


# Waukesha officials justify closed session discussion of water deal

Say talks will focus on recent negotiations, lingering questions about contract

By Hannah Weikel  
hweikel@conley.net.com  
262-513-2651

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Phone: 262-513-2641

Email: [soundoff@conley.net.com](mailto:soundoff@conley.net.com)

**WAUKESHA** — The Waukesha Common Council will review and act on the city's 40-year water contract this evening after months of negotiations as part of a major effort to obtain a reliable water source for the future. Aldermen will have the final say on the stipulations of the deal, and some of their discussion about the contract could be done behind closed doors at the meeting.

Some Waukesha officials say there could be some lingering renegotiations that come up at tonight's meeting, which will be the first time aldermen can ask the city attorney questions about the changes made to the contract since they viewed it last month. Other officials say the closed session notice was placed in tonight's agenda as a formality, and they might not take discussions behind closed doors at all.

Public officials are required to discuss city issues and explain their decisions before the public under most circumstances, according to state open meetings laws. This allows the public to follow along with city government's processes and understand decisions made by their elected officials.

## Exemptions to open meetings law

Several exemptions to the open meetings law justify certain discussions to be

had behind closed doors, including the exemption cited in tonight's Common Council agenda, which would allow officials to privately discuss negotiations when conducting public business, like the water contract with Milwaukee, "when competitive or bargaining reasons require a closed session."

The proposed contract between Milwaukee and Waukesha has been made public at several steps during the process, even before negotiations had ceased. The proposed contract was most recently changed last week after the Milwaukee Common Council approved it 14 to 1, said Dan Duchniak, general manager for the Waukesha Water Utility, and isn't finalized until Waukesha's council approves it.

Mayor Shawn Reilly said tonight's closed session would allow aldermen to meet with City Attorney Brian Running to ask questions about the document that are difficult to ask in public.

"In closed session you can still ask questions that would be very difficult to ask in open session without making the other side upset," Reilly said. "This allows council members to openly question parts of [the contract]."

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## Water

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Reilly said the open meeting law exemption regarding negotiations and bargaining allows aldermen to privately meet with Running to discuss the document while they are still in the approval process.

During Milwaukee's Common Council meeting last week, there was no discussion about the contract before it moved to a vote. The group also didn't go into closed session during the meeting. During a Milwaukee Steering and Licensing Committee meeting earlier last month, the panel publicly questioned Mayor Reilly and Milwaukee Mayor Tom Barrett at length about the deal.

"Milwaukee council members said the contract should have taken care of issues with transportation and housing," Reilly said of the comments made in the committee hearing. "I want to make sure our aldermen get to ask all the questions they want without upsetting Milwaukee."

### 'You don't negotiate a contract in public,' says Reilly

Waukesha officials have pushed for the contract with Milwaukee to be a water-only deal, avoiding things that would affect transportation and affordable housing. Waukesha's council can decide they don't want to accept a certain portion of the contract during tonight's meeting and ask to change it or renegotiate, Reilly said.

When asked if he thought the public would be interested in those discussions, Reilly said he was comfortable with the decision to keep them private.

"Sure, it may be of public interest, but the goal here is to get the best deal and you don't negotiate a contract in public," he said. "This is black letter law that you negotiate in closed session."

Bill Lueders, president of the Wisconsin Freedom of Information Council, said it may not be that simple.

"I think this is pretty much gray letter law," Lueders said. "I've seen this exemption routinely applied, and in my mind routinely over-applied... not wanting to upset others because of the questions you ask is the epitome of a bad reason for having a secret meeting."

Lueders said city governments must meet a threshold where, unless the discussion is had in closed session, harm will ensue.

"The key word for me is 'require.' The statute says whenever competitive strategy or bargaining discussions require a closed session," he said. "That's a really strong word. It's not a matter of preference; it's saying that it meets that threshold where, unless this is done in secret, harm will ensue. I don't think they've made that case here. There's no reason they should have this discussion in closed session other than they don't want to."

### City attorney expects public discussion after closed session

Waukesha aldermen have the option to come out of the closed session and discuss the contract and reiterate

their questions for the public before the vote, said City Attorney Running.

Running said the reason for a closed session is because council members don't have to accept the contract at this point.

"But I think they will," he said. "Still, if this contract was an absolute certainty, then yes of course it would be done in open session."

Running said he expects the closed session to be brief and that there will be a lot of public discussion afterward. He also said that just because a closed session notice was put on tonight's agenda doesn't mean it's going to be necessary.

"I was asked on Friday if I wanted to have closed session and I said that we should put it on there if needed. If it becomes obvious to me right at the get-go that it's not needed, we will come out of it and talk publicly," said Running, who acts as the check and balance during closed session to make sure only privileged information is discussed.

An alderman could hypothetically ask for something to be renegotiated, which would then result in discussions involving negotiation strategies, but most likely that won't happen, Running said.

Waukesha Common Council President Aaron Perry said the decision to have discussions in closed session is consistent with past water discussions in the council.

"I don't anticipate it taking a long time. We are just covering our bases," he said. "As you can imagine, it's one of the more major and detailed things that we've gone over in the last decades."

Perry said all of the aldermen have had time in past closed sessions to raise questions and go over the negotiations with Milwaukee in great detail, and it's become a formality to hold those talks in private.

### Contract still under revision Monday afternoon, says Duchniak

Waukesha Water Utility General Manager Dan Duchniak said aldermen will likely have lots of questions in the closed session because the language in the contract was under revision until Monday afternoon and they haven't reviewed the deal as a full body for about a month.

"The last time we met with the council in closed session was about a month ago and they had items that needed to be addressed," he said. "A lot has changed in the contract since that time and Milwaukee acted on it. In those weeks there were tons of revisions."

Duchniak said the water utility's lawyer has agreed that discussions should be private at tonight's council meeting when they go over the most recent negotiations.

Duchniak said they aren't trying to keep any information from the public, which is why the utility and its public relations firm held three open houses last week at Waukesha high schools.

"We will come out of closed session and act on the contract, and that is open to the public," he said.

The council will convene at 6:30 p.m. tonight in the council chambers at City Hall, 201 Delafield St.