



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-5530/2  
SWB:amn&skw

## 2021 ASSEMBLY BILL 894

January 21, 2022 - Introduced by Representatives WITKE, CALLAHAN, MOSES, MURSAU, NOVAK, J. RODRIGUEZ, SNYDER, SPREITZER, SWEARINGEN and ZIMMERMAN, cosponsored by Senators PETROWSKI, BALLWEG, BEWLEY, COWLES, JACQUE and MARKLEIN. Referred to Committee on Local Government.

1     **AN ACT to renumber and amend** 66.0217 (14) (b); **to amend** 30.745 (2) (c), 32.03  
2             (6) (b), 62.23 (2), 62.23 (7a) (a), 62.23 (7a) (b), 66.0415 (1), 236.10 (1) (b) (intro.),  
3             236.10 (2) and 254.57; and **to create** 32.03 (6) (bm), 62.23 (7a) (am), 66.02165,  
4             66.0217 (14) (b) 1. b. and 66.0217 (14) (b) 2. of the statutes; **relating to:** local  
5             land use restrictions.

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### *Analysis by the Legislative Reference Bureau*

This bill changes certain restrictions on local land use, including limiting annexations and boundary agreements by newly incorporated cities and villages; allowing annexation of town territory across county lines; limiting municipal extraterritorial land division and zoning powers; prohibiting municipalities from using condemnation to acquire certain blighted properties for the purpose of transferring the property to third-party developers; and modifying requirements relating to interim ordinances to freeze extraterritorial zoning.

Under the bill, during the first five years after an incorporation, a newly incorporated city or village is prohibited from adding or contracting to add any remaining town territory of the town from which the newly incorporated city or village was created by use of consolidation, a boundary agreement, or annexation other than annexation by unanimous approval, except that the city or village and the town territory remaining after incorporation may, if certain requirements are met, consolidate by ordinance passed by a two-thirds vote of all of the members of each board or council and ratified by the electors at a referendum held in each municipality.

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Under current law, cities and villages are prohibited from annexing town territory across county lines without approval of the town. The bill allows cities or villages to annex town territory across county lines if there is unanimous approval of the owners of the annexed lands.

Current law generally authorizes cities and villages to exercise zoning authority within their extraterritorial zoning jurisdiction. Extraterritorial zoning jurisdiction consists of unincorporated areas (town or county territory) within three miles of the corporate limits of a first, second, or third class city or within one and one-half miles of a fourth class city or a village. The bill expressly provides that the unincorporated area subject to extraterritorial zoning jurisdiction includes areas that are either surrounding or entirely surrounded by a single city or village.

The bill also provides that, unless otherwise agreed to by a town, the authority of a city or village to exercise its extraterritorial powers outside of its adjacent outlying waters includes only town territory within the extraterritorial zoning jurisdiction of the city or village surrounding or included entirely within the primary geographical area of the city or village.

Current law also provides that a city or village that wishes to exercise extraterritorial zoning jurisdiction may enact an interim zoning ordinance to preserve existing zoning or uses in all or part of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is being prepared. Under the bill, such an ordinance may be enacted to preserve existing zoning in areas subject to a general town or county zoning ordinance and to preserve existing uses in areas not subject to a general zoning ordinance. Current law provides that such an ordinance may be in effect for no more than two years, unless the city or village and the affected town agree to a one-year extension. Under the bill, such an ordinance may be in effect for no more than eighteen months, although it may still be extended for an additional year as provided under current law. The bill also increases the time during which no other interim zoning ordinance may be enacted affecting the same area or part of an area from two years after the expiration of the interim zoning ordinance or the extension of such an ordinance to five years after the expiration of the ordinance or the extension. Under the bill, the changes to interim zoning ordinances first apply to such zoning ordinances that are in effect on the effective date of the bill, except that the change in the permitted duration from two years to eighteen months, before any extension, first applies to interim zoning ordinances adopted on the effective date of the bill.

The bill prohibits a municipality from using its condemnation powers in certain circumstances, providing that a municipal condemnor may not acquire blighted real property that it intends to convey or lease to a private entity if the property is outside of the boundaries of the municipality. Under the bill, before commencing the condemnation of real property that is outside of a municipality, that municipality must make written findings and provide a copy of those findings to the owner of the property and each town, village, or city in which the property is located. The findings must include a description of the project, a legal description of the project area, and the purpose of the condemnation.

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For further information see the local fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 30.745 (2) (c) of the statutes is amended to read:

2           30.745 (2) (c) *Administration and enforcement.* ~~A~~ Except as provided under  
3 s. 62.23 (7a) (am), a municipality may exercise jurisdiction over adjacent outlying  
4 waters for the purpose of administering and enforcing an ordinance enacted under  
5 this section.

6           **SECTION 2.** 32.03 (6) (b) of the statutes is amended to read:

7           32.03 (6) (b) ~~Property~~ Subject to par. (bm), property that is not blighted  
8 property may not be acquired by condemnation by an entity authorized to condemn  
9 property under s. 32.02 (1) or (11) if the condemnor intends to convey or lease the  
10 acquired property to a private entity.

11           **SECTION 3.** 32.03 (6) (bm) of the statutes is created to read:

12           32.03 (6) (bm) If the condemnor is a municipality, the municipality may not  
13 acquire blighted real property that it intends to convey or lease to a private entity  
14 if the property is outside of the boundaries of the municipality. Before commencing  
15 the condemnation of real property that is outside of the boundaries of a municipality,  
16 the municipality shall make written findings and provide a copy of the findings to  
17 the owner of the property and each town, village, or city in which the property is  
18 located. The findings shall include all of the following:

- 19           1. A description of the project.
- 20           2. A legal description of the project area.
- 21           3. The purpose of the condemnation.

**ASSEMBLY BILL 894****SECTION 4**

1           **SECTION 4.** 62.23 (2) of the statutes is amended to read:

2           62.23 (2) FUNCTIONS. ~~It~~ Except as provided under sub. (7a) (am), it shall be the  
3 function and duty of the commission to make and adopt a master plan for the physical  
4 development of the city, including any areas outside of its boundaries that in the  
5 commission's judgment bear relation to the development of the city provided,  
6 however, that in any county where a regional planning department has been  
7 established, areas outside the boundaries of a city may not be included in the master  
8 plan without the consent of the county board of supervisors. The master plan, with  
9 the accompanying maps, plats, charts, and descriptive and explanatory matter, shall  
10 show the commission's recommendations for such physical development, and shall,  
11 as described in sub. (3) (b), contain at least the elements described in s. 66.1001 (2).  
12 The commission may from time to time amend, extend, or add to the master plan or  
13 carry any part or subject matter into greater detail. The commission may adopt rules  
14 for the transaction of business and shall keep a record of its resolutions, transactions,  
15 findings, and determinations, which record shall be a public record.

16           **SECTION 5.** 62.23 (7a) (a) of the statutes is amended to read:

17           62.23 (7a) (a) Extraterritorial zoning jurisdiction means the unincorporated  
18 area within 3 miles of the corporate limits of a first, second or third class city, or 1  
19 1/2 miles of a fourth class city or a village. The unincorporated area subject to  
20 extraterritorial zoning jurisdiction includes areas that are either surrounding or  
21 entirely surrounded by a single city or village. Wherever extraterritorial zoning  
22 jurisdictions overlap, the provisions of s. 66.0105 shall apply and any subsequent  
23 alteration of the corporate limits of the city by annexation, detachment or  
24 consolidation proceedings shall not affect the dividing line as initially determined  
25 under s. 66.0105. The governing body of the city shall specify by resolution the

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1 description of the area to be zoned within its extraterritorial zoning jurisdiction  
2 sufficiently accurate to determine its location and such area shall be contiguous to  
3 the city. The boundary line of such area shall follow government lot or survey section  
4 or fractional section lines or public roads, but need not extend to the limits of the  
5 extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution  
6 the governing body shall declare its intention to prepare a comprehensive zoning  
7 ordinance for all or part of its extraterritorial zoning jurisdiction by the publication  
8 of the resolution in a newspaper having general circulation in the area proposed to  
9 be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy  
10 of the resolution and a scale map reasonably showing the boundaries of the  
11 extraterritorial jurisdiction to the clerk of the county in which the extraterritorial  
12 jurisdiction area is located and to the town clerk of each town, any part of which is  
13 included in such area.

14 **SECTION 6.** 62.23 (7a) (am) of the statutes is created to read:

15 62.23 (7a) (am) 1. In this paragraph, “primary geographical area” means the  
16 area of a city or village that serves as the location of the primary seat of government  
17 and all territory that is contiguous to that area.

18 2. Unless otherwise agreed to by a town, the authority of a city or village to  
19 exercise jurisdiction outside of its adjacent outlying waters when acting under s.  
20 30.745 (2), or outside of its boundaries or corporate limits when acting under this  
21 subsection or sub. (2), or under s. 66.0415 (1), 236.10 (1) (b) or (2), or 254.57, includes  
22 only town territory within the extraterritorial zoning jurisdiction of the city or village  
23 surrounding or included entirely within the primary geographical area of the city or  
24 village.

25 **SECTION 7.** 62.23 (7a) (b) of the statutes is amended to read:

**ASSEMBLY BILL 894****SECTION 7**

1           62.23 (7a) (b) The governing body may enact, without referring the matter to  
2 the plan commission, an interim zoning ordinance to preserve existing zoning ~~or uses~~  
3 in areas subject to a general zoning ordinance under s. 59.69, 60.61, or 60.62 and to  
4 preserve existing uses in areas not subject to a general zoning ordinance in all or part  
5 of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is  
6 being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall  
7 be effective for no longer than ~~2 years~~ 18 months after its enactment, unless  
8 extended as provided in this paragraph. Within 15 days of its passage, the governing  
9 body of the city shall publish the ordinance in a newspaper having general  
10 circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, or as  
11 a notice, as described under s. 62.11 (4) (c) 2., and the city clerk shall mail a certified  
12 copy of the ordinance to the clerk of the county in which the extraterritorial  
13 jurisdiction is located and to the clerk of each town affected by the interim zoning  
14 ordinance and shall file a copy of the ordinance with the city plan commission. The  
15 governing body of the city may extend the interim zoning ordinance for no longer  
16 than one year, upon the recommendation of the joint extraterritorial zoning  
17 committee established under par. (c). No other interim zoning ordinance shall be  
18 enacted affecting the same area or part thereof until ~~2~~ 5 years after the date of the  
19 expiration of the interim zoning ordinance or the one year extension thereof. While  
20 the interim zoning ordinance is in effect, the governing body of the city may amend  
21 the districts and regulations of the ordinance according to the procedure set forth in  
22 par. (f).

23           **SECTION 8.** 66.02165 of the statutes is created to read:

24           **66.02165 Limitations on newly created incorporated village or city.** For  
25 a 5-year period after incorporation under this subchapter, a newly incorporated city

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1 or village may not add or contract to add any remaining town territory of the town  
2 from which the newly incorporated city or village was created by use of consolidation,  
3 a boundary agreement, or annexation other than annexation by unanimous approval  
4 under s. 66.0217 (2), except that the city or village and town territory remaining after  
5 incorporation may consolidate as permitted under s. 66.0230.

6 **SECTION 9.** 66.0217 (14) (b) of the statutes is renumbered 66.0217 (14) (b) 1.  
7 (intro.) and amended to read:

8 66.0217 (14) (b) 1. (intro.) No territory may be annexed by a city or village under  
9 this section if no part of the city or village is located in the same county as the  
10 territory that is subject to the proposed annexation unless the one of the following  
11 applies:

12 a. The town board adopts a resolution approving the proposed annexation.

13 **SECTION 10.** 66.0217 (14) (b) 1. b. of the statutes is created to read:

14 66.0217 (14) (b) 1. b. The annexation is by unanimous approval under sub. (2).

15 **SECTION 11.** 66.0217 (14) (b) 2. of the statutes is created to read:

16 66.0217 (14) (b) 2. Any subsequent annexation by the city or village in the  
17 county of the territory annexed under subd. 1. shall either be approved by the town  
18 board or be annexed by unanimous approval under sub. (2).

19 **SECTION 12.** 66.0415 (1) of the statutes is amended to read:

20 66.0415 (1) The Except as provided under s. 62.23 (7a) (am), the common  
21 council of a city or village board may direct the location, management and  
22 construction of, and license, regulate or prohibit, any industry, thing or place where  
23 any nauseous, offensive or unwholesome business is carried on, that is within the city  
24 or village or within 4 miles of the boundaries of the city or village, except that the  
25 Milwaukee, Menominee and Kinnickinnic rivers with their branches to the outer

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1 limits of the county of Milwaukee, and all canals connecting with these rivers,  
2 together with the lands adjacent to these rivers and canals or within 100 yards of  
3 them, are within the jurisdiction of the city of Milwaukee. A town board has the same  
4 powers as are provided in this section for cities and villages as to the area within the  
5 town that is not licensed, regulated or prohibited by a city or village under this  
6 section. A business that is conducted in violation of a city, village or town ordinance  
7 that is authorized under this section is a public nuisance. An action for the  
8 abatement or removal of the business or an injunction to prevent operation of the  
9 business may be brought and maintained by the common council or village or town  
10 board in the name of this state on the relation of the city, village or town as provided  
11 in ss. 823.01, 823.02 and 823.07, or as provided in s. 254.58. Section 97.42 does not  
12 limit the powers granted by this section. Section 95.72 does not limit the powers  
13 granted by this section to cities or villages but powers granted to towns by this section  
14 are limited by s. 95.72 and by any orders and rules promulgated under s. 95.72.

15 **SECTION 13.** 236.10 (1) (b) (intro.) of the statutes is amended to read:

16 236.10 (1) (b) (intro.) If Except as provided under s. 62.23 (7a) (am), if within  
17 the extraterritorial plat approval jurisdiction of a municipality:

18 **SECTION 14.** 236.10 (2) of the statutes is amended to read:

19 236.10 (2) If Except as provided under s. 62.23 (7a) (am), if a subdivision lies  
20 within the extraterritorial plat approval jurisdiction of more than one municipality,  
21 the provisions of s. 66.0105 shall apply.

22 **SECTION 15.** 254.57 of the statutes is amended to read:

23 **254.57 Smoke.** The Except as provided under s. 62.23 (7a) (am), the common  
24 council of any city or the board of any village may regulate or prohibit the emission  
25 of dense smoke into the open air within its limits and one mile from its limits.



**ASSEMBLY BILL 894****1 SECTION 16. Initial applicability.**

2 (1) EXTRATERRITORIAL LAND DIVISION AND ZONING POWER LIMITATIONS. The  
3 treatment of ss. 30.745 (2) (c), 62.23 (2) and (7a) (a) and (am), 66.0415 (1), 236.10 (1)  
4 (b) (intro.) and (2), and 254.57 first applies to extraterritorial zoning, land division,  
5 or navigation ordinances that are in effect on the effective date of this subsection.

6 (2) INTERIM ZONING. The treatment of s. 62.23 (7a) (b) first applies to an interim  
7 zoning ordinance that is in effect on the effective date of this subsection, except that  
8 the change in the permitted duration of an interim zoning ordinance under s. 62.23  
9 (7a) (b) to 18 months, before any extension, first applies to an interim zoning  
10 ordinance that is adopted on the effective date of this subsection.

11 (3) LIMITATIONS ON NEWLY CREATED INCORPORATED VILLAGE OR CITY. The treatment  
12 of s. 66.02165 first applies to the incorporation of a city or village by a petition filed  
13 with the circuit court under s. 66.0203 (2) (b) on January 1, 2022. For purposes of  
14 this subsection, a petition refiled with the circuit court within one year of dismissal  
15 due to deficiencies in formal signature requirements or failure to meet the minimum  
16 requirements under s. 66.0205, or a new petition submitted within one year of a  
17 determination of the incorporation review board under s. 66.0203 (9) (e) 3., shall be  
18 treated as having been filed with the circuit court on the date of filing of the original  
19 petition.

20

**(END)**