

State of Wisconsin



2021 Senate Bill 835

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2021 WISCONSIN ACT 198

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

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

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

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

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

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

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

32.03 (6) (bm) If the condemnor is a municipality, the municipality 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. Before commencing the condemnation of real property that is outside of the boundaries of a municipality, the municipality shall make written findings and provide a

copy of the findings to the owner of the property and each town, village, or city in which the property is located. The findings shall include all of the following:

1. A description of the project.
2. A legal description of the project area.
3. The purpose of the condemnation.

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

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

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record.

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

62.23 (7a) (a) Extraterritorial zoning jurisdiction means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village. The unincorporated area subject to extraterritorial zoning jurisdiction includes areas that are either surrounding or entirely surrounded by a single city or village. Wherever extraterritorial zoning jurisdictions overlap, the provisions of s. 66.0105 shall apply and any subsequent alteration of the corporate limits of the city by annexation, detachment or consolidation proceedings shall not affect the dividing line as initially determined under s. 66.0105. The governing body of the city shall specify by resolution the description of the area to be zoned within its extraterritorial zoning jurisdiction sufficiently accurate to determine its location and such area shall be contiguous to the city. The boundary line of such area shall follow government lot or survey section or fractional section lines or public roads, but need not extend to the limits of the extraterritorial zoning jurisdiction. Within 15 days of the adoption of the resolution the governing body shall declare its intention to prepare a comprehensive zoning ordinance for all or part of its extraterritorial zoning jurisdiction by the publication of the resolution in a newspaper having general circulation in the area proposed to be zoned, as a class 1 notice, under ch. 985. The city clerk shall mail a certified copy of the resolution and a scale map reasonably showing the boundaries of the extraterritorial jurisdiction to the clerk of the county in which the extraterritorial jurisdiction area is located and to the town clerk of each town, any part of which is included in such area.

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

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

2. Unless otherwise agreed to by a town, the authority of a city or village to exercise jurisdiction outside of its adjacent outlying waters when acting under s. 30.745 (2), or outside of its boundaries or corporate limits when acting under this subsection or sub. (2), or under s. 66.0415 (1), 236.10 (1) (b) or (2), or 254.57, 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.

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

62.23 (7a) (b) The governing body may enact, without referring the matter to the plan commission, an interim zoning ordinance to preserve existing zoning

uses in areas subject to a general zoning ordinance under s. 59.69, 60.61, or 60.62 and to preserve existing uses in areas not subject to a general zoning ordinance in all or part of the extraterritorial zoning jurisdiction while the comprehensive zoning plan is being prepared. Such ordinance may be enacted as is an ordinary ordinance but shall be effective for no longer than ~~2 years~~ 18 months after its enactment, unless extended as provided in this paragraph. Within 15 days of its passage, the governing body of the city shall publish the ordinance in a newspaper having general circulation in the area proposed to be zoned as a class 1 notice, under ch. 985, or as a notice, as described under s. 62.11 (4) (c) 2., and the city clerk shall mail a certified copy of the ordinance to the clerk of the county in which the extraterritorial jurisdiction is located and to the clerk of each town affected by the interim zoning ordinance and shall file a copy of the ordinance with the city plan commission. The governing body of the city may extend the interim zoning ordinance for no longer than one year, upon the recommendation of the joint extraterritorial zoning committee established under par. (c). No other interim zoning ordinance shall be enacted affecting the same area or part thereof until ~~2~~ 5 years after the date of the expiration of the interim zoning ordinance or the one year extension thereof. While the interim zoning ordinance is in effect, the governing body of the city may amend the districts and regulations of the ordinance according to the procedure set forth in par. (f).

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

66.02165 Limitations on newly created incorporated village or city. For a 5-year period after incorporation under this subchapter, a newly incorporated city or village may not add or contract 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 under s. 66.0217 (2), except that the city or village and town territory remaining after incorporation may consolidate as permitted under s. 66.0230.

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

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

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

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

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

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

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

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

66.0415 (1) ~~The Except as provided under s. 62.23 (7a) (am), the~~ common council of a city or village board may direct the location, management and construction of, and license, regulate or prohibit, any industry, thing or place where any nauseous, offensive or unwholesome business is carried on, that is within the city or village or within 4 miles of the boundaries of the city or village, except that the Milwaukee, Menominee and Kinnickinnic rivers with their branches to the outer limits of the county of Milwaukee, and all canals connecting with these rivers, together with the lands adjacent to these rivers and canals or within 100 yards of them, are within the jurisdiction of the city of Milwaukee. A town board has the same powers as are provided in this section for cities and villages as to the area within the town that is not licensed, regulated or prohibited by a city or village under this section. A business that is conducted in violation of a city, village or town ordinance that is authorized under this section is a public nuisance. An action for the abatement or removal of the business or an injunction to prevent operation of the business may be brought and maintained by the common council or village or town board in the name of this state on the relation of the city, village or town as provided in ss. 823.01, 823.02 and 823.07, or as provided in s. 254.58. Section 97.42 does not limit the powers granted by this section. Section 95.72 does not limit the powers granted by this section to cities or villages but powers granted to towns by this section are limited by s. 95.72 and by any orders and rules promulgated under s. 95.72.

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

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

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

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

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

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

SECTION 16. Initial applicability.

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

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

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