



# Act 243 Constrains Municipal Development Authority

Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

The Developers bill (2017 AB 770), so called because it was sought by the Wisconsin REALTORS and the Wisconsin Builders Associations and limits municipal powers to regulate development and recover the cost of serving new development, was signed into law as 2017 Wis. Act 243, effective April 5, 2018. Some provisions have a later effective date. Act 243 contains wide-ranging provisions that will affect municipalities. This article briefly describes the most significant provisions in Act 243.

## **CONDEMNATION: Relocation benefits**

Municipalities using condemnation to acquire property for a public purpose will likely pay more in condemnation relocation benefits. Act 243 creates a new category of business replacement payments designated as “reasonable project costs” that the business “must reasonably incur” to make the business operation to which the owner or tenant moves a “comparable replacement property.” These costs include capital costs, financing costs, professional service costs, imputed administrative costs, and costs related to utilities. It is unclear under the statute who determines whether costs are “reasonable.”

“Business replacement payments” are intended to help a business make up the difference between the compensation paid for its property and the business’s cost to purchase or rent a replacement property. For towns, cities, and villages, “business replacement payments” are capped at \$80,000 for tenants and \$100,000 for owner-occupants (the caps were formerly \$30,000 and \$50,000).

Act 243 eliminates the caps for all other condemnors.

The new law applies to claims filed after April 5, 2018, but an owner who previously filed a relocation claim in the last two years can file a new claim for reasonable project costs under the new law if the claim is filed within 45 days of the new law’s effective date, April 5, 2018.

In the past, owners bore relocation claim litigation costs. Act 243 allows prevailing owners to recover “litigation expenses” for relocation claims filed after the Act’s effective date, including attorney fees and other costs. The court must award litigation expenses if the judgment for the claimant exceeds the amount of damages allowed by the condemnor by 15%. However, this provision expires on January 1, 2019.

The Act requires courts to consider comparable sales and also appraisals using an income approach or cost approach when determining value of property taken if offered by the condemnor or condemnee.

## **LEVY LIMIT CHANGES**

Effective with the levy imposed in December 2019, the levy increase limit applicable to a city or village is increased by \$1,000 for each new single-family residential dwelling unit for which the city or village issues an occupancy permit in the preceding year if the dwelling is located on a parcel of no more than 0.25 acre and the dwelling sold in the preceding year for not more than 80 percent of the median price of a new residential dwelling unit in the city or village in the preceding year.

These additional amounts levied can only be used for police and/or fire protective services, or emergency medical services. A municipality that levies additional amounts under this provision may not decrease the amount it spends for police and/or fire protective services or emergency medical services below the amount the municipality spent in the preceding year.

## **IMPACT FEES**

Impact fees may not include amounts for an increase in service capacity greater than the capacity necessary to serve the development for which the fee is imposed, and may not include expenses for operating or maintaining a public facility.

Impact fees not used within eight years of collection must be refunded to the payer of fees for the property with respect to which the fees were imposed, along with any accumulated interest. Impact fees collected for capital costs related to lift stations or collecting and treating sewage must be returned if not used for that purpose within 10 years of collection. The 10-year time limit may be extended for three years if the municipality adopts a resolution stating that it needs an additional three years to use the impact fees that were collected due to extenuating circumstances or hardship. The resolution must contain detailed written findings specifying the extenuating circumstances or hardship.

For purpose of impact fee refunds, an impact fee is paid on the date a developer obtains a bond or irrevocable letter of credit in the amount of the unpaid fees executed in the name of the municipality.

A municipality, at the time it collects an impact fee, must provide the developer from whom it received the fee an accounting of how the fee will be spent.

### **TIME FOR CHALLENGING REASONABLENESS OF MUNICIPAL FEES**

Expands the time for challenging the reasonableness of a municipal fee from 60 days after the fee is imposed to within 90 days after the fee is due and payable.

### **STORM WATER/SURFACE WATER SEWERAGE CHARGES**

Prohibits applying additional charges, beyond those charged to similar properties, to a property for services rendered by a storm and surface water system for a property that continually retains 90 percent of the difference between post-development and pre-development runoff on site.

### **HOUSING AFFORDABILITY AND FEE REPORTING REQUIREMENTS**

Effective January 1, 2019, Act 243 requires that by January 1, 2020, cities and villages with a population of 10,000 or more must prepare a report of the municipality's implementation of the housing element of its comprehensive plan and update the report annually, not later than January 31. The report must contain information specified in Wis. Stat. sec. 66.10013(2) and analyze the financial impact of the municipality's residential development regulations (e.g., land use controls, site improvement requirements, fees and land dedication requirements, and permit procedures) on new subdivision costs, and identify ways the municipality can modify these things to meet existing and forecasted housing demand and reduce the time and cost necessary to approve and develop a new residential subdivision in the municipality by 20 percent. The municipality must post this report on the

municipality's internet site on a webpage dedicated solely to the report and titled "Housing Affordability Analysis."

In addition, these municipalities must also prepare a report of the municipality's residential development fees containing information specified in sec. 66.10014(2) and then divide the total amount of fees imposed for purposes related to residential construction, remodeling, or development in the prior year by the number of new residential dwelling units approved by the municipality in the prior year. This report must be posted on the municipality's internet site on a webpage devoted solely to the report and titled "New Housing Fee Report." If the municipality does not have an internet site, the county in which the municipality is located must post the information on its internet site on a webpage dedicated solely to development fee information for the municipality. The municipality must provide copies of the reports to each governing body member. Importantly, if a fee or the amount of a fee is not properly posted as required, the municipality may not charge the fee.

### **ZONING**

*Zoning Protest Provision Repealed:* Effective January 1, 2019, repeals sec. 62.23(7)(d)2m.a which requires a three-fourths vote of the governing body members voting on a proposed zoning amendment when a protest petition has been filed.

*Inclusionary Zoning Prohibited:* Creates sec (3) of 66.1015 which prohibits a municipality from enacting, imposing, or enforcing an inclusionary zoning ordinance, regulation, or policy requiring that a certain number or percentage of new or existing residential dwelling units in a land development be made available for rent or sale to an individual or family with income at or below a certain percentage of the median income.

### **LIMITATION ON DEVELOPMENT REGULATION AUTHORITY AND DOWN ZONING**

*Expiration Date for Approvals:*

Act 243 amends sec. 66.10015 to prohibit municipalities from establishing an 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. That provision does not prohibit a municipality from establishing timelines for completion of work related to an approval.

*Water Meter Station Requirements:*

Act 243 constrains a political subdivision or utility district's ability to require certain things in conjunction with required installation of a water meter station and requires the political subdivision or utility district to fund any requirements that exceed limitations specified in sec. 66.10015(6).

*Inspection Timelines:* Act 243 creates new timelines for inspections provided by a local building inspector. If the local building inspector fails to complete an inspection within 14 business days after receiving a request from a developer for an inspection, the developer may request a state inspector with comparable zoning and building qualifications as the local inspector to perform the inspection. The municipality must accept a certificate of inspection provided by the state inspector in those circumstances.

*Construction Fence Banners:* Except for an ordinance that is related to health or safety concerns, no political subdivision may enact an ordinance or adopt a resolution that limits the ability of any person who is the owner, or other person in lawful possession or control, of a construction site to install a banner over the entire height and length of a fence surrounding the construction site. Any portion of an ordinance or resolution adopted before

April 5, 2018, that is inconsistent with this does not apply and may not be enforced.

*Weekend Work Limitations:* Creates sec. 66.1108 which prohibits a political subdivision from prohibiting a private person from working on the job site of a construction project on a Saturday. “Construction project” means a project involving the erection, construction, repair, remodeling, or demolition, including any alteration, painting, decorating, or grading, of a private facility, including land, a building, or other infrastructure that is directly related to onsite work of a residential or commercial real estate development project. Any portion of an inconsistent ordinance or resolution adopted before April 5, 2018, does not apply and may not be enforced.

*Ordinances More Restrictive than Uniform Dwelling Code:* Municipalities may not make or enforce an ordinance that applies to a dwelling and is more restrictive than the state Uniform Dwelling Code (UDC) or that is contrary to an order of the Department of Safety and Professional Services with respect to UDC enforcement. Inconsistent provisions in contracts

between a municipality and an owner may be waived by owner and, if waived, are void and unenforceable.

## LAND DIVISION AND PLAT APPROVAL

Act 243 makes the following changes to chapter 236:

- Authorizes municipalities to allow land divisions by certified survey map for land that is zoned for multi-family use. Current law allows such divisions only for land zoned commercial, industrial, or mixed use.
- Creates sec. 236.13(2)(am)1d which specifies how the estimated cost to complete public improvements for a subdivision is to be determined.
- Specifies that “substantial completion” for purposes of road dedications is when asphalt or a concrete binder course is installed, or, if the required public improvements don’t include a road to be dedicated, when 90 percent of the public improvements by cost are completed.
- Authorizes a subdivider to provide any security required by a city or village in the form of a performance bond, letter

of credit, or combination of the two. A municipality must accept a performance bond unless the governing body demonstrates that a bond form does not sufficiently ensure performance in the event of a default.

- In certain circumstances, requires 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.
- Authorizes a city or village to offer a subdivider the option of paying a fee in lieu of dedicating land for a public park. A subdivider who elects to dedicate land may only dedicate land consistent with the municipality’s park plan and comprehensive plan unless the municipality agrees otherwise.

Contact Claire at [cms@lwm-info.org](mailto:cms@lwm-info.org)

**Building Regulation 113;  
Eminent Domain 102; Platting 173;  
Powers of Municipalities 933;  
Taxation 1055; Zoning 524**



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