



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 243
[2017 Assembly Bill 770]

**Housing and Local Regulation of
Property Development**

2017 Wisconsin Act 243 makes various changes, described below, relating to housing and local regulation of property development.

LEVY LIMIT EXCEPTION FOR AFFORDABLE HOUSING

The Act creates an exception to general local levy limits to allow a city, village, or town to increase its levy by \$1,000 for each new, single-family residential dwelling unit for which it has issued an occupancy permit, if both of the following apply to the dwelling unit:

- It is located on a parcel no more than one quarter of an acre in a city or village, or on a parcel no more than one acre in a town.
- It sold for not more than 80% of the median price of a new housing unit in the city, village, or town.

Amounts levied under the exception may be used only for police, fire, and emergency medical services, and a municipality may not decrease the amount it spends on those services below the amount spent in the preceding year.

CHANGES RELATING TO IMPACT FEES

Generally, under state law, impact fees are payable to a municipality upon issuance of a building permit by the municipality. [s. 66.0617 (6) (g), Stats.] For impact fees in excess of \$75,000, the Act specifies that a developer may defer payment for a period of four years from the date of issuance of a building permit, or until six months before the municipality incurs costs related to the development for which the fees were imposed, whichever is earlier. If the developer elects to defer payment, the developer shall maintain a bond or irrevocable letter of credit in the amount of the unpaid fees. Payments may not be deferred for fees on projects that

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

have previously been approved. The Act also directs a municipality that collects an impact fee to provide the developer with an accounting of how the fee will be spent.

Additionally, state law describes the timeframe after collection in which impact fees must be used. Generally, prior law required impact fees to be used within a reasonable amount of time after collection, or they must be returned with interest. [s. 66.0617 (9), Stats.] Generally, the Act specifies that impact fees that are not used within eight years must be refunded to the payer with interest. Fees collected for costs related to lift stations or sewage treatment or collection must be used within 10 years, unless the municipality adopts a hardship resolution to extend the time period for an additional three years. The Act specifies that an impact fee is paid on the date a developer obtains a bond or irrevocable letter of credit.

The Act also limits the imposition of impact fees to specify that impact fees may not be imposed for increases in service capacity greater than the capacity necessary for the development for which the fee is imposed and that fees may not include expenses for operation or maintenance of a public facility.

State law provides that a person aggrieved by any fee imposed by a political subdivision may appeal the reasonableness of the fee in relation to the service for which the fee is imposed by filing a petition. Prior law required the petition to be filed within 60 days after the fee's imposition. [s. 66.0628 (4) (a), Stats.] The Act revises the filing deadline to 90 days after the fee is due and payable.

PREEMPTIONS OF CERTAIN LOCAL REGULATIONS

The Act prohibits cities, villages, towns, and counties from doing any of the following:

- Enacting an ordinance or adopting a resolution that limits the installation of banners over the entire height and length of a fence surrounding a construction site.¹
- Prohibiting a private person from working on the job site of a construction project on a Saturday, or imposing more restrictive conditions on such work than apply on weekdays.
- Making or enforcing an ordinance that applies to a dwelling and is more restrictive than the state Uniform Dwelling Code or that is contrary to an order of the Department of Safety and Professional Services (DSPS) with respect to the enforcement of the Uniform Dwelling Code.²
- Imposing more stringent requirements on a developer relating to the installation of a water meter station than are required to ensure the proper functioning of such a station.

¹ For the preemption to apply, the installation must be by a person who owns the construction site or is otherwise in lawful possession or control of the site.

² Prior law required local ordinances relating to the construction and inspection of new dwellings to "meet the requirements of" the Uniform Dwelling Code. The Act replaces that requirement with a more specific preemption.

- Enacting or enforcing an ordinance requiring a certain number or percentage of residential dwelling units in a land development be made available for rent or sale to an individual or family with a family income at or below a certain level.
- Establishing a general expiration date for an approval related to a planned development district of less than five years after the date of the last approval required for completion of the project.

PROCEDURE FOR AMENDING A CITY ZONING ORDINANCE

Under prior law, if 20% of certain affected landowners protest a proposed change to a city zoning ordinance, three-fourths of the members of a city's common council must vote in favor of the amendment before it takes effect.

The Act repeals the statutory provisions relating to protests of city zoning ordinances.

LAND DIVISION AND PLAT APPROVAL

The Act makes various changes relating to the requirements for land division and plat approval. Key changes to state law include:

- Authorizing land divisions by certified survey map for land that is zoned for multi-family use, whereas prior law allowed such divisions only for land zoned commercial, industrial, or mixed-use.
- Specifying that the estimated cost to complete public improvements for a subdivision is to be determined as follows:
 - By an initial estimate provided by the governing body, if accepted by the subdivider.
 - If the estimate is rejected by the subdivider, by a bona fide bid from a subdivider's contractor, if the governing body accepts the bid.
 - If the bid is rejected by the governing body, by an estimate of the cost to complete the work in event of default, if the estimate is within 10% of the subdivider's bid.
 - If the cost to complete the work differs by more than 10% from the bid, by mutual agreement between the subdivider's engineer and the municipality's engineer.
- Specifying that the installation of asphalt or a concrete binder course constitutes "substantial completion" for purposes of road dedications.
- Authorizing a subdivider to provide any security required by a city, village, or town in the form of a performance bond, letter of credit, or combination of the two.
- In certain circumstances, requiring municipalities to issue a permit to commence construction of a foundation or any other noncombustible structure before non-safety-related public improvements have been completed.

- Authorizing a city, village, town, or county to offer a subdivider the option of dedicating land for a public park consistent with local park and comprehensive plans or paying a fee-in-lieu of dedicating land.

STORMWATER REGULATION

Generally, state law describes the manner in which property may be classified in order to make equitable charges for services rendered by a storm and surface water system. [s. 66.0821 (4) (c), Stats.] The Act specifies that no additional charges, beyond those charged to similar properties, may be charged to a property for services rendered for a property that continually retains 90% of the difference between the post-development and predevelopment runoff on site.

Subject to certain exceptions, under state law, a city, village, town, or county may not enact an ordinance relating to stormwater management unless the ordinance strictly conforms to uniform statewide standards. [s. 281.33 (3m), Stats.] The Act revises an exception for ordinances relating to flood control to instead apply to ordinances relating to peak flow to address existing flooding problems or to prevent future flooding problems, except an ordinance may not require more than 90% of the difference between pre-development and post-development annual runoff volume to be retained on the site.

LOCAL REPORTING REQUIREMENTS

The Act requires cities and villages with populations of 10,000 or more to prepare and post reports by January 1, 2020, and to update the reports annually thereafter, regarding a city's or village's implementation of the housing element of its comprehensive plan. Those reports must contain specified information relating to plat approvals, proposed new dwelling units, undeveloped parcels, and an analysis of the city's or village's residential development regulations, including a calculation of the financial impact of those regulations.

In addition, the Act requires cities and villages with populations of 10,000 or more to prepare and post a report by January 1, 2020, regarding the city's or village's residential development fees. The report must contain the amounts of specified types of fees, the total amount of relevant fees imposed in the prior year, and the amount of such fees imposed per new residential dwelling unit in the prior year. The Act prohibits a city or village from imposing a fee that it does not properly post in the report.

COMPENSATION FOR CONDEMNATIONS

The Act modifies state law relating to determining fair market value in condemnation cases and makes changes relating to payments for certain displaced persons in such cases. Specifically, the Act **requires** (rather than **authorizes** under prior law) a court or condemnation commission to consider comparable property sales as a basis for determining fair market value in a condemnation action and requires a court or commission to consider cost- or income-based appraisals if provided by the condemnor or condemnee.

With respect to certain persons displaced from a business or farm operation as a result of a condemnation, the Act revises the maximum amount of payments that a condemnor must pay to such persons for the cost of purchasing or renting a replacement business or farm operation.

In addition to the payments required under state law, the Act also requires a condemnor to pay those persons certain litigation expenses and certain “reasonable project costs,” defined to mean the total of specified capital, financing, professional services, imputed administrative, and infrastructure costs that a person must reasonably incur to establish a comparable replacement business or farm operation.

With regard to payment caps, previously set at \$50,000 for purchase and \$30,000 for rental, the Act sets the caps at \$100,000 and \$80,000 respectively, if the condemnor is a village, town, or city, and removes the caps for other condemnors. The Act also specifies that, until January 1, 2019, a court must award litigation expenses if the award of the judgment for the claimant exceeds the amount of damages allowed by the condemnor by 15%.

TIMELINE FOR LOCAL BUILDING INSPECTIONS

The Act creates a new timeline for inspections provided by a local building inspector. Specifically, the Act requires a local building inspector to complete an inspection no later than 14 business days after receiving a request from a developer for an inspection. If a local inspector does not complete an inspection within that time, the Act authorizes a developer to request a state inspector with a comparable level of zoning and building inspection qualification as the local building inspector to perform the inspection. The Act requires a city, village, town, or county to accept a certificate of inspection provided by a state inspector in those circumstances.

Effective date: Generally, 2017 Wisconsin Act 243 took effect April 5, 2018. Provisions of the Act affecting the sunset of treatments relating to just compensation for condemnation take effect January 1, 2019. Generally, the Act initially applies to actions taking place on or after the effective date of the Act. However, provisions relating to just compensation first apply to proceedings for which title to property has not vested in the condemnor on the effective date, and provisions relating to relocation benefits apply retroactively to claims filed up to two years prior to the effective date. Additionally, the levy limit exception first applies to a levy imposed in December of 2019.

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