

MUNICIPAL AUTHORITY OVER REAL PROPERTY INSPECTIONS AND REGISTRATIONS RECENTLY LIMITED

By: Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

Many municipalities have property registration and inspection ordinances to help ensure that they have important information regarding buildings within the municipality and that buildings remain safe and code compliant. In recent years, the legislature has significantly curtailed municipal authority in this area. Although municipalities can still require that properties be inspected and registered, they must do so within these new constraints. This legal comment summarizes recent laws curtailing municipal authority in this area. Municipal officials should check municipal ordinances governing property registration and inspection to make sure ordinances do not exceed municipal authority.

Rental properties:

Many municipalities have ordinances requiring that rental properties be registered and inspected periodically. Although municipalities can require that rental properties be registered and inspected periodically, Wis. Stat. § 66.0104(2)(e),¹ prohibits municipalities from enacting an ordinance that does *any* of the following:

1. Requires that a rental property or rental unit be inspected except upon a complaint by any person, as part of a program of regularly scheduled inspections conducted in compliance with sec. 66.0119 which contains a procedure for obtaining special inspection warrants, as applicable, or as required under state or federal law.
2. Charges a fee for conducting an inspection of a residential rental property UNLESS the amount of the fee is uniform for residential rental inspections AND the fee is charged at the time that the inspection is actually performed.
3. Charges a fee for a subsequent reinspection of a residential rental property that is more than twice the fee charged for an initial reinspection.

4. Requires that a rental property or rental unit be certified, registered, or licensed, except that a municipality may require that a rental unit be registered if the registration consists only of providing the owner's name and an authorized contact person and an address and telephone number at which the contact person may be contacted.

Municipalities may not impose an occupancy or transfer of tenancy fee on a rental unit.²

Municipalities may not enact an ordinance that requires a residential rental property owner to register or obtain a certification or license related to owning or managing the residential rental property unless the ordinance applies uniformly to all residential rental property owners, including owners of owner-occupied rental property. However, municipalities are not prohibited from requiring that a landlord be registered if the registration consists only of providing the name of the landlord and an authorized contact person and an address and telephone number at which the contact person may be contacted.³

Any municipal ordinance in effect on March 2, 2016 and inconsistent with §66.0104 (2) (e), (f), or (g), does not apply and may not be enforced.⁴

All Real Estate

Time-of Sale, Purchase or Occupancy Requirements Prohibited

Under Wis. Stat. § 706.22(2)(a),⁵ local governmental units⁶ are prohibited from imposing or enforcing time-of-sale, purchase or occupancy (TOSPO) requirements on the sale of real property. Specifically, this means municipalities cannot restrict the ability of an owner of real property to sell or otherwise transfer title to or refinance the property by requiring

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1. This provision was created by 2015 Wis. Act 176.

2. Wis. Stat. § 66.0104 (2) (f).

3. Wis. Stat. § 66.0104 (2) (g).

4. Wis. Stat. § 66.0104 (3)(c).

5. Wis. Stat. § 706.22 was enacted as part of the 2015-2017 State budget act, 2015 Wis. Act 55, and further amended by 2015 Wis. Acts 176 and 391.

6. Local governmental unit includes the following:

1. A political subdivision of this state.
2. A special purpose district in this state.
3. An agency or corporation of a political subdivision or special purpose district in this state.
4. A combination or subunit of any entity under subds. 1. to 3.
5. An employee or committee of any entity under subds. 1. to 4.

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the owner or an agent of the owner to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property before, at the time of, or within a certain time period after, selling, refinancing, or transferring title to the property.

Additionally, municipalities cannot restrict the ability of a person to purchase or take title to real property by requiring the person or an agent of the person to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property before, at the time of, or within a certain period of time after, completing the purchase of or taking title to the property.

Finally, municipalities cannot restrict the ability of a purchaser of or transferee of title to residential real property to take occupancy of the property by requiring the purchaser or transferee or an agent of the purchaser or transferee to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property before, at the time of, or within a certain period of time after, taking occupancy of the property.

The law defines “actions with respect to the property” as including such actions as having an inspection made by a local government employee, agent or contractor; making improvements or repairs; removing junk or debris; mowing or pruning; performing maintenance or upkeep activities; weatherproofing; upgrading electrical systems; paving; painting; repairing or replacing appliances; replacing or installing fixtures or other items; and actions relating to compliance with building codes or other property condition standards.⁷

Existing ordinances, resolutions or policies inconsistent with the time-of-sale provisions and in effect on July 14, 2015 do not apply and may not be enforced. Existing ordinances, resolutions or policies inconsistent with the purchase and occupancy provisions and in effect on March 2, 2016 do not apply and may not be enforced.⁸

Significantly, sec. 706.22(2)(b) provides that 706.22(a) does NOT prohibit municipalities from requiring a real property

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owner or the owner’s agent to take certain actions with respect to the property not in connection with the purchase, sale, or refinancing of, or the transfer of title to, the property. Furthermore, it does not prohibit a local governmental unit from enforcing, or otherwise affect the responsibility, authority, or ability of a local governmental unit to enforce, a federal or state requirement that does any of the things a local governmental unit is prohibited from doing under par. (a).

CONCLUSION

Although municipalities can still require that properties be registered and inspected, it is important that municipalities be aware that recent legislation significantly curtails municipal authority in these areas and declares inconsistent ordinances inapplicable and unenforceable.

Building Regulation 112
Powers of Municipalities 930

7. Wis. Stat. § 706.22(1)(a).

8. Wis. Stat. § 706.22(3).

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About the author:

Claire Silverman is Legal Counsel for the League of Wisconsin Municipalities. Claire's responsibilities include supervising the legal services provided by the League, answering questions of a general nature for officials and employees of member

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