

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*Repeal Section 2.16.060 of the Brookfield Municipal Code Providing for the Canvassing of Absentee Ballots for all Elections in the City of Brookfield by the Municipal Board of Absentee Ballot Canvassers commonly referred to as Central Count.*

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*The Common Council of the City of Brookfield do ordain as follows:*

**PART I.** Section 2.16.060 of the City of Brookfield Municipal Code is hereby repealed.

**PART II.** All ordinances and parts of ordinances contravening the provisions of this ordinance are hereby repealed.

**PART III.** If any section or portion of this ordinance shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect.

**PART IV.** The provisions of this ordinance shall be in full force and effect from and after its passage and publication.

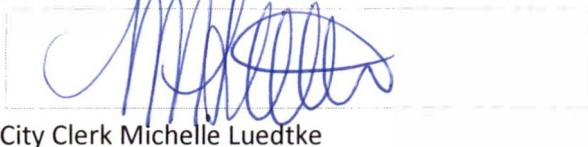
*Adopted this 5th day of April 2022.*

Approved:



Mayor Steven V. Ponto

Attested:



City Clerk Michelle Luedtke

Publication Date: April 9, 2022

In re Complaint filed by Andrew Yunker, Case No. EL 24-23

**AFFIDAVIT OF MAILING**


STATE OF WISCONSIN )  
: ss  
WAUKESHA COUNTY )

I, Jenna Merten, being first duly sworn on oath say that I am an employee of the City of Brookfield and not a party of this action.

That on March 19, 2024, I caused an Answer of Respondent Michelle Luedtke with attached Exhibits, dated March 19, 2024, to be enclosed in a sealed envelope for mailing and deposited it at the United States Postal facility, with first-class postage prepaid, to the following:

Andrew Yunker  
17830 West North Avenue  
Brookfield, WI 53045

Dated this 19th day of March 2024 in Brookfield, Wisconsin.

  
Jenna Merten

Subscribed and sworn to before me  
this 19th day of March 2024.

  
Mary L. Schulz

Notary Public, State of Wisconsin  
My Commission is permanent / expires: 9-30-25

MARY L. SCHULZ  
NOTARY PUBLIC  
STATE OF WISCONSIN