



American Planning Association
Wisconsin Chapter

Making Great Communities Happen

Recent Wisconsin Legislation

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2007 Wisconsin Act 11

Revisions in terminology that affect mobile homes, manufactured homes, modular homes, manufactured buildings, recreational vehicles, and mobile and manufactured home communities, and changes that apply to monthly fees collected by certain local governmental units.

2007 Wisconsin Act 13

Grants for catastrophic damage caused to urban forests.

2007 Wisconsin Act 19

Property tax exemption for waste treatment facilities.

2007 Wisconsin Act 43

Municipal boundary issues. See Appendix A.

2007 Wisconsin Act 44

Impact fees. See Appendix B.

2007 Wisconsin Act 57

Expands the area in which a tax incremental district's project costs may be expanded.

2007 Wisconsin Act 72

Allows local government to publish a summary of certain actions (such as ordinances) as an alternative to publishing the action in their entirety. A "summary" is defined to mean a brief, precise, and plain-language description that can be easily understood. The summary notice must include: 1. The number and title of the ordinance; 2. The date of enactment; 3. A summary of the subject matter and main points of the ordinance; 4. Information as to where the full text of the ordinance may be obtained, including the phone number of the county clerk, a street address where the full text of the ordinance may be viewed, and a Web site, if any, at which the ordinance may be accessed.

2007 Wisconsin Act 117

Ratifies the Midwest Interstate Passenger Rail Compact.

2007 Wisconsin Act 121

Adds drainage districts to the intergovernmental cooperation element of a comprehensive plan. Changes the responsibility for producing certain reports about drainage districts. Requires local governments and drainage districts to provide notice to each other regarding proposals that affect drainage districts, and requires a real estate condition report to disclose whether the property is located in a special purpose district.

2007 Wisconsin Act 125

Clean up and consolidation of Department of Commerce economic development programs.

2007 Wisconsin Act 147

Changes the term “private domestic sewage treatment and disposal system” with “private sewage system.”

2007 Wisconsin Act 182

Repeals prohibition on exterior pedestrian walkways.

2007 Wisconsin Act 188

Authorizes local governments to issue debt based on proceeds from the brownfields revolving loan program.

2007 Wisconsin Act 193

Anyone who intentionally causes bodily harm to a county/city/village/town zoning or building code enforcement officer is guilty of a Class I felony.

2007 Wisconsin Act 204

Establishes new requirements regarding the regulation of piers and wharves.

2007 Wisconsin Act 205

Requiring the installation of carbon monoxide detectors in certain buildings.

2007 Wisconsin Act 210

Changing the “penalty” for converting agricultural land assessed under the use value program to other uses to a “conversion charge.”

2007 Wisconsin Act 227

This Act ratified the Great Lakes-St. Lawrence River Basin Water Resources Compact. Among other things, the Act requires that the Wisconsin Department of Natural Resources (DNR) establish rules for a continuing water supply planning process for the preparation of water supply plans for persons operating public water supply systems within the Great Lakes basin. Water supply plans will be subject to approval by the Wisconsin DNR. One of the criteria for approval will be whether the water supply plan is consistent with applicable section 66.1001 (1)(a) comprehensive plans.

Appendix A

Municipal Boundary Agreements 2007 Wisconsin Act 43

2007 Wisconsin Act 43 provide several new measures to encourage cooperative boundary agreements between cities/villages and towns.

1. Consistency Requirement

The Act deletes the detailed planning requirements for cooperative plans under Wis. Stat. § 66.0307(5), and replaces it with a requirement that the cooperative plan be consistent with each participating municipality's comprehensive plan under Wis. Stat. § 66.1001

The Act also reduces the number of days to wait before holding the public hearing on the cooperative plan from 120 to 60 following the last authorizing resolution by a participating municipality.

2. Mediated Agreement Procedure

If a city/village or a town refuses to participate in developing a cooperative plan to determine common boundaries, the Act provides a procedure for one municipality to petition for development of a cooperative plan through mediation. If a city/village refuses to engage in mediation after being requested to do so, an annexation proceeding initiated during the shorter of 270 days after the refusal or the period beginning after the refusal until the city/village agrees to engage in mediation may be contested by the town. If a town refuses to engage in mediation, the town may not contest any annexation of its territory to the city/village that is initiated during the shorter of 270 days after the refusal or the period beginning after the refusal until the town agrees to engage in mediation.

If both parties agree to engage in mediation, the mediation period expires after 270 days unless the participating municipalities agree to extend the period.

3. General Intergovernmental Cooperation Boundary Agreements

In addition to the Cooperative Boundary Agreement enabling authority found in Wis. Stat. § 66.0307, a number of communities have adopted boundary agreements under the general enabling authority for intergovernmental cooperation under Wis. Stat. § 66.0301. The Act establishes a specific procedure for municipal boundaries to be determined by agreement under the authority of Wis. Stat. § 66.0301. The Act requires a public hearing on a proposed agreement and provides for a referendum of the electors residing within the territory whose jurisdiction is subject to change as a result of the agreement if a sufficient referendum petition is timely submitted. A boundary agreement under Wis. Stat. § 66.0301 may provide that during the term of the agreement, no other procedure for altering municipal boundaries may be used to alter a boundary that is affected by the agreement. Once an agreement expires, all provisions of the agreement expire with the exception of boundary determinations, which remain until subsequently changed. The maximum term of an agreement is 10 years.

4. Stipulated Boundary Agreements in Contested Boundary Actions

The Act limits the application of Wis. Stat. § 66.0225, Stats. (boundaries fixed by court judgment) to contested annexations and limits the scope of a boundary determination under that procedure to that portion of the boundary "that is the subject of the annexation." The Act provides that contested consolidations, detachments, and incorporations may be settled by entering into a cooperative boundary agreement under Wis. Stat. § 66.0301 or 66.0307. Contested annexations may also be so settled.

5. Alternative Dispute Resolution Encouraged

Finally, the Act encourages the court and the parties to a contested annexation to consider the applicability to the contested annexation of the current ADR provisions that apply generally to court proceedings under Wis. Stat. § 802.12.

The Act requires the Department of Administration to make available on its public website a list of persons who have identified themselves as professionals qualified to facilitate ADR of annexation, boundary, and land use disputes.

Appendix B

Making Sense of Recent Changes to Wisconsin's Impact Fee Law (2005 Wisconsin Act 203; 2005 Wisconsin Act 477; 2007 Wisconsin Act 44)

[Bolded language references changes under 2007 Wisconsin Act 44.]

Exactions are various techniques used by local governments to require that new development pay a portion of the capital cost for public facilities that are needed to address the impacts of the new development. Five types of exactions commonly used in Wisconsin as part of the subdivision process are:

1. *Dedication of land.*

The developer dedicates land to the local government for public facilities such as streets, storm water facilities, parks, etc. Dedication is appropriate where the subdivision actually contains suitable land for the public facility needed, such as a park or a school site. Dedication is least desirable for off-site facilities. Mandatory dedication of certain capital improvements as part of the subdivision process is generally recognized as the earliest form of exaction.

2. *Payment of fees in lieu of dedication.*

The fee in-lieu concept developed as a refinement of mandatory dedication by substituting monetary payment for the dedication of capital improvements when dedication was not feasible because the subdivision is too small and there is insufficient land to dedicate for the facility needed; where the land available is not well suited for the facility because of location or topography; or where the local government's plans indicate a need for the facility at a different location outside the boundaries of the particular subdivision.

NOTE: As a result of 2005 Wisconsin Act 477, this method is no longer available to local governments in Wisconsin. HOWEVER, as a result of 2007 Wisconsin Act 44, a city, village, or town may impose a fee or other charge to fund the acquisition or initial improvement of land for public parks. The term "improvement of land for public parks" is defined in 2007 Wisconsin Act 44 to mean "grading, landscaping, installation of playground equipment, and construction or installation of restroom facilities on land intended for public park purposes."

2007 Wisconsin Act 44 also added the underlined language to Wis. Stat. § 236.45(6)(b), a section that was originally added by 2005 Wisconsin Act 477:

"Any land dedication, easement, or other public improvement or fee for the acquisition or initial improvement of land for a public park that is required by a municipality, town, or county as a condition of approval under this chapter must bear a rational relationship to a need for the land dedication, easement, or other public improvement or parkland acquisition or initial improvement fee resulting from the subdivision or other division of land and must be proportional to the need."

3. *Requiring that the developer install on site public improvements*

Wisconsin law expressly provides that certain local governments can require that a developer install on site improvements as follows:

- As a condition of approving a map of a subdivision the governing body of a town, city or village "may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider execute a surety bond or provide other security to ensure that he or she will make those improvements within a reasonable time." Wis. Stat. § 236.13(2)(a).

- A city or village "may require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that designated facilities shall have been previously provided without cost to the municipality . . . such as, without limitation because of enumeration, sewerage, water mains and laterals, **storm water**

management or treatment facilities [Added by 2007 Wisconsin Act 44], grading and improvement of streets, alleys, sidewalks and other public ways, street lighting or other facilities designated by the governing body, or that a specified portion of such costs shall be paid in advance. . . ." Wis. Stat. § 236.13(2)(b).

NOTE: 2007 Wisconsin Act 44 also added a provision related to the acceptance of storm water management facilities dedicated to the public that states that, unless an earlier date is agreed to by a city or village, the dedication does not have to be accepted until at least 80 percent of the lots in the subdivision have been sold and a professional engineer certifies that the storm water facility is functioning properly, that required plantings are adequate, and that any necessary maintenance has been performed.

• A county, town, city, or village may require that the subdivider pay "the cost of any necessary alterations of any existing utilities which, by virtue of the platting or certified survey may, fall within the public right-of-way." Wis. Stat. § 236.13(2)(c). A county, town, city, or village may also "require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar energy across adjacent lots in the subdivision." Wis. Stat. § 236.13(2)(d).

4. *Voluntary contributions*

A developer might decide to make a voluntary contribution such as dedicating land for a new public library that the developer wants as a focal point of his/her development, providing certain facilities to appease neighborhood concerns, etc.

5. *Impact Fees*

Wisconsin's impact fee law was enacted in 1994. 1993 Wisconsin Act 305. The law is currently codified at 66.0617 of the Wisconsin Statutes. Since May 1, 1995, a municipality seeking to impose and collect impact fees has needed to comply with the requirements of this law. Wis. Stats. § 66.0617(2)(c). The law defines impact fees as "cash contributions, contributions of land or interests in land or any other items of value that are imposed on a developer by a municipality under this section." Wis. Stats. § 66.0617(1)(c). Cities, villages, and towns are all authorized to use impact fees. Wis. Stats. § 66.0617(1)(e). **While counties originally were authorized under this law to collect impact fees, 2005 Wisconsin Act 477 eliminated that authority.**

[NOTE -- impact fees are not limited to the subdivision process. Depending on how a local community structures its impact fees, a single development that does not involve the subdivision of land (such as a new big box retail store) could have to pay impact fees.]

Types of Facilities For Which Impact Fees May Be Used

Impact fees may be used to finance the capital costs of constructing highways and other transportation facilities, traffic control devices, sewage treatment facilities, storm and surface water handling facilities, water facilities, parks, playgrounds, and land for athletic fields, solid waste and recycling facilities, fire and police facilities, emergency medical facilities, and libraries. The law expressly prohibits the use of impact fees to finance facilities owned by a school district. Wis. Stat. § 66.0617(1)(f).

NOTE: When the law was enacted, it included the general authorization to collect impact fees for parks "and other recreational facilities." 2005 Wisconsin Act 477 replaced the term "other recreational facilities" with the more limited term "playgrounds, and land for athletic fields." This change created problems for communities that had already established impact fees for other recreational facilities under the original language. 2007 Wisconsin Act 44 attempts to correct this problem by stating that if impact fees were first imposed before June 14, 2006, the elimination of the term "other recreational facilities" does not apply for 10 years (January 19, 2018). This allows those communities with impact fees for other recreational facilities to continue to collect those fees for 10 years.

The statute defines "capital costs" to mean the capital costs to construct, expand or improve public facilities, including the cost of land. Wis. Stat. § 66.0617(1)(a). Up to ten percent of capital costs

can be for related legal, engineering, and design costs unless a political subdivision can demonstrate that legal, engineering and design costs exceed ten percent of capital costs. Id.

NOTE: 2005 Wisconsin Act 477 amended the definition of “capital costs” to clarify that the cost of vehicles is not included. Other noncapital costs and the costs of other equipment to construct, expand or improve public facilities is also excluded from capital costs.

Procedure for Establishing Impact Fees

The statutes outline a two-part process that must be followed by a municipality wishing to establish an impact fee program under the statute. The process also needs to be followed by a municipality when it amends an existing impact fee ordinance by revising the amount of the fee or altering the public facilities for which the fee may be imposed. Wis. Stat. § 66.0617(4)(a).

1. Needs Assessment

A political subdivision must prepare a needs assessment for the public facilities that the municipality anticipates imposing impact fees. Wis. Stat. § 66.0617(4)(a). The reason for the needs assessment is that communities bear the burden of proving that the need for additional facilities results from new development, not from existing deficiencies. The needs assessment is therefore critical to establishing the rational relationship that the impact fee must bear to the need for new, expanded or improved public facilities that are required to serve land development. Wis. Stat. § 66.0617(6)(a).

The statute specifies certain information that must be included in the needs assessment. This information is listed below. Some additional information not identified in the statute is also needed to complete the public facilities needs assessment.

- An inventory of existing public facilities for which the impact fee may be imposed. Wis. Stat. § 66.0617(4)(a)(1).

- Identify existing deficiencies in the quantity or quality of those public facilities. Wis. Stat. § 66.0617(4)(a)(1). The statute prohibits the use of impact fees to address existing deficiencies in public facilities. Wis. Stat. § 66.0617(6)(f).

- Explicitly identify service areas and service standards.

"Service areas" are defined as "a geographic area delineated by a municipality within which there are public facilities." Wis. Stat. § 66.0617(1)(g). "Service standards" are defined as "a certain quantity or quality of public facilities relative to a certain number of persons, parcels of land or other appropriate measure, as specified by the municipality." Wis. Stat. § 66.0617(1)(h).

- Based on the identified service areas and service standards, identify new public facilities, or improvements or expansions of existing public facilities that will be required because of land development. Wis. Stat. § 66.0617(4)(a)(2).

- Include a detailed estimate of the capital costs of providing the new public facilities or improvements or expansions in existing public facilities. Wis. Stat. § 66.0617(4)(a)(3). Impact fees must be based upon actual capital costs or reasonable estimates of capital costs for new, expanded or improved public facilities. Wis. Stat. § 66.0617(6)(c).

- Include an estimate of the **cumulative** effect of **all proposed and existing** impact fees on the availability of affordable housing within the municipality. Wis. Stat. § 66.0617(4)(a)(3). **[Underlined wording added by 2007 Wisconsin Act 44.]**

- The needs assessment should also insure that the impact fees do not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the municipality. Wis. Stat. § 66.0617(6)(b).

- Credits. Impact fees must be reduced to compensate for other capital costs imposed by the municipality with respect to land development to provide or pay for public facilities, such as special assessments, special charges, land dedications or fee in lieu of land dedication or other items of value. Wis. Stat. § 66.0617(6)(d). The law does not prohibit or limit the authority of a municipality to finance public facilities by any other means authorized by law. Wis. Stat. § 66.0617(2)(b).

Impact fees must also be reduced to compensate for moneys received from the federal or state government specifically to provide or pay for the public facilities for which the impact fees are imposed. Wis. Stat. § 66.0617(6)(e).

2. *Impact Fee Ordinance*

Following completion of the needs assessment, the next step in the impact fee process elaborated in the statute is the enactment of an impact fee ordinance.

Procedural Requirements. Public hearing on the proposed ordinance. Wis. Stat. § 66.0617(3). Notice of the public hearing must be published as a class 1 notice under Wis. Stat. ch. 985. The notice shall specify where a copy of the proposed ordinance and the public facilities needs assessment may be obtained. Id. The needs assessment must be available for public inspection and copying in the office of the clerk of the municipality at least 20 days before the hearing. Wis. Stat. § 66.0617(4)(b).

Refund of Impact Fees. **For impact fees collected after April 10, 2006**, the ordinance must specify that impact fees collected by a municipality **within 7 years of the effective date of the ordinance** but are not used within **10** years after the **effective date of the ordinance** to pay the capital costs for which they were imposed shall be refunded to the current owner of the property along with any accumulated interest. Subject to this **10** year limit, the ordinance must specify, by type of public facility, reasonable time periods within which impact fees must be spent. Wis. Stat. § 66.0617(9)(a). In determining the length of the time periods, the political subdivision must consider what are appropriate planning and financing periods for the particular types of public facilities for which the impact fees are imposed. Id. The **10** year time limit may be extended for 3 years if the municipality adopts a resolution stating that due to extenuating circumstances or hardship in meeting the **10** year limit, it needs an additional 3 years to use the impact fees that were collected. Wis. Stat. § 66.0617(9)(b).

NOTE: The original impact fee law stated that fees not used in a “reasonable period of time” after they are collected needed to be refunded to the current property owner. 2005 Wisconsin Act 203 eliminated this language and required that impact fees must be used within 7 years of when they were collected with a possibility of extending the time for 3 additional years under extenuating circumstances or hardship. Act 203 was also intended to apply retroactively, thereby impacting existing fees that had been collected since the original law because effective in 1994. 2007 Wisconsin Act 44 added the underlined provisions above, eliminating the retroactive application and extended the 7 year time frame to a 10 year time frame with the 3 year extension option. Act 44 also added the following provisions to address impact fees collected before April 11, 2006:

An impact fee that was collected before January 1, 2003, must be used for the purpose for which it was imposed not later than December 31, 2012. Any such fee that is not used by that date must be refunded to the current owner of the property with respect to which the impact fee was imposed, along with any accumulated interest. Wis. Stat § 66.0617 (9) (c) 1.

An impact fee that was collected after December 31, 2002, and before April 11, 2006, must be used for the purpose for which it was imposed within 10 years after the date on which the fee was collected. Any such fee that is not used by that date must be refunded to the current owner of the property with respect to which the impact fee was imposed, along with any accumulated interest. Wis. Stat § 66.0617 (9) (c) 1.

Finally, Act 44 also added a provision to address situations where an impact fee is collected after April 10, 2006, and it is collected more than 7 years after the effective date of the ordinance. An example of this situation would be where a local government adopted an impact fee ordinance in 1997 and is still collecting fees. Even though more than 7 years has elapsed since the effective date of that ordinance, Act 44 provides that the local government can still collect the fee but the impact fee must be used within a reasonable period of time after they are collected to pay the capital costs for which they were imposed, or the fees must be refunded to the current owner of the property along with accumulated interest. Wis. Stat. § 66.0617(9)(d).

Appeal. The ordinance must specify a procedure for a developer upon whom an impact fee is imposed has the right to contest the amount, collection or use of the impact fee to the governing body of the municipality. Wis. Stat. § 66.0617(10).

An impact fee ordinance may also: Impose different impact fees on different types of land development (Wis. Stat. § 66.0617(5)(a)); Delineate geographically defined zones within the municipality and impose impact fees on land development in a zone that differ from impact fees imposed on land development in other zones within the municipality (Wis. Stat. § 66.0617(5)(b)). The statute further specifies that the public facilities needs assessment must explicitly identify the differences, such as land development or the need for those public facilities, which justify the differences between zones in the amount of impact fees imposed (id.); Provide for an exemption from, or a reduction in the amount of impact fees on land development that provides low-cost housing (Wis. Stat. § 66.0617(7)). No amount of an impact fee which is exempted or reduced for low-cost housing, however, may be shifted to any other land development in the municipality (id.).

Administrative Issues. Impact fees shall be payable by the developer or the property owner **upon the issuance of a building permit.** Wis. Stat. § 66.0617(6)(g).

NOTE: Under the original law, the impact fee could be collected before the issuance of a building permit or other required approval. 2005 Wisconsin Act 477 eliminated this flexibility and provided that impact fees could be collected within 14 days of the issuance of a building permit or within 14 days of the issuance of an occupancy permit by the municipality. 2007 Wisconsin Act 44 eliminated the option of local governments to also collect impact fees within 14 days of the issuance of an occupancy permit. It also eliminated the “within 14 days” provision and simply requires payment upon issuance of the building permit.

Revenues from each impact fee that is imposed must be placed in a separate segregated, interest bearing account and shall be accounted for separately from the other funds of the municipality. The fees may only be expended for the particular capital cost for which the fee was imposed. Wis. Stat. § 66.0617(8).

NOTE: 2005 Wisconsin Act 477 changed this section to require that revenue from each impact fee be placed in a separate segregated account. Under the original law, revenues from multiple impact fees could be placed in one segregated account.

Finally, the general rule for all fees imposed by a city, village, town, or county was added by 2003 Wisconsin Act 134. According to that law, “any fee” imposed by a local government “shall bear a reasonable relationship to the service for which the fee is imposed. Wis. Stat. § 66.0628(2). **2007 Wisconsin Act 44 added another provision to that section of the statutes that states that if a local government enters into a contract to purchase engineering, legal, or other professional services from a consultant and the local government passes along the cost for the professional services to another person under a separate contract between the local government and that person, the rate charged that other person for the professional services may not exceed the rate customarily paid for similar services by the local government. Wis. Stat. § 66.0628(3).**