



AGENDA
OZAUKEE COUNTY BOARD
ORGANIZATIONAL MEETING
TUESDAY, APRIL 20, 2021 – 9:00 AM
ADMINISTRATION CENTER - ROOM A-204
121 W. MAIN STREET, PORT WASHINGTON, WI 53074

THE FOLLOWING BUSINESS WILL BE BEFORE THE COUNTY BOARD FOR INITIATION, DISCUSSION, CONSIDERATION, DELIBERATION AND POSSIBLE FORMAL ACTION:

The public can access the meeting by viewing the live stream at the link which will be opened five minutes before the call to order:

[County Board Live Stream](#)

*The public can submit comments here: [Public Comment Form](#)
[Public Comment Policy](#) & [Instructions for Submitting Public Comments Online](#)*

1. CALL TO ORDER

Roll Call

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. PUBLIC COMMENT

Legislative Update

Chairperson's Proclamation

4. COMMUNICATIONS

5. CLAIMS

6. NON-COMMENDATION RESOLUTIONS

RES.21-1: Protecting the Constitutional Rights of Ozaukee County Citizens

RES.21-2: Application to the Wisconsin Department of Revenue for a Class B Intoxicating Liquor Permit Renewal and Designating Concessionaire(s) to Utilize County Facilities at Hawthorne Hills Golf Course

7. COMMITTEE APPOINTMENTS/REAPPOINTMENTS

8. COMMITTEE REPORTS

COVID-19 Pandemic Update

Interim Public Health Director Tyler Weber

9. ADJOURNMENT

RESOLUTION NO. 21-1

PROTECTING THE CONSTITUTIONAL RIGHTS OF OZAUKEE COUNTY CITIZENS

WHEREAS, the United States Constitution serves as the fundamental document that establishes the workings and role of the federal government and defines the limitations of said government with respect to its inability to infringe upon the rights and liberties of all people; and

WHEREAS, the United States Constitution forms a more perfect union, establishes justice, insures domestic tranquility, provides for the common defense, promotes the general welfare, and secures the blessings of liberty for United States citizens and their posterity; and

WHEREAS, the Bill of Rights added the first ten amendments to the United States Constitution in order to reaffirm specific guarantees of personal freedoms, clearly define limitations on the federal government’s power, and make explicit declarations that all rights and powers not granted to the United States government are reserved to the states or to the people; and

WHEREAS, the Constitution of the State of Wisconsin which was ratified in 1848 contains a Declaration of Rights which states in Article I: “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed;” and

WHEREAS, throughout the history of and subsequent amendments to the United States Constitution and the Constitution of the State of Wisconsin, the foundation of liberties, freedoms and inalienable rights has endured; and

WHEREAS, each member of the Ozaukee County Board of Supervisors took an Oath of Office swearing to support the United States Constitution and the Constitution of the State of Wisconsin.

NOW, THEREFORE, BE IT RESOLVED, by the Ozaukee County Board of Supervisors that no agent, employee or official of Ozaukee County in his or her official capacity shall knowingly participate, whether by act or by omission, in conduct that infringes upon any individual’s rights, as expressed by the United States Constitution and the Constitution of the State of Wisconsin.

Dated at Port Washington, Wisconsin, this 20th day of April 2021.

SUMMARY: Resolution Protecting Constitutional Rights.

VOTE REQUIRED: Majority

Resolution brought forth by Supervisors Haas and Irish to the committee.

EXECUTIVE COMMITTEE

04/05/21

Executive Committee

APPROVED

RESULT:	APPROVED [4 TO 0]
MOVER:	M. Wolf, 2nd Vice- Chairperson
SECONDER:	D. Korinek, Supervisor District 13
AYES:	L. Schlenvogt, P. Melotik, M. Wolf, D. Korinek
ABSTAIN:	K. Geracie, R. Nelson

Executive Committee

AGENDA INFORMATION SHEET

AGENDA DATE:	April 20, 2021
DEPARTMENT:	Administrator
DIRECTOR:	Jason Dzwinel
PREPARER:	Jason Dzwinel

Agenda Summary Protecting the Constitutional Rights of Ozaukee County Citizens

BACKGROUND INFORMATION: The resolution sponsored by Supervisors Haas and Irish is presented to reaffirm the Oath of Office made by each individual County Board Supervisor when the 2020-2021 County Board term commenced. Per Wis. Stat. 59.11(1)(c) every County Board shall hold an organizational meeting on the third Tuesday of each April thus the resolution is presented on April 20, 2021.

ANALYSIS: The resolution bars any action by county employees, agents or elected officials that knowingly violates the United States Constitution and the Constitution of the State of Wisconsin.

FISCAL IMPACT: None

ATTACHMENTS:

- Corp Counsel Memo(PDF)



OFFICE OF THE CORPORATION COUNSEL

Rhonda K. Gorden
Corporation Counsel

Rik Kluessendorf
Assistant Corporation Counsel

Date: April 14, 2021

To: Lee Schlenvogt

From: Rhonda Gorden

Re: Resolution No. 21-1 extending the requirements of the “official oath” to county agents, employees and officials.

You requested that I prepare a memo on the issue of whether Resolution No. 21-1 falls “within the delegated legislative powers and privileges granted to the county or the performance of the legal duties charged upon the County.”

Our policy and procedural manual requires that items placed on county board agendas be consistent with “the delegated legislative powers and privileges granted to the county or the performance of the legal duties charged upon the County.” Ozaukee, Wis., Ozaukee County Policy and Procedure Manual sec. 2.05 (2) (g) 3. a. Reviewing the proposed resolution with this in mind, I offer the following opinions.

“WHEREAS” CLAUSES

The last “Whereas” clause in the Resolution recognizes the fact that all county board supervisors have in fact taken the “official oath”. The clause states

WHEREAS, each member of the Ozaukee County Board of Supervisors took an Oath of Office swearing to support the United States Constitution and the Constitution of the State of Wisconsin.

County board supervisors are required to take the “official oath” upon entering office pursuant to Wis. Stat. § 59.21 (1), which states

... Every county supervisor shall take and file the official oath within 20 days after receiving official notice of election or appointment, or if not officially notified, within 20 days after the commencement of the term for which he or she is elected or appointed.

The form of the “official oath” is found in Wis. Stats. §. 19.01, which states

(1) FORM OF OATH. Every official oath required by article IV, section 28, of the constitution or by any statute shall be in writing, subscribed and sworn to and except as provided otherwise by s. 757.02 and SCR 40.15, shall be in substantially the following form:

STATE OF WISCONSIN,
County of

I, the undersigned, who have been elected (or appointed) to the office of, but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

.... ..,

Subscribed and sworn to before me this day of, (year)

....(Signature).....,

(1m) FORM OF ORAL OATH. If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:

I,, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of to the best of my ability. So help me God.

As County Board Supervisors comply with statute by taking the official oath, they are acting consistent with an expressly stated “legal duty charged upon the County.” The “Whereas” clause reiterating the fact that all supervisors have taken the official oath is recognition of the supervisors’ historical compliance with an existing legal duty. The other “Whereas” clauses in the resolution recount historical national and state constitutional events. Reiteration of historical facts is common in resolution “Whereas” clauses.

County Board Supervisors are not the only county officials required to take the official oath. County officers named in Chapter 59 must also take the official oath per s. 59.21 (1), Wis. Stats., which states “Each county officer named in this chapter . . . shall execute and file an official bond and take and file the official oath within 20 days after receiving official notice of election or appointment.” While Chapter 59 is subject to interpretation as to who is included as a “county officer named in this chapter,” the term expressly includes, for example, elected county register of deeds, clerks, treasurers, sheriffs, coroners, surveyors, clerks of circuit court and county comptrollers. (See s. 59.20 (2), Wis. Stats.) Other county officers expressly required to take the “constitutional oath,”

including, deputy treasurers (s. 59.25 (2)), deputy comptrollers (s. 59.255 (2)(b)), and certain corporation counsels and deputy corporation counsels (s. 59.42 (2)(a)).

References to non-county government employees taking oaths are also ample throughout the Wisconsin Statutes. One example is weed commissioners, pursuant to Wis. Stats. § 66.0517 (2), which states

APPOINTMENT. (a) *Town, village and city weed commissioner.* The chairperson of each town, the president of each village and the mayor of each city may appoint one or more commissioner of noxious weeds on or before May 15 in each year. A weed commissioner shall take the official oath and the oath shall be filed in the office of the town, village or city clerk.

Oaths require an affirmative commitment to the constitution by the oath-taker. Whether or not a government agent is statutorily required to take an oath appears to be partially based on factors such as the level of the position within the government entity and the elective or appointive status of the agent.

Oaths and policies such as the proposed Resolution merely reiterate existing legal duties and provide notice of them. As further discussed below, government actors are obligated to abide by constitutional requirements whether or not they are required to take an oath. The requirement of taking an oath or the imposition of an express policy requiring compliance with the constitution imposes no additional obligations on government agents than those which already exist.

Were anyone to observe that an agent, employee or official of the county was violating an individual's federal constitutional rights, it is imperative that the concern be brought to the attention of the County so that any potential constitutional violations are investigated, eliminated and remedial action taken. The constitutional duties already imposed on county agents, official and employees can have legal consequences when not performed properly.

RESOLVED CLAUSE

The Resolution's Resolved clause is designed so that by voting in the affirmative, the county board expressly extends the oath's essential requirements to all county agents, employees and officials by mandating that

no agent, employee or official of Ozaukee County in his or her official capacity shall knowingly participate, whether by act or by omission, in conduct that infringes upon any individual's rights, as expressed by the United States Constitution and the Constitution of the State of Wisconsin.

Extending the oath's requirements to county agents, employees and officials is consistent with the county's legal duties. Though no statute expressly requires the county pass a resolution or ordinance such as the one proposed, federal law requires all county agents, employees and officials to comply with federal constitutional mandates pursuant to federal civil rights statutes, which states

42 U.S. Code § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Federal case law clarifies that government agencies are required to train staff to prevent constitutional violations and to avoid implementing policies that violate the constitution. An example of a civil rights action based on failure of a government agency to properly train staff is *City of Canton, Ohio v. Harris*, 489 U.S. 378, 109 S.Ct. 1197 (1989). In *Canton*, the Supreme Court stated

Consequently, while claims such as respondent's—alleging that the city's failure to provide training to municipal employees resulted in the constitutional deprivation she suffered—are cognizable under § 1983, they can only yield liability against a municipality where that city's failure to train reflects deliberate indifference to the constitutional rights of its inhabitants.

Id., at 392.

An example of a civil rights action in which a government agency's policy violated the constitution is *Monell v. Department of Social Services*, 436 U.S. 658 (1978). In *Monell*, the Supreme Court stated

when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is

responsible under § 1983. Since this case unquestionably involves official policy as the moving force of the constitutional violation found by the District Court, see *supra*, at 2020–2021, and n. 2, we must reverse the judgment below.

Id., at 694-95.

When government agents cause harm by violating the constitution, the government may be required, or agree to pay, substantial damages to a successful petitioner. (See, e.g., <https://www.jsonline.com/story/news/politics/2018/03/20/plan-close-lincoln-hills-teen-prison-may-collapse-wisconsin-senate-assembly-differ-details-and-finan/438252002/>) On the other hand, victims of constitutional violations may be left without a remedy due to their inability to overcome the high hurdle that petitioners may have to overcome to obtain relief in civil rights actions. A particularly disturbing set of facts and a high hurdle is soberingly illustrated in the civil rights case of *Connick v. Thompson*, 131 S.Ct. 1350 (2011) in which the victim petitioner was unable to obtain damages.

Wisconsin state statutes also impose state and federal constitutional duties on county agents, employees and officials (and non-government persons as well). Examples of these statutes include Wis. Stats. § 106.50 related to fair housing and § 111.321 related to employment discrimination.

Federal and state constitutional references in Chapter 59 also clearly illustrate that counties and their agents are already obligated to abide by federal and state constitutional requirements. For example, Wis. Stat. § 59.54 (27) states

(c) *Nondiscrimination against religious organizations.* If the board is authorized to contract with a nongovernmental entity, or is authorized to award grants to a nongovernmental entity, religious organizations are eligible, on the same basis as any other private organization, to be contractors and grantees under any program administered by the board so long as the programs are implemented consistently with the first amendment to the U.S. Constitution and article I, section 18, of the Wisconsin constitution. Except as provided in par. (L), the board may not discriminate against an organization that is or applies to be a contractor or grantee on the basis that the organization does or does not have a religious character or because of the specific religious nature of the organization.

The County has a policy and procedure manual and code of ordinances. The purpose of these documents is to gather in one place all policies and laws in an organized manner. Though it is not improper to pass county policy in the form of a resolution, free-floating

policies tend to be lost and forgotten. For this reason, it may be better to create an ordinance imposing the “support the constitution” requirement on county agents, employees and officials.

I researched online to see if I could find any Wisconsin county policies imposing constitutional requirements on county employees. Kenosha’s ethics ordinance incorporates constitutional requirements. The ordinance states

20.03-1 RESPONSIBILITY OF PUBLIC OFFICE

Public officials and employees are agents of public purpose and hold office for the benefit of the public. **They are bound to uphold the Constitution of the United States and the Constitution of the State of Wisconsin** and to carry out impartially the laws of the nation, state and county, and to observe in their official acts the highest standards of ethics and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in their official actions is to be above reproach so as to foster respect for all government.

All current employees and job applicants and any individual applying for membership on a County board or commission shall be given notice of the fact that they will be subject to the provisions of this Code of Ethics, any financial disclosure requirements that they will be subject to and the need to reveal any potential or actual conflict of interests.

[Emphasis added.]

Like Kenosha, Ozaukee County has an ethics ordinance which expressly extends statutory ethics requirements imposed on county officials to county employees. (See 2.44 of the Ozaukee County Code of Ordinances) Our ethics ordinance would be a good place to incorporate a reference to constitutional duties to notify all county actors of their existence.

CONCLUSION

The Resolution falls within the powers delegated to (and constitutionally imposed upon) counties and their agents, employees and officials. The Resolution imposes no additional legal duties, it merely reiterates them. Should the Resolution be adopted, the Executive Committee could subsequently direct staff to draft an ordinance codifying the Resolution’s direction that county agents, employees and officials act in compliance with constitutional requirements. Although an ordinance would be a reiteration of existing constitutional requirements already imposed on county agents, employees and officials, it would serve to provide additional notice of the requirements to them.

RESOLUTION NO. 21-2

APPLICATION TO THE WISCONSIN DEPARTMENT OF REVENUE FOR A CLASS B INTOXICATING LIQUOR PERMIT RENEWAL AND DESIGNATING CONCESSIONAIRE(S) TO UTILIZE COUNTY FACILITIES AT HAWTHORNE HILLS GOLF COURSE

WHEREAS, and the State of Wisconsin Department of Revenue has authorized counties to apply directly for a Class B intoxicating liquor permit for county designated concessionaires in government owned public facilities under §125.51(5)(b) Wis. Stats.; and

WHEREAS, Hawthorne Hills Golf Course, being a government owned public facility, can apply for this permit, which will allow the sale of liquor by the Concessionaire(s) at Hawthorne Hills Golf Course; and

WHEREAS, the Airport/Public Facility Permit for Hawthorne Hills Golf Course gives the concessionaire the opportunity to offer improved customer service by providing a permit to sell Class B intoxicating liquor; and

WHEREAS, the availability of liquor at Hawthorne Hills Golf Course will provide additional revenue for the concessionaire allowing the County to attract new outings, additional rounds of golf, and more frequent rental of the facilities, all of which will contribute to the golf course revenues; and

WHEREAS, the Ozaukee County Board of Supervisors approved Resolution 19-51 authorizing the State of Wisconsin Class B intoxicating liquor biannual permit submittal at its January 16, 2019 meeting; and

WHEREAS, the current State of Wisconsin Class B intoxicating liquor biannual permit will expire in June 2021.

NOW, THEREFORE, BE IT RESOLVED that the Ozaukee County Board of Supervisors approves the application to the Department of Revenue under the airport/public facility permit for renewal of a Class B intoxicating liquor permit and this application will be made on a biannual basis for Milwaukee B&E Partners I LLC, the designated concessionaire, for as long as they remain the designated concessionaire for Hawthorne Hills Golf Course.

Dated at Port Washington, Wisconsin this 5th day of May, 2021.

SUMMARY: Submittal of the airport/facility permit application for renewal of a Class B intoxicating liquor permit for the Hawthorne Hills Golf Course.

VOTE REQUIRED: Majority

NATURAL RESOURCES COMMITTEE

04/08/21

Natural Resources Committee

APPROVED

RESULT:	APPROVED [UNANIMOUS]
MOVER:	B. Ross, Supervisor District 19
SECONDER:	B. Jobs, Vice-Chairperson
AYES:	D. Korinek, B. Jobs, R. Holyoke, B. Ross
EXCUSED:	N. Minkel-Dumit

Natural Resources Committee

AGENDA INFORMATION SHEET

AGENDA DATE:	April 20, 2021
DEPARTMENT:	Planning and Parks
DIRECTOR:	Andrew Struck
PREPARER:	Andrew Struck

Agenda Summary Application to the Wisconsin Department of Revenue for a Class B Intoxicating Liquor Permit Renewal and Designating Concessionaire(s) to Utilize County Facilities at Hawthorne Hills Golf Course

BACKGROUND INFORMATION: The Hawthorne Hills Golf Course Concessionaire, Milwaukee B&E Partners I LLC, is attempting to renew its bi-annual State of Wisconsin Class B intoxicating liquor permit. . The State of Wisconsin Department of Revenue has authorized counties to apply directly for a Class B intoxicating liquor permit for county designated concessionaires in government owned public facilities under §125.51(5)(b) Wis. Stats. Hawthorne Hills Golf Course, being a government owned public facility, can apply for this permit, which will allow the sale of liquor by the Concessionaire(s) at Hawthorne Hills Golf Course. Milwaukee B&E Partners I LLC’s current State of Wisconsin Class B intoxicating liquor permit will expire in June 2021 and a permit application for biannual renewal is required.

ANALYSIS: The Airport/Public Facility Permit for the Hawthorne Hills Golf Course gives the Concessionaire the opportunity to offer improved customer service by providing a permit to sell Class B intoxicating liquor. The continued availability of liquor at Hawthorne Hills Golf Course will provide additional revenue for the Concessionaire allowing the County to attract new outings, additional rounds of golf, and more frequent rental of the facilities, all of which will contribute to our golf course revenues. The Airport/Public Facility Permit application requires an authorizing resolution passed by the County Board and a Declaration signature from the County Board Chairperson. The Natural Resources Committee unanimously approved the resolution authorizing the permit application at its January 3, 2019 meeting (Ayes: Rothstein, Jobs, Gall, Holyoke, Ross), and the Ozaukee County Board of Supervisors approved Resolution 18-51 authorizing the permit application at its January 16, 2019 meeting (Ayes - 24, Nays 1, Absent - 1). This resolution will support the renewal of the biannual Class B intoxicating liquor permit application. The biannual permit fee of \$600 will be the Concessionaire’s responsibility.

FISCAL IMPACT:

Balance Current Year: \$600 Next Year’s Estimated Cost: \$0

FUNDING SOURCE:

County Levy:

Non-County Levy: X Indicate source: MBE Concessionaire

RECOMMENDED MOTION: Approve and recommend to the Ozaukee County Board of Supervisors the resolution for the application to the Department of Revenue under the Airport/Public Facility Permit to renew a Class “B” Intoxicating Liquor permit and this application will be made on a biannual basis for Milwaukee B&E Partners I LLC, the designated Concessionaire, for as long as they remain the designated Concessionaire for the Hawthorne Hills Golf Course.

Ozaukee County Board

AGENDA INFORMATION SHEET

AGENDA DATE: April 20, 2021
DEPARTMENT: Administrator
DIRECTOR: Jason Dzwinel
PREPARER: Julie Winkelhorst

Agenda Summary April 20, 2021 Appointments/Reappointments

HUMAN SERVICES BOARD

Appoint Kathleen Oberneder to replace Patricia Treffert

Term expires April 15, 2024