

## **From the desk of David E. Olson**

March 22, 2021

To: La Crosse City Clerk  
400 La Crosse Street  
La Crosse, WI 54601

From: David E. Olson  
1219 Madison Street  
La Crosse, WI 54601



RE: Appeal to reverse fire dept. inspection fees charges & issue refund of amounts paid

Dear City Clerk:

Please consider this letter and attached documents as my appeal of the Fire Department inspection fees charged to the properties at 1004-1006-1008 Pine Street, 1021 Vine Street, 303-305-307 11<sup>th</sup> Street North & 610 11<sup>th</sup> Street North, LaCrosse, WI 54601 in 2020.

2017 Wisconsin Act 317 66.0104(2)2(e) states "No city, village, town, or county may enact an ordinance that does any of the following:.....2. Charges a fee for conducting an inspection of a residential property unless all of the following are satisfied:.....1m **No fee may be charged** for an inspection of the exterior and common areas if the property owner voluntarily allows access for the inspection and no habitability violation is discovered during the inspection or, if a violation is discovered during the inspection, the violation is corrected within the period established by the city, village, town, or county under subd. 1m.

This Act's Date of Enactment was April 16, 2018 and the Date of Publication was April 17, 2018.

After being invoiced for 4 Fire Department Inspections (Invoices 00014402 & 00015202) I reviewed the above Act and requested via Certified Mail (proof of mailing & receipt by the Fire Department attached) that the La Crosse Fire Department clear these inspection fees from our accounts. The Fire Department never responded to my letter. However, I did discover that the Fire Department had placed a "Spl Chg" on our 2020 Real Estate tax bills to take payment for these invoices in the amount of \$30 for three of the properties and \$50 for the fourth property.

In 2019 I had made a similar appeal to the Common Council on this very issue. Two days before my appeal was to be heard by the J&A Committee on 4-02-2019 I had emergency major surgery and was in the hospital. Since the Deputy City Clerk (Nikki Elsen) had advised me in a letter dated March 22, 2019 that the matter would be heard at both the Tuesday 4-02-2019 J&A meeting and then the Common Council meeting on Thursday 4-11-2019 I believed I had enough time to recover and make arrangements for my appeal prior to the Common Council meeting on 4-11-2019. In a letter dated 4-01-2019 I received correspondence from the Deputy Clerk advising me that she had been in error in her March 22, 2019 letter and that the J&A Committee sits as the Administrative Review Board and the final determination is made by that board. The letter date said 4-01-2019 but the U.S. postal service postmark was 4-03-2019. The Administrative Review Board made its determination to deny my appeal on 4-2-2019. I never received notice from the Deputy Clerk correcting her misinformation to me in her letter of 4-22-2019

until after the final determination was made by the Administrative Review Board. I was denied due process in my first appeal.

The following paragraphs set out the history and arguments during my first appeal in 2019 and remain the same for this appeal:

[I sent a letter to Fire Chief Ken Gilliam in 2019 advising him of the contents of Act 317 highlighting the pertinent sections of S66.0104(2)(e)2.a. which addresses inspection fees. Act 317 specially prohibits municipalities from charging a fee for exterior and common area inspections of rental property unless a habitability violation is discovered during the inspection and the owner fails to correct the violation within the time period established by the City.

Assistant Chief Craig Snyder replied in a letter to me referencing authorization to due a mandated fire inspection by Wisconsin State Statue 101.142(2)(b). He also referenced Wisconsin Act 317 where it permits the inspections of rental properties that are required to be inspected by state or federal law.

After reviewing Wisconsin State Statue 101.14(2)(b) and SS101.01(12), I could only find a definition of "Public building" and the requirement that (b) "The chief of every fire department shall provide for the inspection of every public building.....". No where in these sections can I find any reference to being required to or being enabled to charge any fees for these inspections.

**I was not challenging the La Crosse Fire Dept. mandate under state or federal law to inspect certain rental properties as laid out in the statutes. I was and am challenging the City's right to charge any fees for doing these inspections.**

The La Crosse Fire Dept. did not dispute that the inspections being done were "*an inspection of the exterior and common areas*" being performed at "*residential rental properties*". Since we have "*voluntarily granted access to the property*" and "*no code violations were discovered in the course of the inspection*" the assessment of an inspection fee is unlawful under the current state law.

Also, I would bring to your attention that the City of La Crosse at its November 2018 Common Council Meeting repealed 103-403 Initial Inspection Fee and 103-403 Reinspection Fee and the ordinance "regarding mandatory inspection and registration for residential rental properties", to comply with Act 317.

Furthermore, these Fire Department Inspection Fees came into existence in 2013 and had nothing to do with the actual inspections that were being done or had been done for many years prior to this inspection fee enactment, but rather was a means to increase the City of La Crosse's revenue stream for the City's operating budget.

On November 10, 2018 I sent a follow up letter to Assistant Chief Snyder laying out in more detail what Act 317 stated and other pertinent information to reconsider his denial of my request. I never received a reply and when I received my 2018 Real Estate Tax Bills I saw that the Fire Department had encumbered my Tax Bill with "Spl Chg" for these inspection fees along with adding "administrative fees".

On January 7, 2019 I hand delivered a letter to Paralegal Brenda Buddenhagen advising that I wished to contest the charges on my 2018 Property Tax Bill and requested she advise me on the procedure to do that.

On February 26, 2019 I received a letter from Assistant Chief Snyder advising me that the Fire Department had determined that the fees billed to me by the La Crosse Fire Department were done in accordance with Municipal Code 18-27. On this point Assistant Chief Snyder is correct. The flaw in his position is that Wisconsin State Statutes take precedence over municipal ordinances.

Assistant Chief Snyder's final point for denial was confusing. Chief Snyder stated "The associated special charges are charged to all commercial buildings and residential buildings three units and larger (as defined by SS 101.01(12)) which are inspected either annually or semi-annually by the La Crosse Fire Department as determined by the State of Wisconsin". He then proceeded to declare that " Because the annual fire prevention inspection fees are assessed to all places of employment and public buildings which are inspected by the La Crosse Fire Department", that they "are not considered residential inspection fees". On the City of La Crosse Invoice for the inspection fees it states " FIRA 370 Inspect Fee – Apartments. To take the position that the fees are charged to inspect residential buildings, invoice it as such and then say they are not considered residential inspection fees because they also inspect other public buildings is simply a ruse to circumvent Act 317.]

I am respectfully requesting that the special charges on my 2020 Property Tax Bills (1008 Pine Street - \$30, 1201 Vine Street - \$50, 307 11<sup>th</sup> Street N. - \$30, 610 11<sup>th</sup> Street N. \$30) be refunded and that the City cease further assessment of any and all Fire Dept. inspection fees which have been pre-empted under Wisconsin Act 317.

Please also be advised that if this appeal is denied I will appeal the denial through the appropriate courts and further seek the return to the payers all inspection fees collected by the City of La Crosse since the enactment of ACT 317 on 4-16-2018. I will also seek to recover costs, attorney fees, punitive damages and any other just relief that Court may choose to impose on the City.

Thank you.

David E. Olson  
1219 Madison Street  
La Crosse, WI 54601  
(608) 769-7368

# State of Wisconsin



2017 Assembly Bill 771

Date of enactment: April 16, 2018  
Date of publication\*: April 17, 2018

## 2017 WISCONSIN ACT 317

**AN ACT** to repeal 66.0104 (2) (d) 2. c., 66.0104 (2) (g) and 106.50 (2r) (bm); to renumber 66.0104 (1) (a), 704.17 (1) and 799.06 (3); to renumber and amend 66.0809 (5) (am) and 704.07 (3) (a); to amend 59.69 (4m) (a), 60.64 (1), 62.23 (7) (em) 1., 66.0104 (2) (e) 1., 66.0104 (2) (e) 2. a., 66.0104 (2) (e) 4., 66.0104 (3) (c), 66.0602 (2m) (b) 2., 66.0602 (2m) (b) 3., 66.0809 (3m) (a), 66.0809 (5) (b), 66.0821 (4) (a), 101.132 (2) (a) (intro.), 106.50 (2r) (c), 175.403 (2), 196.643 (title), 704.07 (4), 799.206 (3), 799.40 (4) (a) and 802.05 (2m); and to create 59.69 (4m) (bm), 60.64 (2m), 62.23 (7) (em) 2m., 66.0104 (1) (ah), 66.0104 (2) (e) 1m., 66.0104 (2) (e) 2. am., 66.0104 (2m), 66.0628 (2m), 68.125, 101.02 (7w), 106.50 (1m) (im), 106.50 (1m) (mx), 106.50 (2r) (bg) and (br), 196.643 (3), 196.643 (4), 704.07 (3) (a) 1. and 2., 704.07 (5), 704.085, 704.10, 704.17 (1g), 704.17 (4m), 758.20, 799.06 (3) (b), 799.40 (1g) and 799.40 (1s) of the statutes; relating to: the authority of political subdivisions to regulate rental properties and historic properties and of municipalities to inspect dwellings, public utility service to rental dwelling units, landlord and tenant regulations, fees imposed by a political subdivision, certain levy limit reductions, certain procedural changes in eviction actions, information available on the consolidated court automated Internet site, discrimination in housing against individuals who keep certain animals, falsely claiming an animal to be a service animal, municipal administrative procedure, enforcement of the rental unit energy efficiency program, and providing penalties.

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

**SECTION 1.** 59.69 (4m) (a) of the statutes is amended to read:

59.69 (4m) (a) Subject to ~~par. (b)~~ and (bm), a county, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance any place, structure or object with a special character, historic interest, aesthetic interest or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to ~~par. (b)~~, (bm), and (c), the county may create a landmarks commission to designate historic landmarks

and establish historic districts. Subject to ~~par. (b)~~ and (bm), the county may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

**SECTION 2.** 59.69 (4m) (bm) of the statutes is created to read:

59.69 (4m) (bm) In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this subsection, a county shall permit an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

\* 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."



SECTION 3. 60.64 (1) of the statutes is amended to read:

60.64 (1) Subject to ~~sub. subs. (2) and (2m)~~, the town board, in the exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate any place, structure or object with a special character, historic interest, aesthetic interest or other significant value for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subs. (2), ~~(2m)~~, and (3), the town board may create a landmarks commission to designate historic landmarks and establish historic districts. Subject to ~~sub. subs. (2) and (2m)~~, the board may regulate all historic landmarks and all property within each historic district to preserve the historic landmarks and property within the district and the character of the district.

SECTION 4. 60.64 (2m) of the statutes is created to read:

60.64 (2m) In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this section, the town board shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

SECTION 5. 62.23 (7) (em) 1. of the statutes is amended to read:

62.23 (7) (em) 1. Subject to ~~subd. subds. 2. and 2m.~~, a city, as an exercise of its zoning and police powers for the purpose of promoting the health, safety and general welfare of the community and of the state, may regulate by ordinance, or if a city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall, not later than 1995, enact an ordinance to regulate, any place, structure or object with a special character, historic, archaeological or aesthetic interest, or other significant value, for the purpose of preserving the place, structure or object and its significant characteristics. Subject to subds. 2., ~~2m.~~, and 3., a city may create a landmarks commission to designate historic or archaeological landmarks and establish historic districts. Subject to ~~subd. subds. 2. and 2m.~~, the city may regulate, or if the city contains any property that is listed on the national register of historic places in Wisconsin or the state register of historic places shall regulate, all historic or archaeological landmarks and all property within each historic district to preserve the historic or archaeological landmarks and property within the district and the character of the district.

SECTION 6. 62.23 (7) (em) 2m. of the statutes is created to read:

62.23 (7) (em) 2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood con-

servation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

SECTION 7. 66.0104 (1) (a) of the statutes is renumbered 66.0104 (1) (ax).

SECTION 8. 66.0104 (1) (ah) of the statutes is created to read:

66.0104 (1) (ah) "Habitability violation" means any of the following conditions if the condition constitutes an ordinance violation:

1. The rental property or rental unit lacks hot or cold running water.

2. Heating facilities serving the rental property or rental unit are not in safe operating condition or are not capable of maintaining a temperature, in all living areas of the property or unit, of at least 67 degrees Fahrenheit during all seasons of the year in which the property or unit may be occupied. Temperatures in living areas shall be measured at the approximate center of the room, midway between floor and ceiling.

3. The rental property or rental unit is not served by electricity, or the electrical wiring, outlets, fixtures, or other components of the electrical system are not in safe operating condition.

4. Any structural or other conditions in the rental property or rental unit that constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the property or unit other than negligent use or abuse of the property or unit by the tenant.

5. The rental property or rental unit is not served by plumbing facilities in good operating condition.

6. The rental property or rental unit is not served by sewage disposal facilities in good operating condition.

7. The rental property or rental unit lacks working smoke detectors or carbon monoxide detectors.

8. The rental property or rental unit is infested with rodents or insects.

9. The rental property or rental unit contains excessive mold.

SECTION 9. 66.0104 (2) (d) 2. c. of the statutes is repealed.

SECTION 10. 66.0104 (2) (e) 1. of the statutes is amended to read:

66.0104 (2) (e) 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~~ under subd. 1m., under s. 66.0119, as applicable, or as required under state or federal law.

SECTION 11. 66.0104 (2) (e) 1m. of the statutes is created to read:

66.0104 (2) (e) 1m. A city, village, town, or county may establish a rental property inspection program under this subdivision. Under the program, the governing body



of the city, village, town, or county may designate districts in which there is evidence of blight, high rates of building code complaints or violations, deteriorating property values, or increases in single-family home conversions to rental units. A city, village, town, or county may require that a rental property or rental unit located in a district designated under this subdivision be initially inspected and periodically inspected. If no habitability violation is discovered during a program inspection or if a habitability violation is discovered during a program inspection and the violation is corrected within a period of not less than 30 days established by the city, village, town, or county, the city, village, town, or county may not perform a program inspection of the property for at least 5 years. If a habitability violation is discovered during a program inspection and the violation is not corrected within the period established by the city, village, town, or county, the city, village, town, or county may require the rental property or unit to be inspected annually under the program. If a habitability violation is discovered during an inspection conducted upon a complaint and the violation is not corrected within a period of not less than 30 days established by the city, village, town, or county, the city, village, town, or county may require the rental property or unit to be inspected annually under the program. If, at a rental property or unit subject to annual program inspections, no habitability violation is discovered during 2 consecutive annual program inspections, the city, village, town, or county, except as provided in this subdivision, may not perform a program inspection of the property for at least 5 years. No rental property or unit that is less than 8 years old may be inspected under this subdivision. A city, village, town, or county may provide a period of less than 30 days for the correction of a habitability violation under this subdivision if the violation exposes a tenant to imminent danger. A city, village, town, or county shall provide an extension to the period for correction of a habitability violation upon a showing of good cause. A city, village, town, or county shall provide in a notice of a habitability violation an explanation of the violation including a specification of the violation and the exact location of the violation. No inspection of a rental unit may be conducted under this subdivision if the occupant of the unit does not consent to allow access unless the inspection is under a special inspection warrant under s. 66.0119.

SECTION 12. 66.0104 (2) (e) 2. a. of the statutes is amended to read:

66.0104 (2) (e) 2. a. The amount of the fee is uniform for residential rental inspections does not exceed \$75 for an inspection of a vacant unit under subd. 1m. or an inspection of the exterior and common areas of a property under subd. 1m., \$90 for any other initial program inspection under subd. 1m., or \$150 for any other 2nd or subsequent program inspection under subd. 1m. No fee may be charged for a program inspection under subd. 1m. if

no habitability violation is discovered during the inspection or, if a violation is discovered during the inspection, the violation is corrected within the period established by the city, village, town, or county under subd. 1m. No fee may be charged for an inspection of the exterior and common areas if the property owner voluntarily allows access for the inspection and no habitability violation is discovered during the inspection or, if a violation is discovered during the inspection, the violation is corrected within the period established by the city, village, town, or county under subd. 1m. No fee may be charged for a reinspection that occurs after a habitability violation has been corrected. No fee may be charged to a property owner if a program inspection does not occur because an occupant of the property does not allow access to the property. Annually, a city, village, town, or county may increase the fee amounts under this subd. 2. a. by not more than the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor, for the previous year or 2 percent, whichever is greater.

SECTION 13. 66.0104 (2) (e) 2. am. of the statutes is created to read:

66.0104 (2) (e) 2. am. The amount of the fee does not exceed \$150 for an inspection under s. 66.0119, except that if a habitability violation is discovered during the inspection and the violation is not corrected within a period of not less than 30 days established by the city, village, town, or county, the fee may not exceed \$300. No fee may be charged for an inspection under s. 66.0119 if no habitability violation is discovered. Annually, a city, village, town, or county may increase the fee amounts under this subd. 2. am. by not more than the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor, for the previous year or 2 percent, whichever is greater.

SECTION 14. 66.0104 (2) (e) 4. of the statutes is amended to read:

66.0104 (2) (e) 4. Except as provided in this subdivision, requires that a rental property or rental unit be certified, registered, or licensed or requires that a residential rental property owner register or obtain a certification or license related to owning or managing the residential rental property. A city, village, town, or county may require that a rental unit or residential rental property owner be registered if the registration consists requires only of providing the one name of the an owner and an or authorized contact person and an address and, telephone number, and, if available, an electronic mail address or other information necessary to receive communications by other electronic means at which the contact person may be contacted. No city, village, town, or county, except a 1st class city, may charge a fee for registration under this subdivision except a one-time registration fee that reflects the actual costs of operating a registration



(2) (a) No city, village, town, or county may enact an ordinance that places any of the following limitations on a residential landlord:

1. Prohibits a landlord from, or places limitations on a landlord with respect to, obtaining and using or attempting to obtain and use any of the following information with respect to a tenant or prospective tenant:

- Monthly household income.
- Occupation.
- Rental history.
- Credit information.
- Court records, including arrest and conviction records, to which there is public access.
- Social security number or other proof of identity.

2. Limits how far back in time a prospective tenant's credit information, conviction record, or previous housing may be taken into account by a landlord.

3. Prohibits a landlord from, or places limitations on a landlord with respect to, entering into a rental agreement for a premises with a prospective tenant during the tenancy of the current tenant of the premises.

4. Prohibits a landlord from, or places limitations on a landlord with respect to, showing a premises to a prospective tenant during the tenancy of the current tenant of the premises.

(b) No city, village, town, or county may enact an ordinance that places requirements on a residential landlord with respect to security deposits or earnest money or pretenancy or posttenancy inspections that are additional to the requirements under administrative rules related to residential rental practices.

(c) No city, village, town, or county may enact an ordinance that limits a residential tenant's responsibility, or a residential landlord's right to recover, for any damage or waste to, or neglect of, the premises that occurs during the tenant's occupancy of the premises, or for any other costs, expenses, fees, payments, or damages for which the tenant is responsible under the rental agreement or applicable law.

(d) 1. a. No city, village, town, or county may enact an ordinance that requires a landlord to communicate to tenants any information that is not required to be communicated to tenants under federal or state law.

b. Subdivision 1. a. does not apply to an ordinance that has a reasonable and clearly defined objective of regulating the manufacture of illegal narcotics.

2. No city, village, town, or county may enact an ordinance that requires a landlord to communicate to the city, village, town, or county any information concerning the landlord or a tenant, unless any of the following applies:

- The information is required under federal or state law.
- The information is required of all residential real property owners.

(e) No city, village, town, or county may enact 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 inspections under subd. 1m., under s. 66.0119, or as required under state or federal law.

1m. A city, village, town, or county may establish a rental property inspection program under this subdivision. Under the program, the governing body of the city, village, town, or county may designate districts in which there is evidence of blight, high rates of building code complaints or violations, deteriorating property values, or increases in single-family home conversions to rental units. A city, village, town, or county may require that a rental property or rental unit located in a district designated under this subdivision be initially inspected and periodically inspected. If no habitability violation is discovered during a program inspection or if a habitability violation is discovered during a program inspection and the violation is corrected within a period

of not less than 30 days established by the city, village, town, or county, the city, village, town, or county may not perform a program inspection of the property for at least 5 years. If a habitability violation is discovered during a program inspection and the violation is not corrected within the period established by the city, village, town, or county, the city, village, town, or county may require the rental property or unit to be inspected annually under the program. If a habitability violation is discovered during an inspection conducted upon a complaint and the violation is not corrected within a period of not less than 30 days established by the city, village, town, or county, the city, village, town, or county may require the rental property or unit to be inspected annually under the program. If, at a rental property or unit subject to annual program inspections, no habitability violation is discovered during 2 consecutive annual program inspections, the city, village, town, or county, except as provided in this subdivision, may not perform a program inspection of the property for at least 5 years. No rental property or unit that is less than 8 years old may be inspected under this subdivision. A city, village, town, or county may provide a period of less than 30 days for the correction of a habitability violation under this subdivision if the violation exposes a tenant to imminent danger. A city, village, town, or county shall provide an extension to the period for correction of a habitability violation upon a showing of good cause. A city, village, town, or county shall provide in a notice of a habitability violation an explanation of the violation including a specification of the violation and the exact location of the violation. No inspection of a rental unit may be conducted under this subdivision if the occupant of the unit does not consent to allow access unless the inspection is under a special inspection warrant under s. 66.0119.

2. Charges a fee for conducting an inspection of a residential rental property unless all of the following are satisfied:

a. The amount of the fee does not exceed \$75 for an inspection of a vacant unit under subd. 1m. or an inspection of the exterior and common areas of a property under subd. 1m., \$90 for any other initial program inspection under subd. 1m., or \$150 for any other 2nd or subsequent program inspection under subd. 1m. No fee may be charged for a program inspection under subd. 1m. if no habitability violation is discovered during the inspection or, if a violation is discovered during the inspection, the violation is corrected within the period established by the city, village, town, or county under subd. 1m. No fee may be charged for an inspection of the exterior and common areas if the property owner voluntarily allows access for the inspection and no habitability violation is discovered during the inspection or, if a violation is discovered during the inspection, the violation is corrected within the period established by the city, village, town, or county under subd. 1m. No fee may be charged for a reinspection that occurs after a habitability violation has been corrected. No fee may be charged to a property owner if a program inspection does not occur because an occupant of the property does not allow access to the property. Annually, a city, village, town, or county may increase the fee amounts under this subd. 2. a. by not more than the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor, for the previous year or 2 percent, whichever is greater.

am. The amount of the fee does not exceed \$150 for an inspection under s. 66.0119, except that if a habitability violation is discovered during the inspection and the violation is not corrected within a period of not less than 30 days established by the city, village, town, or county, the fee may not exceed \$300. No fee may be charged for an inspection under s. 66.0119 if no habitability violation is discovered. Annually, a city, village, town, or county may increase the fee amounts under this subd. 2. am. by not more than the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal department of labor, for the previous year or 2 percent, whichever is greater.

b. The fee is charged at the time that the inspection is actually performed.



City of La Crosse, Wisconsin  
400 La Crosse Street, La Crosse, Wisconsin 54601

# INVOICE

00014402

ROBERT OLSON  
1219 MADISON ST  
LA CROSSE WI 54601



Invoice Date: 06/22/2020 Due Date: 09/22/2020

Inspection: Fire - Billing - Occupancy  
1006 PINE ST, 1004 PINE ST, 1008 PINE ST

1A-VINE0919-00-N

Fee	Quantity	Amount	Paid	Owed
Fire Inspection Fee - Apartments	3.00	\$10.00	\$0.00	\$10.00
		\$10.00	\$0.00	\$10.00

Detach and include section below with payment:

Make Checks Payable To: City Treasurer, 400 La Crosse St., La Crosse, WI 54601  
(Include Invoice/Account Number with Payment)

Invoice Date: 06/22/2020 Due Date: 09/22/2020

Amount	Paid	Owed
\$10.00	\$0.00	\$10.00

00014402







City of La Crosse, Wisconsin  
400 La Crosse Street, La Crosse, Wisconsin 54601

# INVOICE

00015202

DAVID E OLSON TRUST  
1219 MADISON ST  
LA CROSSE WI 54601



Invoice Date: 06/22/2020 Due Date: 09/22/2020

Inspection: Fire - Billing - Occupancy 1G-11NO0610-00-N  
810 11TH ST. N

Fee	Quantity	Amount	Paid	Owed
Fire Inspection Fee - Apartments	4.00	\$10.00	\$0.00	\$10.00
		\$10.00	\$0.00	\$10.00

Inspection: Fire - Billing - Occupancy 1G-11NO0303-00-N  
303 11TH ST. N, 307 11TH ST. N, 305 11TH ST. N

Fee	Quantity	Amount	Paid	Owed
Fire Inspection Fee - Apartments	3.00	\$10.00	\$0.00	\$10.00
		\$10.00	\$0.00	\$10.00

Inspection: Fire - Billing - Occupancy 1A-VINE1021-00-N  
1021 VINE ST

Fee	Quantity	Amount	Paid	Owed
Fire Inspection Fee - Apartments	16.00	\$30.00	\$0.00	\$30.00
		\$30.00	\$0.00	\$30.00

Detach and include section below with payment:

Make Checks Payable To: City Treasurer, 400 La Crosse St., La Crosse, WI 54601  
(Include Invoice/Account Number with Payment)

Invoice Date: 06/22/2020 Due Date: 09/22/2020

00015202



Amount	Paid	Owed
\$50.00	\$0.00	\$50.00

## *From the Desk of David E. Olson*

August 28, 2020

To: Fire Chief Ken Gilliam  
La Crosse Fire Department  
726 5<sup>th</sup> Avenue South  
La Crosse, WI 54601-4512

From: David E. Olson  
1219 Madison St.  
La Crosse, WI 54601

RE: Fire Inspection Fees – Apartments

Dear Chief Gilliam,

We received two invoices (No.'s 00014402 & 00015202) for City of La Crosse Fire Department Inspection Fees.

We have reviewed 2017 Wisconsin Act 317 which was enacted on April 16<sup>th</sup>, 2018 and published on April 17<sup>th</sup>, 2018. A copy is attached for your review. I have highlighted the pertinent section of §66.0104(2)(e)2.a. which addresses these inspection fees.

Act 317 specifically prohibits municipalities from charging a fee for exterior and common area inspections of rental property unless a habitability violation is discovered during the inspection and the owner fails to correct the violation within the time period established by the City. The section that directly relates this law to the inspections performed by the Fire Department reads as follows:

"No fee may be charged for an inspection of the exterior and common areas if the property owner voluntarily allows access for the inspection and no habitability violation is discovered during the inspection..."

Please note that I am "not challenging" the Fire Department's mandate under state or federal law to inspect certain rental properties as laid out in the statutes but am challenging the City's right to "charge any fees" for doing these inspections. If your position is that "the invoices in question are part of the State mandated fire inspection program as required under DSPS 314 authorized by Wisconsin State Statute 101.14(2)(b)" then please specify the exact wording of the Statute which authorizes or permits the City to charge fees for these inspections.



If you review Wisconsin State Statute 101.14(2)(b) and SS101.01(12) you will only find a definition of "Public building" and the requirement that (b) "The chief of every fire department shall provide for the inspection of every public building.....". No where in these sections can I find any reference to being required to or being enabled to charge any fees for these inspections.

We respectfully ask that the fees be cleared from our account and that the City cease further assessment of any and all inspections fees which have been pre-empted under 2017 Wisconsin Act 317.

Thank you,

A handwritten signature in black ink, appearing to read "David E. Olson", followed by a long horizontal line extending to the right.

David E. Olson

Attachments: City Invoices 00014402 & 00015202  
Wisconsin Act 317 pages 1-3

Certified Mail: 7018 0360 0001 2888 6453

2018 0360 0001 2888 6456

<b>U.S. Postal Service™</b> <b>CERTIFIED MAIL® RECEIPT</b> Domestic Mail Only	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.	
La Crosse, WI 54601	
<b>OFFICIAL USE</b>	
Certified Mail Fee \$3.55 \$ Extra Services & Fees (check box, add fee as appropriate) <input type="checkbox"/> Return Receipt (hardcopy) \$2.85 <input type="checkbox"/> Return Receipt (electronic) \$0.00 <input type="checkbox"/> Certified Mail Restricted Delivery \$0.00 <input type="checkbox"/> Adult Signature Required \$0.00 <input type="checkbox"/> Adult Signature Restricted Delivery \$0.00	0083 CROSSE WI 54601 Postmark AUG 28 2020 08/28/2020
Postage \$0.70 \$ Total Postage and Fees \$7.10 \$	
Sent To FIRE CHIEF KEN GILLIAM Street and Apt. No., or PO Box No. 726 5th AVE South City, State, ZIP+4® LACROSSE, WI 54601-4512	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



LA CROSSE  
 425 STATE ST STE 100  
 LA CROSSE, WI 54601-3378  
 (800)275-8777

08/28/2020 03:42 PM

Product	Qty	Unit Price	Price
Henry James NDN	1	\$0.85	\$0.85
Total			\$0.85
First-Class Mail® Letter	1		\$0.70
La Crosse, WI 54601			
Weight: 0 Lb 1.50 Oz			
Estimated Delivery Date			
Monday 08/31/2020			
Certified			\$3.55
USPS Certified Mail #			
70180360000128886453			
Return Receipt			\$2.85
USPS Return Receipt #			
9590940259760062111246			
Total			\$7.10
Grand Total:			\$7.95

Cash \$20.00  
 Change (\$12.05)

\*\*\*\*\*  
 Due to limited transportation



## Product Tracking &amp; Reporting

[Home](#)[Search](#)[Reports](#)[Manual Entry](#)[Reverse  
Commitments](#)[PTR / EDW](#)[USPS Corporate  
Accounts](#)

September 24, 2020

## USPS Tracking Intranet

## Delivery Signature and Address



## Price Change 1/26/2020:

USPS Premium Tracking: USPS will offer a fee-based service to extend the availability of tracking data on domestic competitive products for an additional 6 months up to 10 years. In addition, customers can also request a Premium Tracking Statement via email.

The Manual Entry Acceptance screen will be modified to use the Pricing Engine for all rates calculations. Users will no longer enter fees for Collect on Delivery (COD) and Additional Insurance; instead, users will enter the dollar amount to be collected for COD or the insured value for Insurance.

Tracking Number: 7018 0360 0001 2888 6453

This item was delivered on 08/31/2020 at 16:49:00

[Return to Tracking Number View](#)

Signature	G JWP #23 C19 G JWP #19 C19
Address	726 5 <sup>TH</sup> AVE

Enter up to 35 items separated by commas.

Select Search Type:

Quick Search



Submit

Product Tracking & Reporting, All Rights Reserved  
Version: 20.4.2.0.79

City Hall  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

STATE OF WISCONSIN  
2020 Real Estate Tax Bill  
La Crosse County  
City of La Crosse

2020 Real Estate Tax

Bill Number 5468



\*054682020\*

Correspondence should refer to Tax Parcel 17-20198-10

IMPORTANT: See reverse side for important information.

5468 17-20198-10 6292  
ROBERT D OLSON  
1219 MADISON ST  
LA CROSSE WI 54601

Be sure this description covers your property. This description is for property tax bill only and may not be a full legal description.

32-16 N-07 Acres 0.195  
ALLEN OVERBAUGH & PETER BURN  
S ADDITION LOT 212 BLOCK 20  
LOT SZ: 51 11/12X163.08

1008 PINE ST

Assessed Value Land	Ass'd Value Improvement	Total Assessed Value	Assessed Woodland	Ave. Assmt. Ratio	Net Assessed Value
51,200	367,100	418,300	0	.867962042	Rate (Does NOT reflect credit) .025607710
Est Fair Mkt Land	Est Fair Mkt Improvement	Total Est Fair Mkt	Est Fair Mkt Woodland	School Taxes reduced by school levy tax credit	A Star in this box means unpaid prior year taxes
59,000	422,900	481,900	0	795.29	
2019 2020 2019 2020 % Tax					
Taxing Jurisdiction	Est. State Aids Allocated Tax Dist.	Est. State Aids Allocated Tax Dist.	Net Tax	Net Tax	Change
STATE OF WISCONSIN	0	0	0.00	0.00	0.00
La Crosse County	2,076,766	2,067,428	1,531.18	1,578.54	3.10
Local Municipality	13,244,804	13,079,005	4,344.84	4,443.98	2.30
LA CROSSE SCHOOL	33,615,214	34,257,824	4,196.24	4,014.65	-4.30
WTC	4,125,012	3,811,393	657.00	674.53	2.70
Total			10,729.26	10,711.70	-0.20
First Dollar Credit			78.25	70.86	-9.40
Lottery Credit			0.00	0.00	0.00
Net Property Tax			10,651.01	10,640.84	-0.10
Net Property Tax					10,640.84
Spl Chg					30.00
TOTAL DUE FOR FULL PAYMENT					
Pay by 01/31/21					\$10,670.84

FOR INFORMATIONAL PURPOSES ONLY- Voter-Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
LACROSSE SCHOOL	3,172,502	354.93	2024
RF4643			

On or prior to 07/31/21

Make Check Payable to:  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

Or Installment Options

DUE DATE	AMOUNT
01/31/21	2,690.21
03/31/21	2,660.21
05/31/21	2,660.21
07/31/21	2,660.21

To receive receipt, enclose a self-addressed stamped envelope.  
All payments can be seen at [www.lacrossecounty.org](http://www.lacrossecounty.org)

WARNING: If not paid by due dates, installment option is lost and total tax is delinquent subject to interest and if applicable, penalty.  
Failure to pay on time. See reverse.

REMIT THIS WITH PAYMENT

2020 Real Estate Tax Bill Number 5468

Correspondence should refer to Tax  
Parcel 17-20198-10

City of LaCrosse  
1008 PINE ST  
32-16 N-07 Acres 0.195  
ALLEN OVERBAUGH & PETER BURN  
S ADDITION LOT 212 BLOCK 20  
LOT SZ: 51 11/12X163.08

To: City Hall  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

\*\*To pay in person, check hours of operation @  
[www.cityoflacrosse.org/treasurer](http://www.cityoflacrosse.org/treasurer)

Pay by 01/31/21 \$10,670.84

Or Installment Options

DUE DATE	AMOUNT
01/31/21	2,690.21
03/31/21	2,660.21
05/31/21	2,660.21
07/31/21	2,660.21

AMOUNT ENCLOSED

\$10670.84

ROBERT D OLSON  
1219 MADISON ST  
LA CROSSE WI 54601



017020198010



City Hall  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

STATE OF WISCONSIN  
2020 Real Estate Tax Bill  
La Crosse County  
City of La Crosse

2020 Real Estate Tax

Bill Number 5459



\*054592020\*

Correspondence should refer to Tax Parcel 17-20197-30

IMPORTANT: See reverse side for important information.

Be sure this description covers your property. This description is for property tax bill only and may not be a full legal description.

5459 17-20197-30 288 10 8 of 17  
DAVID E, ELAINE M  
OLSON TRUST  
1219 MADISON ST  
LA CROSSE WI 54601

32-16 N-07 Acres 0.390  
ALLEN OVERBAUGH & PETER BURN  
S ADDITION LOTS 187 & 188 BL  
OCK 20 LOT SZ: 103M/L X163.0  
8  
1021 VINE ST

Assessed Value Land	Ass'd Value Improvement	Total Assessed Value	Assessed Woodland	Ave. Assmt. Ratio	Net Assessed Value
102,400	762,400	864,800	0	.867962042	Rate (Does NOT reflect credit) .025607710
Est Fair Mkt Land	Est Fair Mkt Improvement	Total Est Fair Mkt	Est Fair Mkt Woodland	School Taxes reduced by	A Star in this box means unpaid prior year taxes
118,000	878,400	996,400	0	school levy tax credit 1,644.20	

Taxing Jurisdiction	2019	2020	2019	2020	% Tax Change	Net Property Tax	22,074.68
	Est. State Aids Allocated Tax Dist.	Est. State Aids Allocated Tax Dist.	Net Tax	Net Tax			
STATE OF WISCONSIN	0	0	0.00	0.00	0.00		
La Crosse County	2,076,766	2,067,428	3,165.59	3,263.49	3.10		
Local Municipality	13,244,804	13,079,005	8,982.59	9,187.56	2.30		
LA CROSSE SCHOOL	33,615,214	34,257,824	8,675.38	8,299.95	-4.30		
WTC	4,125,012	3,811,393	1,358.29	1,394.54	2.70		
		<b>Total</b>	<b>22,181.85</b>	<b>22,145.54</b>	<b>-0.20</b>		
		<b>First Dollar Credit</b>	<b>78.25</b>	<b>70.86</b>	<b>-9.40</b>		
		<b>Lottery Credit</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>		
		<b>Net Property Tax</b>	<b>22,103.60</b>	<b>22,074.68</b>	<b>-0.10</b>		

FOR INFORMATIONAL PURPOSES ONLY- Voter-Approved Temporary Tax Increases				On or prior to 07/31/21		Or Installment Options	
Taxing Jurisdiction	Total Additional Taxes	Applied to Property	Year Increase Ends	Make Check Payable to:		DUE DATE	AMOUNT
LACROSSE SCHOOL	3,172,502	733.80	2024	La Crosse City Treasurer		01/31/21	5,568.67
RF4643				PO Box 2408		03/31/21	5,518.67
				La Crosse WI 54602-2408		05/31/21	5,518.67
						07/31/21	5,518.67

**WARNING:** If not paid by due dates, installment option is lost and total tax is delinquent subject to interest and if applicable, penalty.  
Failure to pay on time. See reverse.

To receive receipt, enclose a self-addressed stamped envelope.  
All payments can be seen at [www.lacrossecounty.org](http://www.lacrossecounty.org)

REMIT THIS WITH PAYMENT

2020 Real Estate Tax Bill Number 5459

Correspondence should refer to Tax  
Parcel 17-20197-30

City of LaCrosse  
1021 VINE ST  
32-16 N-07 Acres 0.390  
ALLEN OVERBAUGH & PETER BURN  
S ADDITION LOTS 187 & 188 BL  
OCK 20 LOT SZ: 103M/L X163.0  
8

DAVID E, ELAINE M  
OLSON TRUST  
1219 MADISON ST  
LA CROSSE WI 54601

To: City Hall  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

\*\*To pay in person, check hours of operation @  
[www.cityoflacrosse.org/treasurer](http://www.cityoflacrosse.org/treasurer)

Pay by 01/31/21 \$22,124.68

Or Installment Options

DUE DATE	AMOUNT
01/31/21	5,568.67
03/31/21	5,518.67
05/31/21	5,518.67
07/31/21	5,518.67

AMOUNT ENCLOSED



017020197030

City Hall  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

STATE OF WISCONSIN  
2020 Real Estate Tax Bill  
La Crosse County  
City of La Crosse

2020 Real Estate Tax

Bill Number 5460



Correspondence should refer to Tax Parcel 17-20197-70

IMPORTANT: See reverse side for important information.

Be sure this description covers your property. This description is for property tax bill only and may not be a full legal description.

5460 17-20197-70 289 10 9 of 17  
DAVID E, ELAINE M  
OLSON TRUST  
1219 MADISON ST  
LA CROSSE WI 54601

32-16 N-07 Acres 0.132  
ALLEN OVERBAUGH & PETER BURN  
S ADDITION LOT 189 EX N 53FT  
BLOCK 20 LOT SZ: 51.9X110.0  
8  
307 11TH ST N

Assessed Value Land	Ass'd Value Improvement	Total Assessed Value	Assessed Woodland	Ave. Assmt. Ratio	Net Assessed Value
34,600	406,800	441,400	0	.867962042	Rate (Does NOT reflect credit) .025607710
Est Fair Mkt Land	Est Fair Mkt Improvement	Total Est Fair Mkt	Est Fair Mkt Woodland	School Taxes reduced by	A Star in this box means unpaid prior year taxes
39,900	468,700	508,600	0	school levy tax credit 839.21	
		2019	2020	2019	2020
		Est. State Aids	Est. State Aids	Net Tax	Net Tax
		Allocated Tax Dist.	Allocated Tax Dist.		% Tax Change
Taxing Jurisdiction					
STATE OF WISCONSIN		0	0	0.00	0.00
La Crosse County		2,076,766	2,067,428	1,615.74	1,665.71
Local Municipality		13,244,804	13,079,005	4,584.78	4,689.40
LA CROSSE SCHOOL		33,615,214	34,257,824	4,427.97	4,236.35
WTC		4,125,012	3,811,393	693.28	711.78
		Total		11,321.77	11,303.24
		First Dollar Credit		78.25	70.86
		Lottery Credit		0.00	0.00
		Net Property Tax		11,243.52	11,232.38
					Net Property Tax 11,232.38
					Spl Chg 30.00
					<b>TOTAL DUE FOR FULL PAYMENT</b>
					<b>Pay by 01/31/21 \$11,262.38</b>

FOR INFORMATIONAL PURPOSES ONLY- Voter-Approved Temporary Tax Increases

Taxing Jurisdiction	Total Additional Taxes	Total Additional Taxes Applied to Property	Year Increase Ends
LACROSSE SCHOOL	3,172,502	374.53	2024
RF4643			

On or prior to 07/31/21

Make Check Payable to:  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

Or Installment Options

DUE DATE	AMOUNT
01/31/21	2,838.08
03/31/21	2,808.10
05/31/21	2,808.10
07/31/21	2,808.10

To receive receipt, enclose a self-addressed stamped envelope.  
All payments can be seen at [www.lacrossecounty.org](http://www.lacrossecounty.org)

WARNING: If not paid by due dates, installment option is lost and total tax is delinquent subject to interest and if applicable, penalty.  
Failure to pay on time. See reverse.

REMIT THIS WITH PAYMENT

2020 Real Estate Tax Bill Number 5460

Correspondence should refer to Tax  
Parcel 17-20197-70

City of LaCrosse  
307 11TH ST N  
32-16 N-07 Acres 0.132  
ALLEN OVERBAUGH & PETER BURN  
S ADDITION LOT 189 EX N 53FT  
BLOCK 20 LOT SZ: 51.9X110.0  
8

DAVID E, ELAINE M  
OLSON TRUST  
1219 MADISON ST  
LA CROSSE WI 54601

To: City Hall  
La Crosse City Treasurer  
PO Box 2408  
La Crosse WI 54602-2408

\*\*To pay in person, check hours of operation @  
[www.cityoflacrosse.org/treasurer](http://www.cityoflacrosse.org/treasurer)

Pay by 01/31/21 \$11,262.38

Or Installment Options

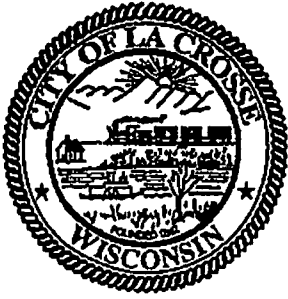
DUE DATE	AMOUNT
01/31/21	2,838.08
03/31/21	2,808.10
05/31/21	2,808.10
07/31/21	2,808.10

AMOUNT ENCLOSED



017020197070





**TERI LEHRKE, WCPC, City Clerk**

**400 LA CROSSE STREET  
LA CROSSE, WISCONSIN 54601**

**PHONE (608) 789-7510**

**FAX (608) 789-7552**

**[www.cityoflacrosse.org](http://www.cityoflacrosse.org)**

March 22, 2019

David E Olson  
1219 Madison St  
La Crosse WI 54601

**Re: Appeal of Fire Inspection Fees**

Dear Mr. Olson:

Your appeal of the Fire Department's denial to reverse fire inspection fees will be heard at the following meetings:

**Judiciary & Administration Committee      Tues., April 2, 2019, 5:15 p.m.  
Common Council Chambers**

**Common Council      Thurs., April 11, 2019, 6:00 p.m.  
Common Council Chambers**

The Council Chambers is located on 1<sup>st</sup> Floor of City Hall.

There will be a public hearing at the Judiciary & Administration Committee; we recommend your attendance. Public hearing is not allowed at the Council meeting but you are welcome to attend.

If you have any questions, comments, or concerns, do not hesitate to contact me.

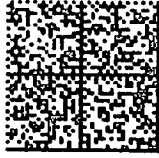
Sincerely,

Nikki M. Elsen  
Deputy City Clerk  
(608) 789-7555  
[elsenn@cityoflacrosse.org](mailto:elsenn@cityoflacrosse.org)



**TERI LEHRKE**  
CITY CLERK  
400 LA CROSSE ST  
LA CROSSE WI 54601-3396  
RETURN SERVICE REQUESTED

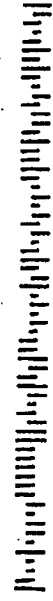
Presort  
First Class Mail  
ComBasPrice



U.S. POSTAGE >> PITNEY BOWES  
ZIP 54601 \$000.42<sup>8</sup>  
02 1W  
0001399329 MAR 25 2019

DAVID E OLSON  
1219 MADISON ST  
LA CROSSE WI 54601

72 LRCINMF 54601





**TERI LEHRKE, WCPC, City Clerk**

400 LA CROSSE STREET

LA CROSSE, WISCONSIN 54601

PHONE (608) 789-7510

FAX (608) 789-7552

[www.cityoflacrosse.org](http://www.cityoflacrosse.org)

April 1, 2019

David E Olson  
1219 Madison St  
La Crosse WI 54601

**Re: Appeal of Fire Inspection Fees**

Dear Mr. Olson:

This letter is in follow up to my communication dated March 22, 2019.

The information I provided was based on an appeal process in Chapter 10 of the Municipal Code. That was in error.

The process of your appeal actually falls under Municipal Code sec. 2-4. The Judiciary & Administration Committee sits as the Administrative Review Board and our ordinance clarifies that this matter does not go to the Common Council since the final determination is made by that Board.

Therefore, the hearing on appeal remains scheduled for April 2, 2019 at 5:15 p.m. However, the issue will not be before the Common Council on Thursday, April 11, 2019 as previously indicated.

The Board has 20 days to issue its written determination and reasons after the hearing on April 2<sup>nd</sup>.

If you have any questions, do not hesitate to contact me.

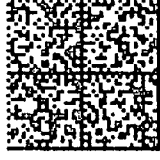
Sincerely,

Nikki M. Elsen  
Deputy City Clerk  
(608) 789-7555  
[elsenn@cityoflacrosse.org](mailto:elsenn@cityoflacrosse.org)

cc: David Olson via email [olsonapartments@gmail.com](mailto:olsonapartments@gmail.com)

**TERI LEHRKE**  
**CITY CLERK**  
**400 LA CROSSE ST**  
**LA CROSSE WI 54601-3396**  
**RETURN SERVICE REQUESTED**

Presort  
First Class Mail  
CombAsPrice



U.S. POSTAGE >> PITNEY BOWES

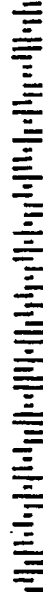


ZIP 54601 \$ 000.42<sup>8</sup>  
02 1W  
0001399329 APR 03 2019

DAVID E OLSON  
1219 MADISON ST  
LA CROSSE WI 54601

7

72 BRCINMF 54601





## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Constitutional Home Rule

This Information Memorandum describes a city or village's power to enact a charter ordinance under its constitutional home rule authority. The Information Memorandum also discusses how a city or village's charter ordinance would interact with statewide legislation on the same matter.

Generally, a city or village may enact a charter ordinance that preempts a state law, but local preemption of a state law is not effective if the state law applies uniformly to every city or village, or if the matter is solely of statewide concern. If a matter is primarily of statewide concern, and the legislation does not expressly or implicitly forbid local regulation on the matter, a local ordinance may stand if it does not conflict with the legislation.

#### **CONSTITUTIONAL HOME RULE**

The Wisconsin Constitution provides that cities and villages "may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village." Under this provision, the method for a city or village to determine its own affairs is to be prescribed by the Legislature. [Art. XI, s. 3 (1), Wis. Const.]

This provision is known as "constitutional home rule," and means that if a policy is entirely a matter of a city or village's local affairs and government, a city or village is authorized to regulate that matter, and the Legislature is prohibited from enacting a law that would preempt the local regulation of that matter. However, if a matter is exclusively of statewide concern, or a legislative enactment applies uniformly to every city or village, the Legislature may prohibit a city or village from enacting an ordinance on the matter and may regulate the matter through state laws.

The constitutional home rule authority is granted only to a city or village. Other units of local government such as counties, towns, and school districts do not have constitutional home rule authority. However, the administrative home rule authority, which is provided to every county under the state statutes, is limited in a similar manner by any legislative enactment of statewide concern that uniformly affects all counties, and is reviewed in a similar manner to constitutional home rule authority. Likewise, a town that has adopted village powers is subject to review of its ordinances in a similar manner to constitutional home rule authority.



## **CHARTER ORDINANCE PREEMPTION OF STATE LAW**

As directed by the constitutional home rule provision, the Legislature enacted s. 66.0101, Stats., titled, "Home rule; manner of exercise."

This section includes a procedure for a city or village to enact a "charter ordinance" to override a state law as it relates to the local affairs and government of the city or village. Any such charter ordinance that is intended to preempt a state law must specifically designate which law is made inapplicable to the city or village by the charter ordinance.

To be effective, a charter ordinance must be designated as a charter ordinance, and must be passed by a two-thirds vote of the members of the city or village's governing body. If a petition demanding a referendum is filed within 60 days of the charter ordinance's passage and publication, and the petition is signed by an adequate number of electors (according to a specified formula), the charter ordinance takes effect after it is submitted to a referendum and is approved by a majority of the electors who voted. Alternatively, a city or village may choose to submit a charter ordinance to a referendum, on its own initiative. If no petition demanding a referendum is filed within the 60 days after the charter ordinance's passage and publication, it takes effect on the 60th day.

A charter ordinance may also be initiated by a petition for direct legislation, to either be adopted by the city or village's governing body, or by referendum. If adopted by the governing body, the charter ordinance may still be subject to a referendum if a demand petition is filed within 60 days of the charter ordinance's passage.

Under both the state Constitution and statutes, the procedures for a charter ordinance to preempt a state law are not available when the legislative enactment was of statewide concern in its uniform effect on every city or every village.

## **CASELAW**

Under constitutional home rule analyses, the ability for a city or village to regulate a matter, if there are state statutes regulating the same matter, depends upon the statewide and local interests involved. For the purposes of a court's analysis, statutes are classified in one of three ways:

- (1) *Statutes exclusively of statewide concern.* When a matter under the statutes is entirely of statewide concern, a city or village may not elect to override the statute.
- (2) *Statutes entirely of a local character.* When a statute is entirely of a local character, a city or village may elect not to be bound by that statute.

(3) *Statutes of mixed statewide and local character.* When a statute topic has mixed statewide and local character, the test depends upon whether the statute involved is primarily or paramountly a matter of local affairs and government or of statewide concern. A court must make this determination on a case-by-case basis looking at legislative intent and other evidence. If a statute is paramountly a matter of local affairs, the charter ordinance will prevail, but if a statute is paramountly a matter of statewide concern, the statute will prevail over any conflicting provisions, and to the extent that it expressly or implicitly forbids local legislation.

[*State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526–527, (1977); *Gloudeman v. City of St. Francis*, 143 Wis. 2d 780, 789 (Ct. App. 1988); *Anchor Sav. & Loan Ass'n v. Equal Opportunities Comm'n*, 120 Wis. 2d 391, 397 (1984).]

A few cases are briefly described below to illustrate the analysis used by Wisconsin courts in reviewing a city or village's constitutional home rule authority.

#### ***DECISIONS IN FAVOR OF LOCAL CHARACTER***

In *State ex rel. Ekern v. Milwaukee*, the Wisconsin Supreme Court reviewed the narrow question of whether the subject matter of the maximum height of buildings in a city is a matter of a city's "local affairs and government" within its constitutional home rule authority. The Court stated that there is a "substantial difference between a building in a congested community and one in a rural district," and held that building heights are a matter of "local affair" within the city's constitutional home rule authority. [*State ex rel. Ekern v. Milwaukee*, 190 Wis. 633 (1926).]

In *State ex rel. Michalek v. Le Grand*, the Wisconsin Supreme Court applied the "test of paramountcy" to determine whether the city ordinance was primarily a matter of local affairs or of statewide concern. The Court noted that the analysis is not whether specific state statutes preempt a local ordinance, but, rather, whether the subject is paramountly a local affair or a matter of statewide concern.

In *Michalek*, the Court first held that the ordinance, enacted to secure compliance with the city's building and zoning code, was primarily and paramountly a matter of the city's local affairs. The Court then reviewed whether there might be any conflict between specific statutes and the ordinance. The Court held that, because the ordinance and the statutes did not conflict, the ordinance was a valid exercise of the city's home rule authority, and the statutes were valid enactments of statewide concern.

#### ***DECISIONS IN FAVOR OF STATEWIDE CHARACTER***

In *Van Gilder v. Madison*, the Wisconsin Supreme Court commented that the Legislature's declaration of what constitutes "local affairs" or "matters of statewide concern" involves large considerations of public policy, and, although not controlling, should be entitled to great

weight. The Court noted that the Legislature had statutorily declared that the police and fire statutes should be construed as enactments of statewide concern, for the purpose of providing a uniform regulation of police and fire departments. The Court held that the statutory procedures for reducing police and firefighter salaries is primarily a matter of statewide concern. [*Van Gilder v. Madison*, 222 Wis. 58 (1936).]

In its discussion in *Van Gilder*, the Wisconsin Supreme Court commented that if a statute deals with local affairs and government of a city, a charter ordinance may still be subordinate to the state statute if the statute affects every city with uniformity.

In *Madison v. Tolzmann*, the Wisconsin Supreme Court held that a statute conferring general police powers did not contain an *express* authority to enact a fee relating to the use of navigable waters within the city's boundaries.

The Court then turned to a search for any *implied* authority, in order to give a liberal construction to matters of local affairs, under the city's constitutional home rule authority. The Court held that the beds of navigable waters are held by the state in trust for use by the public, and that the free and unobstructed use of navigable waters under the trust doctrine is a matter of statewide concern, which could be delegated only by express authority. [*Madison v. Tolzmann*, 7 Wis. 2d 570 (1959).]

In *Gloudeman v. St. Francis*, the Wisconsin Court of Appeals held that statutory notice provisions are primarily of statewide concern and, therefore, may not be elected against by a city or village. The court noted that notice and hearing provisions are "invariably intertwined" with due process considerations, and that the Legislature attempted to protect the right to due process by requiring an adequate notice and hearing before a change in municipal zoning could affect the character of a neighborhood. The court stated that the city could not by ordinance overrule the Legislature's safe-guarding of the constitutional right to due process.

#### ***DECISIONS ANALYZING LOCAL AUTHORITY TO ACT IN A MATTER OF STATEWIDE CONCERN***

In *Local Union No. 487, IAFF-CIO v. Eau Claire*, the Wisconsin Supreme Court noted that a municipality may act even in an area of statewide concern, if there is no express language in the statutes restricting the power and the ordinance does not infringe the spirit of a state law or general policy. The Court utilized a test of four separate criteria to determine whether state legislation expressly or implicitly forbids local legislation in an area of statewide concern:

1. Whether the Legislature has expressly withdrawn the power of municipalities to act.
2. Whether the ordinance logically conflicts with the state legislation.
3. Whether the ordinance defeats the purpose of the state legislation.
4. Whether the ordinance goes against the spirit of the state legislation.

The Court found that the Legislature had not expressly withdrawn the power of a city to establish a public safety officer program, but that the city failed to meet the three remaining criteria. The Court held that, under the other criteria, the program would conflict with, defeat, and go against the spirit of the statutes' separate organization for police officers than for firefighters. The Court noted that the Legislature had expressly stated in the statutes that "uniform regulation" of those departments should "be construed as an enactment of statewide concern." [*Local Union No. 487, IAFF-CIO v. Eau Claire*, 147 Wis. 2d 519 (1988).]

In *Adams v. State Livestock Facilities Siting Review Board*, based on the state siting law's statement that the law was an "enactment of statewide concern for the purpose of providing uniform regulation of livestock facilities," the Wisconsin Supreme Court determined that livestock facility siting is an issue of statewide concern. However, the Court found that livestock facility siting is not exclusively a matter of statewide concern, because it "clearly affects local concerns," and has traditionally been regulated at the local level. As a "mixed bag," the Court noted that a municipality could concomitantly regulate matters of statewide concern, if the ordinances did not conflict with state law. [*Adams v. State Livestock Facilities Siting Review Bd.*, 2012 WI 85.]

The Court utilized the four separate criteria test to determine whether the state legislation expressly or implicitly forbids local legislation, noting that if any one factor is met, the municipality's conflicting action is void. The Court held that the town failed the first of the criteria, because the Legislature had expressly withdrawn the power of municipalities to act in the field of livestock facility siting, by providing uniform state standards and only limited circumstances in which a permit could be disapproved or conditioned.

## **DISCUSSION**

In a court's review of whether a statute or a local ordinance would prevail on a matter, the analysis first requires a determination of whether the topic is solely a matter of statewide concern, solely a matter of local affairs and government, or whether both levels of government share an interest in the matter. A court would look to prior analyses regarding constitutional home rule for guidance.

If a court were to find that the issue is solely a matter of local concern, the court's inquiry could end there, because a charter ordinance on the matter would be within the municipality's constitutional home rule authority. However, as stated in *Van Gilder*, if a state law does deal with local affairs and government of a city, a charter ordinance may still be subordinate to a state statute if the statute affects every city with uniformity. The constitutional home rule provision, and the charter ordinance statute, specify that a city or village's election to preempt a state law is subject to enactments of statewide concern that uniformly affect every city or every village, and preemption by a charter ordinance could not be elected in those circumstances.

Where a statute states that the subject is a matter of statewide concern, a court is likely to give great weight to this statement of the Legislature's opinion. A court could nevertheless determine that the matter is not *exclusively* a matter of statewide concern, with the matter



affecting local concerns that in some instances have traditionally been regulated at the local level. This could allow local regulations to be in place, if, under the four separate criteria, the state legislation does not expressly or implicitly forbid local regulation.

Under the four criteria, a court would evaluate: (1) whether the Legislature has expressly withdrawn the power of municipalities to act; (2) whether the municipality's actions logically conflict with the state legislation; (3) whether the municipality's actions defeat the purpose of the state legislation; or (4) whether the municipality's actions are contrary to the spirit of the state legislation.

### **SUMMARY**

In summary, a city or village may enact a charter ordinance that preempts a state law, but local preemption of a state law is not effective if the state law applies uniformly to every city or village, or if the matter is solely of statewide concern.

Ultimately, the question of whether a city or village has properly exercised its constitutional home rule authority, or whether the state has unconstitutionally interfered with a city or village's home rule authority, would be decided by a court based on the particular facts and circumstances presented. However, it appears likely that a uniform statewide law would be found to preempt a city or village's charter ordinance on the same matter. In such a circumstance, the local ordinance could maintain its authority only if it does not conflict with the state law.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Margit Kelley, Staff Attorney, on May 1, 2013.

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