

Wisconsin Towns Association

July 2022

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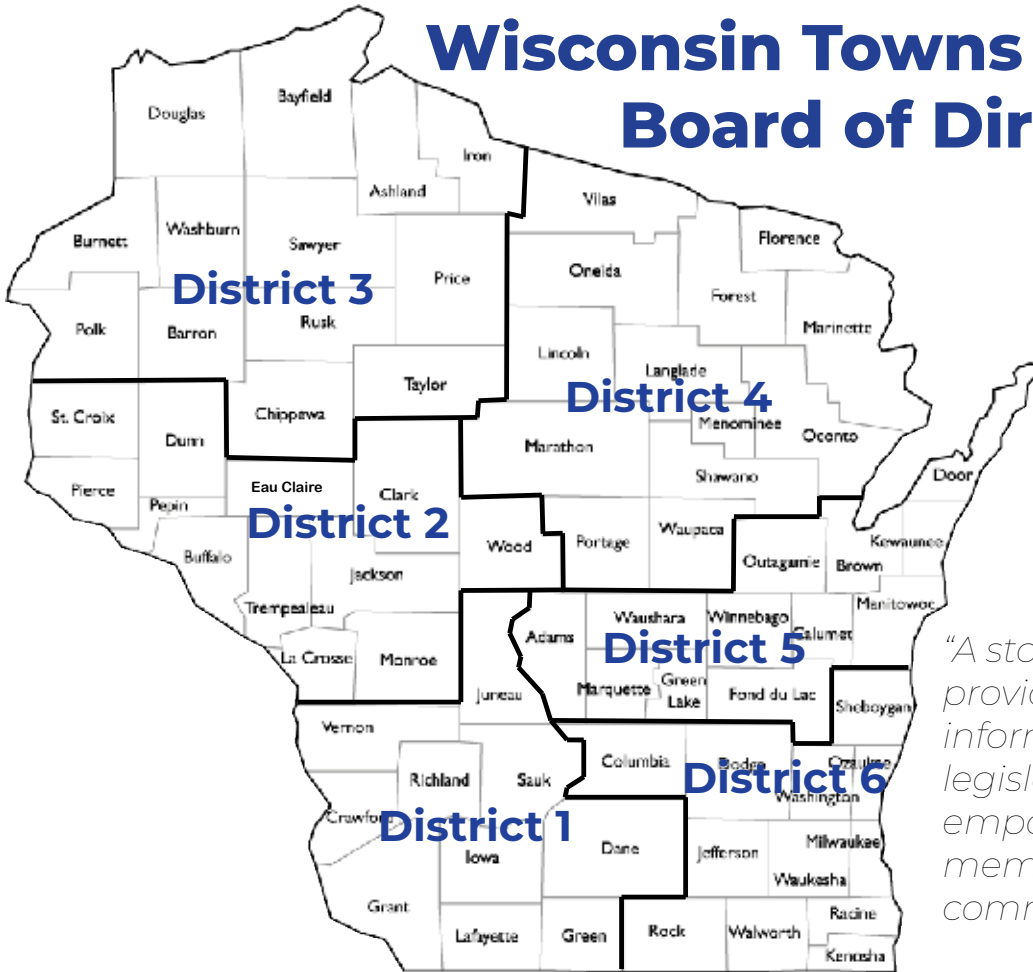
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Wisconsin Towns Association Board of Directors



“A statewide association providing education, legal information and grassroots legislative advocacy to empower and inspire our members to lead in their communities.”



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Volume 413

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Wisconsin Towns

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Empowering Town Officials

FROM THE EXECUTIVE DIRECTOR



By
Mike Koles

Celebrate Freedom AND Responsibility

Happy Independence Day! July marks the month that we celebrate independence from tyranny and authoritarianism for which our mothers, fathers, brothers, and sisters have fought and died. My hope is everyone has a plethora of opportunities to spend time with family and friends celebrating both our freedoms they secured AND the responsibilities they expect us to fulfill.

The notion of freedom being closely connected to and rising out of responsibility is nothing new. President Kennedy famously challenged Americans to take responsibility to provide public service as it was the foundation of freedom when he stated: “Ask not what your country can do for you – but what you can do for your country.” Less famously, but just as importantly, he noted: “...this nation was not founded solely on citizen’s rights. Equally important, though, too often not discussed, is the citizen’s responsibilities. Our privileges can be no greater than our obligations. The protection of our rights can endure no longer than the performance of our responsibilities.”

About the same time, Indira Ghandi was challenging Indians as well. As the country was continuing to transition to a western form of government, she reminded them that: “people tend to forget their duties but remember their rights.”

For me, one of the most inspiring connections between freedoms, rights, and responsibilities comes Randy Pausch. Here is a very successful computer scientist, professor, husband, and father of three young children that was given 10 months to live due to liver cancer. Instead of complaining

about the unfortunate circumstances that were thrust upon him, he chose to write a book (The Last Lecture) containing critical lessons he wanted to pass on to his children since he wouldn’t be there to teach them throughout their formative years. One chapter begins: “We’ve placed a lot of emphasis in this country on the idea of people’s rights. That’s how it should be, but it makes no sense to talk about rights without also talking about responsibilities.” He provides several examples of how this principle was instilled in him, including

“...it makes no sense to talk about rights without also talking about responsibilities.”

an episode where his father was having trouble finding adult volunteer umpires for elementary level youth baseball. To overcome the challenge, his father required that in order to play as a teenager, you had to umpire

the elementary school kids. You had to take responsibility before you had the freedom and the right to play ball. Today, too often, everyone demands a right to a ribbon at the end of a tournament without taking the responsibility to work hard enough to get first place.

Obviously, I don’t have to tell town officials that freedom and responsibility are two sides of the same coin. You already provide tremendous and exemplary service to your fellow citizens. From elections to EMS and infrastructure to volunteerism, town officials dedicate a significant amount of themselves to others. Quite frankly, dedication to the responsibility of serving is one of the greatest traits that causes you to be the cream of the crop of all government officials. This month, when we cheer for freedom while watching fireworks, I encourage us to all remember that this only occurs because so many, past and present, have dedicated themselves to first fulfilling responsibilities.

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Mark Your Calendars!



Wisconsin Towns Association Annual Convention

**Help WTA celebrate our
75th Anniversary!**

Sunday, October 9 - Tuesday, October 11, 2022

Hilton Appleton Paper Valley

& Fox Cities Exhibition Center Appleton, Wisconsin



Game Night! *Back by popular demand.*



Live music by Bella Musik



Clerks' election training



Great educational opportunities



Networking with town officials

Registration and full agenda coming in August.

Convention Lodging

Sunday, October 9 - Tuesday, October 11, 2022

**Hilton Appleton Paper Valley & Fox Cities Exhibition Center
Appleton, Wisconsin**

Following is a list showing the address, telephone number and rates (if available), of some hotels within 1-5 miles from the Convention site. Please note the room rates are only general quotes and are subject to change by the hotels. Please confirm your rate when booking.

Comfort Suites

(Fox River Mall area)
3809 W Wisconsin Ave.
Appleton, WI 54914
(920) 730-3800
Room Rate: \$90

DoubleTree by Hilton Appleton

(Fox River Mall area)
150 S Nicolet Rd.
Appleton, WI 54914
(920) 735-9955
Room Rate: \$90

Country Inn & Suites by Radisson

(Fox River Mall area)
355 Fox River Dr.
Appleton, WI 54913
(920) 830-3240
Room Rate: \$90

Copperleaf Boutique Hotel

(across the street from host hotel)
300 W College Ave.
Appleton, WI 54912
(920) 749-0303
Room Rate: \$139 for Copper King
or Double Rooms



*You may not make more than 3 room reservations under your name.
Please DO NOT call our office concerning rooms.*



Common Bidding Problems to Avoid

As summer gets underway, bidding of public works projects is in full swing. It's important to remember that towns face potential costs when they fail to follow proper bidding procedures. This article will highlight some common mistakes in hopes that they are not repeated as you put projects out on bid this year.

Mistake #1 -- Timing of Bid Notices:

Let's say a town publishes bid notices for construction of a new town hall in the newspaper on June 2nd and June 9th. The notices indicate that bids are due at the town hall no later than 5p.m on June 14th. The timing of such bid notices would be in error because a Class 2 notice is required when bidding projects over \$25,000. Wis. Stat. § 60.47(2)(b). A Class 2 notice means two newspaper insertions are required. An "insertion" means "once each week for consecutive weeks, the last of which shall be at least one week before the act or event, unless otherwise specified by law." Wis. Stat. § 985.01(1m). The bid notices in this case would not comply with the law because the first notice did not appear at least two weeks prior to the bid deadline and the second notice did not appear at least one week prior to the deadline.

Note that towns without an official newspaper may *post* bid notices in three public places or one place and their town website (instead of using the newspaper). Wis. Stat. § 985.02(2). If posting, the bid notices should be posted at least two weeks prior to the bid opening and left up until the bids are opened.

Mistake #2 -- Failure to Fairly & Effectively Communicate Changes With Potential Bidders:

Let's say potential contractors contact the town's engineering firm for copies of the full specifications for an advertised project. The town decides to make some last minute changes to the specifications after the initial bid packets have been sent out. Updated specifications are sent to some interested bidders, but not others. One interested bidder receives the final bid specifications on June 13th, one day before the bids are due. The town receives 3 bids for the project. Two of the bids are rejected as incomplete because they were not responsive to the last minute changes that the town had made to the bid specs. The town decides to award the project to the only remaining bidder. This could result in a bidder suing the town in an attempt to void the contract or, at minimum, to recover its costs in preparing the failed bid. Towns have had to pay out in such cases for failing to use fair procedures.

It is always best to start over and return all of the bids unopened if it becomes clear that the bid notices have not been properly provided or irregularities have occurred in communicating with the prospective bidders, potentially resulting in a lack of fairness.

Mistake #3 -- Failing to Award the Bid to the Lowest Responsible Bidder:

Let's say the town receives a bid from a company headquartered out of state that you have never heard of and a bid from your local contractor that you have had great experiences with in the past. The out-of-state company submits the lowest bid, but you reject that bid and go with the next higher bid from your local contractor because you are more "comfortable" with them. You let the lowest bidder know their bid was rejected because you wanted to give a preference to a "local" contractor.

Bidding law does not allow you to give a preference to local contractors. The fact that a company may be from out of the area does not automatically render it less responsible. If you are worried about having to contract with a "fly by night" operation that provides a suspiciously low bid, your town board should consider adopting a responsible bidder ordinance that requires bidders to show they are authorized to conduct business in Wisconsin, have a permanent place of business, have not been debarred, carry proper insurance, and meet other specified qualifications in order to be considered responsible bidders. See Wis. Stat. § 66.0901.

Mistake #4 -- Asking For Bids When Quotes, Estimates, or RFP's Will Suffice:

Only contracts for the construction, execution, repair, remodeling or improvement of any public work or building (or for the furnishing of materials or supplies) with a value of more than \$25,000 are required to be bid out. Towns are not required to bid out purchases of equipment or services like garbage hauling, assessing, mowing, etc. Moreover, if a project or needed supplies will cost more than \$5,000, but not more than \$25,000, only a Class 1 notice is required before execution of the contract. Bids are not required. For example, if roof repairs are needed at the town hall, the town can simply publish (or post) a notice that says the town is seeking quotes, or requests for proposals to enter into a contract to repair the town hall roof at a cost not to exceed \$ (an amount of \$25k or less). After waiting a week, the town is then free to hire *whomever they wish* to repair the roof.

But, if the town puts out a notice asking for "bids" for a service or "bids" for a project that does *not* have to be bid out, you are essentially telling the public that the bidding rules will apply and the town must then use a "bid" process and go with the lowest responsible bidder. Note that bid notices are also not required if you are hiring the county or another municipal entity to complete the work, regardless of cost. Wis. Stat. § 60.47(4). So, don't use bidding procedures or terminology in your notices or solicitations unless required by law. That way, you can preserve your options and hire a local firm or favorite contractor whenever the standard bidding laws do not apply to your situation.

For more information on advertising in our magazine, please contact Sandy Wanta at 715-526-3157 or sandy.wanta@wisctowns.com

Save the Date!

2022 FALL WORKSHOPS

Join us this September to learn about budgeting, levies, tax bills, emergency preparedness, grant funding opportunities, and more!

9/12-9/15 - Webinar/Teleconference Presentations

- 9/19 - Stevens Point, Holiday Inn**
- 9/20 - Barneveld, Deer Valley Lodge**
- 9/21 - Eau Claire, Florian Gardens**

- 9/26 - Cable, Lakewoods Resort**
- 9/27 - Rhinelander, Cabaret Cove**
- 9/28 - Green Bay, Rock Garden**
- 9/29 - Ripon, Royal Ridges**



All workshop registrants will receive access to view recordings of the presentations. Watch for a full schedule, program descriptions, and registration information in the August magazine!

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2021 – 2022 Legislative Overview **Part 3: Standalone Legislation**

Over the last few months, my articles have addressed legislative changes from the 2021-23 session, focusing thus far on state budget highlights. This article, the third and final part of the series, will discuss a few significant standalone legislative changes impacting towns and villages. All told, there were a total of 266 laws enacted this past session. Only four changes are discussed in this article, but a more comprehensive list and description of recent legislative changes affecting towns and villages will be added to the “Legislative” section of the WTA website soon.

GTA Penalty Cap – Act 102

Towns and villages must annually submit a municipal financial report to the Department of Revenue on or before May 15. Late submission of this report will result in a penalty assessed upon the town or village general transportation aids (GTA). Until now, GTA was reduced by one percent for each day the report was late up to a maximum of ten percent. Even a short delay could result in a massive blow to the local budget, and penalizing a percentage rather than a fixed amount resulted in higher penalties as GTA funding increased. Act 102 changed the penalty for late submission of the municipal financial report, imposing a more reasonable penalty of \$100 per working day up to a maximum of \$2,200. This more measured penalty will still incentivize on-time submission of the report without devastating local governments that submit late. Furthermore, this fixed penalty will no longer increase as GTA funding increases.

Land Use Compromise – Act 198

WTA collaborated with the League of Wisconsin Municipalities to address a variety of land use issues, ultimately resulting in Act 198. In short this legislation limited the extraterritorial authority of cities and villages and eliminated several tools that could otherwise be used by municipalities to further intergovernmental tension rather than promote collaboration.

One change in this legislation closed a legal loophole that allowed for a recently incorporated city or village to immediately annex the remnant town. When a city or village incorporates, its neighboring towns suddenly become subject to newly created extraterritorial authority. Those surrounding towns also begin to face annexation pressures from the new municipality. This change minimized the ability of a newly incorporated city or village to engage in an immediate extension of extraterritorial authority and annexation pressures by prohibiting the annexation of the remnant town within 5 years after the incorporation unless: a) the annexation is by unanimous approval; or, b) a consolidation is supported by two thirds of the town and village/city boards and passed in both jurisdictions through a referendum. The flexibilities notes in (a) and (b) put the power of choice squarely in the hands of the town landowners.

Another change in Act 198 prohibited extraterritorial condemnation of blighted property for third-party development. Note that town land is often considered “blighted” in Wisconsin. Prior to this change, a city or village could condemn a town landowner’s property, then annex it, and then sell it for development by a third-party developer. This was true even though the town landowner could not vote for the city or village officials condemning their property. By limiting extraterritorial condemnation authority, this change protected the town and its landowners from this type of unwanted development. The bill does not affect city, village, or town condemnation authority within their own jurisdiction.

Additionally, this act limited municipal extraterritorial zoning and land division authority in two ways. First, the act clarified that extraterritorial zones do not extend from any city or village islands within the town. This prevents a city or village from enlarging its extraterritorial reach by purchasing and annexing small islands of city or village land within the town. Second, this act decreased the period of time that a city or village may unilaterally freeze zoning and land use in the extraterritorial area from 2 years to 18 months and requiring cities and villages to wait 5 years after the expiration of the 18-month restriction period before enacting further unilateral restrictions (i.e., a cooling off period). Changing the allowable timeline of unilateral restrictions in this way provides towns with a greater voice in land use discussions and protects town landowners from prolonged unilateral land use freezes.

Finally, this act restored city and village authority to annex territory across county lines, but only with the unanimous consent of landowners. Restoring this authority was a necessary part of this compromise legislation. While it does allow annexation of town land in limited circumstances, it also promotes the interests of individual town landowners despite arbitrary political boundaries. Accepting the restoration of this limited authority as part of a compromise also lends credibility to other WTA legislative priorities, such as, allowing for levy flexibility for regional EMS regardless of county boundary. Overall, the advantages for towns in this legislation far outweighed any disadvantages.

Medicaid Ambulance Reimbursements – Act 228

EMS providers across Wisconsin continue to face significant funding shortages. As noted in my June article, the state budget partially addressed these shortages by increasing the Medical Assistance (MA) reimbursement rates for ground ambulance transport. Act 228 further addressed this by creating new programs that will allow the state to draw down additional federal funds under the MA program for both public and private ambulance services. These changes will ultimately result in additional reimbursements for ambulance providers, helping to stabilize the rising costs of providing ambulance services.

ATV/UTV Speed Limit Authority – Act 164

As I’m sure you are aware, a local government may designate roads under its jurisdiction as ATV routes, allowing ATVs and UTVs to travel upon the roadway. Though many local governments have posted a lower speed limit that applies only to ATV and UTV traffic, it has not been clear that they have had the legal authority to do so. Act 164 clarified this and avoided potential local government liability by affirmatively granting local governments the authority to post a lower speed limit for ATV and UTV traffic if desired.

MANAGE YOUR TOWN'S LARGEST ASSET



ROAD SURFACE CONDITION

Evaluate current asphalt surface conditions and provide a cost-effective maintenance plan that will improve the longevity of your town roads.



ROADWORK BID LETTING

Provide guidance throughout the bid letting process; from development of documents to comparison of bids received. Ensure that all specifications are met and that each contractor is submitting uniform information, making cost comparison effortless.



#1 PASER RATINGS

Provide and submit PASER ratings to the Wisconsin Department of Transportation to provide a credible analysis of road conditions, as required by the WisDOT every two years. These ratings are important in extending the life of roads, by impacting road maintenance methods.



INVENTORY AND MAPPING

Inventory, mapping and condition report of roads, culverts and signage. Having an accurate record of current conditions lets you plan for the future by prioritizing your needs.



DO YOU...

- ❑ Know the conditions of all your roads?
- ❑ Know how many culverts you have and where they are located?
- ❑ Know if any of your town's culverts are at risk of failing?
- ❑ Have a complete inventory and assessment of all your road signs?

As a recommended service provider for the Wisconsin Towns Association, Delmore Consulting can help answer these questions.



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We're all in this together . . .

what happens in your back yard affects ours, too



Attend an ACE® Twilight Meeting to join in discussions with your neighbors, leaders and local elected officials to share ideas and solutions for issues that affect us all — water, conservation, transportation, local ordinances and more.

MONDAY, AUGUST 29
Vernon County



WALL-STONE HOLSTEINS LLC
Dr. Anne Marie Elwing, DVM,
Kevin, William & Emil Walleser
S7414 Fortner Rd.
DeSoto, WI 54624

TUESDAY, AUGUST 30
Buffalo County



BRAGGER FAMILY DAIRY
Joe & Dan Bragger
W89 Pape Valley Rd.
Independence, WI 54747

WEDNESDAY, AUGUST 31
Clark County



JTP FARMS
Jake & Tolea Peissig
W1202 County Rd. A
Dorchester, WI 54425

THURSDAY, SEPTEMBER 1
Dodge County



McFARLANDALE DAIRY LLC
Peter & Cindy McFarland
and Christine & Robb Bender
N302 County Rd. K
Watertown, WI 53098

Each meeting starts with a dairy tour at 6 pm. Ice cream will be served at 7 pm with discussion following until 8:30 pm.



This ACE® (Agricultural Community Engagement) event is brought to you by Pheasants Forever®, Wisconsin Counties Association, Wisconsin Towns Association and Professional Dairy Producers®.

Neighbors, leaders and local elected officials . . .

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Purchasing or Selling Town Property and Sales Tax Applicability

Q. What authorization is required for a town to buy or sell real estate property?

A. Under Wis. Stat. § 60.10(2)(e) and (f), a town board must get authorization from the town electors to purchase land for town purposes or to purchase, lease or construct buildings for town use. Similarly, under § 60.10(2)(g), a town board must get elector authorization before “disposing” of any town real estate. “Disposal” generally refers to sales of town land or buildings, but this requirement can also apply to other actions granting rights or privileges to town real property, such as easements or long-term leases.

Town electors may grant the required authorization by adopting a resolution at either the annual town meeting in April or at a special town meeting of electors that is properly called and noticed under the procedures outlined in Wis. Stat. § 60.12. A sample resolution is available in the Wisconsin Town Law Forms. The electors’ resolution authorizes but does not require the town board to take action. The board must ultimately vote, at one or more properly noticed town board meetings, to decide whether to move forward with the proposal, bid out construction contracts if needed, and finalize the purchase or sale.

Q. What requirements apply when a town is buying or selling an item like a fire truck or snowplow?

A. If a town board wants to buy or sell personal property such as a truck or snowplow, town elector authorization is *not* required. Competitive bidding is similarly not required for purchases or sales of equipment or services under Wisconsin law. See Wis. Stat. § 60.47. Therefore, a town board has discretion to decide what methods to use when buying or selling personal property items such as vehicles, lawnmowers, computers, tables, etc. For example, if a town board wants to buy new computers for town office staff, the board might price check/get quotes from a few potential vendors before voting to decide which option would be best for the town. If the town is selling a used road grader, the board might advertise for sealed offers and take the highest one, trade the equipment in at a dealership, or use some other method to get the best deal for the town. The board’s motions and votes regarding this type of sale or purchase must be recorded in the meeting minutes of properly noticed town board meetings. Note that competitive bids and other restrictions may apply if a purchase is made using federal funding, such as ARPA funds. Additional information about federal funding requirements is available on the WTA website.

State law sets some limitations on selling items to town employees. Under Wis. Stat. § 175.10, towns are generally prohibited from selling property to town employees unless 1) The sale is of a surplus or discarded item and the town board makes the item available for sale to the public via a publicly available method (e.g., auction, newspaper, town website, online marketplace, etc.); or 2) The sale is of an item that the town regularly sells to the public at the same cost (e.g., garbage/recycling bags, plat maps, codebooks, flags, etc.). A violation of § 175.10 is considered a misdemeanor punishable by fines and/or jail time, so towns should exercise caution when making sales of town property to town employees.

Q. Can a town sell excess gravel from town road projects?

A. Wisconsin law does not explicitly prohibit municipalities from selling excess materials, but the public purpose doctrine requires that public resources be used for the public benefit, and towns generally should not act as retailers or give private individuals deals that unfairly compete with private vendors. However, occasional sales of small amounts of excess materials at a fair market price are likely permissible.

Q. Are towns required to charge sales tax when selling personal property items or services?

A. Yes, towns are required to collect and report Wisconsin sales tax on sales of taxable property and services, with the exception of sales that qualify for the occasional sale exemption or are otherwise tax exempt. The occasional sale exemption applies to town sales if three requirements are met: 1) The town's sales of taxable property and services occur on 75 days or less during the year and its taxable receipts from these sales do not exceed \$50,000 per calendar year; 2) If the town is charging admission for an event, the total amount all entertainers are paid is \$50,000 or less (note that this threshold increased from \$10,000 as of June 1, 2022); and 3) The town does not have and is not required to have a seller's permit. See DOR Fact Sheet 2106: <https://www.revenue.wi.gov/DOR%20Publications/2106occsales.pdf>.

Some items that are considered non-taxable include most fees and licenses/permits, such as dog licenses, building permits, fees for snowplowing private driveways, ambulance service fees, and fees for copies of public records, as well as special assessments and special charges. Trash bags are generally considered taxable, but if the bags are not optional to the purchaser (if the town requires them) then the charge may be considered part of a tax-exempt fee for garbage services. Town hall rentals are taxable if the facility will be used for a recreational purpose, but rentals for non-recreational business/educational meetings are non-taxable. To determine whether specific items or services are subject to sales and use tax, call the Wisconsin DOR at 608-266-2776 or review the DOR sales and use tax fact sheets and guides at <https://www.revenue.wi.gov/Pages/SalesAndUse/Home.aspx>.

Q. Do towns have to pay sales tax when buying goods and services?

A. Towns are exempt from paying Wisconsin sales and use tax on purchases for town use. To claim the exemption, the town can either provide the seller with a completed exemption certificate, Wisconsin DOR Form S-211 (<https://www.revenue.wi.gov/DORForms/s-211f.pdf>), or provide the town's Certificate of Exempt Status (CES) number. Towns can apply for a CES number from the Wisconsin DOR via Form S-103: <https://www.revenue.wi.gov/DORForms/s-103.pdf>. Note that the DOR recently issued new 15-digit CES numbers (replacing former 6-digit CES numbers) that must be used starting July 1, 2022.

Q. Does sales tax apply if a contractor purchases items to be used in a town construction project?

A. A sales and use tax exemption applies to sales of tangible personal property and other items purchased by a construction contractor if the items will be transferred to a municipality and become part of a "facility" located in Wisconsin that is owned by the municipality. "Facilities" include buildings, shelters, parking garages, athletic fields, storm sewers, wastewater treatment plants and certain other structures listed in the statute, but *not* highways, streets, or roads. See Wis. Stat. § 77.54(9m).



Town Law Conference

Friday, September 30, 2022
Virtual Event

\$150 Attorneys

\$50 Non-Attorney Municipal Officials

Register at: www.wisctowns.com

AGENDA

8:25am Welcome and Introductions

8:30-9:30am Guide to the Eminent Domain Process and Litigation Concerns:

This session will give an overview of the process of acquiring property by eminent domain under Wis. Stat. Ch 32. There are two different procedures depending upon the purpose for which the property is being acquired. This presentation will describe the different procedures and highlight their similarities and differences. Further, because the threat of litigation is always present whenever the power of eminent domain is exercised, this presentation will discuss the major issues about which condemnors must be aware as they work through the process. Presented by Atty. Matt Fleming, Murphy Desmond SC.

9:30-10:30am Overview of Federal and State Employment Laws — What Town Employers and Their Attorneys Need to Know to Minimize the Risk of Discrimination Claims:

Navigating employment law issues can be complex and confusing. Identifying issues and spotting potential problems is critical for smaller employers. This presentation will identify the major federal and state employment laws that town employers and their attorneys need to be familiar with in order to minimize the risk of discrimination claims. Presented by Atty. Aggie Raynor, Crivello Carlson, SC.

10:30-10:45am Break

10:45-11:45am Advice for Dealing with Nuisance Properties and Dilapidated Buildings:

Every town has nuisance properties, and they are notoriously difficult to deal with. This session will cover best practices to make the process as painless as possible. It will include why your Town should have a public nuisance ordinance and what it should say, whether a property should be addressed using your nuisance enforcement authority, a raze order, or both, and best practices for town officials. Presented by Atty. Matt Parmentier, Dempsey Law Firm, LLP.

11:45am-1:00pm Lunch Break

1:00pm-2:00pm Managing Stormwater and Surface Water Runoff — A Legal Perspective:

This session will begin with a historical review of how the law treated surface water runoff management and how the law has developed to today. It will discuss future challenges and opportunities for managing stormwater in both urban and rural settings. Presented by Atty. Paul Kent, Stafford Rosenbaum, LLP.

2:00pm-3:00pm Understanding the Code of Ethics for Local Public Officials

This presentation will include a detailed review of Wisconsin’s Code of Ethics for Local Public Officials as well as other notable laws that govern the conduct of town officials, employees, and candidates. Come learn about how to handle conflicts of interest, disposition of gifts, and get ideas for your own local ethics ordinance. Presented by Atty. David Buerger, Staff Counsel, Wisconsin Ethics Commission.

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Moving to an Appointed Clerk or Treasurer and Combining the Offices

Q. The town clerk recently informed the town board that they will be retiring when their current term ends in April 2023. We have been searching for a qualified resident to run next year, but we have been having an extremely difficult time finding someone. We think that we are going to have to look outside the town for someone to fill the office. What do we have to do to make the elective office of clerk (or treasurer or clerk-treasurer) an appointive office, the selection of which is vested in the town board?

A. The procedural options that are available to convert the position(s) to “appointed” vary depending on the size of the town. In a town with a population over 2,500, the electors may vote to have the position(s) become appointed at a town meeting of the electors. See Wis. Stat. §§ 60.10(1)(b)(2m) and 60.30(1e)(e).

Towns with smaller populations, and towns exceeding 2,500 that choose not to use the above procedure, may also convert the office(s) to “appointed” by following a different set of steps. First, the town board must enact an ordinance that provides for the appointment of the positions(s). See Wis. Stat. § 60.30(1e)(a). A sample appointment ordinance is available on the WTA website in the Information Library under Ordinances and Resolutions. Next, the town board must call a referendum for the electors to approve the ordinance—the call for the referendum is made a part of our sample ordinance. The referendum must be held not sooner than 70 days after the referendum is called by the town board and the referendum must be held at the next spring or general election. See Wis. Stat. § 60.30(1e)(b). This means that a town board wanting to implement this change in April of 2023 must adopt such an ordinance at a properly noticed town board meeting on or before August 29th, 2022. Please note that referendum information must be communicated to the county clerk at least 70 days prior to the election. See Wis. Stat. § 8.37. So, August 30th, 2022 is the deadline for filing a referendum questions with the county clerk if you want the question to be placed on the November 8th, 2022 ballot. Best practice would be for the town board to act at least a week prior to the deadline. If the town waits to put the question on the April 2023 ballot, the change will not become effective until the start of the new terms in April 2025!

Q. What if we need to fill an elected clerk or treasurer vacancy before April 2023? Can the town board somehow make this change immediately so that they can fill the vacancy with someone who is not a town resident?

A. No. The process cannot be fast tracked. If the town board’s ordinance is approved in a referendum or the switch occurs because of a town elector meeting vote, under Wis. Stat. § 60.30(1e), the change from an elective to an appointive office does not take effect until the *term of the incumbent expires*. For example, if the ordinance is approved at the general election this fall, the ordinance takes effect upon the expiration of the term(s) of the incumbent officer(s) in April of 2023. If the ordinance is adopted after the August deadline and placed on the spring election ballot at which the office of the town clerk and/or treasurer is filled, the ordinance would take effect upon the expiration of the term or terms of each officer who is elected at that election. That means the town would essentially have to wait 2 more years for the office to become appointive. As a result, any town attempting to make the switch by referendum needs to be sure to get the ordinance passed prior to the August 2022 deadline if it wants the switch to become effective in April of 2023.

NOTE: Not sooner than 2 years after the position becomes appointive, the town board may enact an ordinance to return the office to an elective position, without a referendum or a town elector vote meeting. See Wis. Stat. §§ 60.30(1e)(d) and 60.30(1e)(g).

Q. How are the offices of town clerk and town treasurer combined?

A. The town electors may combine the offices of town clerk and town treasurer by a vote at an annual meeting or a special town meeting of the electors where that item specifically appears on the agenda. The procedure to combine offices is the same for all towns, regardless of size. See Wis. Stat. § 60.305(1)(a). A combination of offices under this provision also takes effect after the current terms of office expire. See Wis. Stat. § 60.305(4)(c). If the town wishes to try and accomplish this change, I suggest conducting the elector meeting no later than mid-November of 2022. This is because the clerk will need to provide a notice of which town offices are going to be up for election in the spring on the 4th Tuesday of November. The town will need to resolve this issue beforehand so that the notice can be accurate.

Q. Why do towns switch to having an appointed clerk or treasurer?

A. The positives or negatives often depend on one’s perspective. Some of the key differences are as follows:

Appointed clerks and treasurers:

1. Do not have to be town residents.
2. Have their qualifications, job descriptions, and wages/benefits set by the town board as they are essentially town employees hired by the board.
3. Cannot be removed by the board during their term of office, unless there is “cause” for removal (misconduct in office or neglect of duties). This means there would need to be a hearing and other due process protections afforded before someone could be removed from office. That said, once his or her term expires, the town board can simply choose not to re-appoint a clerk or treasurer without having to establish cause.
4. Can be appointed for a term not to exceed 3 years at one time. Can be appointed for a shorter term such as six months or one year or whatever the board deems appropriate. The board may also re-appoint the person for successive terms, if desired.

Elected clerks and treasurers:

1. Do have to be town residents.
2. Are answerable to the electorate and cannot be required by the board to hold specific qualifications or obtain training (unless required by state law-such as election training for clerks). Cannot be required by the board to keep set hours at the town hall or be required to work a certain number of hours per week.
3. Can be recalled from office like other elected officials. Can also be removed from office by a majority vote of the board, but only if the reason for removal is continued physical inability to perform the duties of the office or gross neglect of duty. See Wis. Stat. § 17.13(2m).

Q. How many appointed town clerks and treasurers are there in Wisconsin? How many hold the combined office?

A. Out of our 1,240+member towns, there are currently: 280 appointed clerks; 201 appointed treasurers; 153 appointed clerk-treasurers and 80 elected clerk-treasurers.

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Ohm is a professor in the Department of Planning and Landscape Architecture at the University of Wisconsin-Madison. He teaches planning law and the Land Use Controls course in the UW Law School.

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WTA–Rural Mutual Insurance–Scott Construction 2021 Scholarship Winner

“What lessons can town governments take from the COVID-19 pandemic to improve their emergency management systems and prepare for and respond to future disasters?”

By: Samantha Anhalt, Mishicot High School

The Wisconsin Towns Association, Rural Mutual Insurance Company, and Scott Construction, Inc. award \$8,000 in scholarships to high school seniors graduating from either a public or private high school that enroll in a Wisconsin public or private college or university. The winners are determined by independent judging of an essay contest.

During the past unprecedented year, our society has gone through ups and downs while combating the COVID-19 pandemic. Many of us were constantly wondering what was going to happen next, how we should react, and then what the impacts of current events would be on our lives. To attempt to find answers to these questions, members of society looked to those of higher knowledge and authority, specifically those in governmental positions of all levels. The individuals in these positions were tasked with challenges beyond what they imagined and from these challenges lessons were learned. Specifically on the local level, town governments learned essential lessons of ensuring emergency management systems were up to date, integrating virtual communication methods, and maintaining communication with the public. These lessons will allow our town governments to have improved emergency management systems that are better prepared for responding to future disasters of all types.

When the pandemic first hit, town governments had to reference their emergency management systems. According to the “2012 Wisconsin Statutes & Annotations 323. Emergency management. 323.14 Local government; duties and powers.” page on *Justia*, “The governing body of each city, village, or town shall develop and adopt an emergency management plan and program that is compatible with the state



plan of emergency management adopted under s. 323.13 (1) (b).” This power and ability to create these plans is only part of the role of town governments as they must ensure the plans are in fact realistic as any disaster may occur at any point in time. To understand the importance of an emergency management plan, I conversed with my father, Dean Anhalt, who is the Town Supervisor of the Town of Mishicot. He further emphasized to me the significance of an annual review of emergency plans. Within these reviews, updates should be made regarding new technologies and resources available as well as proper contacts to individuals who can aid in alleviating the effects of disasters. Among these contacts, important people to include are those in higher-up positions such as the Emergency Services Director. In Manitowoc County, Travis Waack

is in this position and his department works closely with local governments to protect lives during all stages of disasters (“Emergency Management”). People from other areas are also needed to combat

disasters whether they be natural disasters, pandemics, or man-made disasters. Contacts of people such as excavators and food banks should be updated and clearly stated within all town government emergency management systems. The COVID-19 pandemic taught our town governments this lesson of preparedness because of the scrambling many endured at the beginning of the pandemic. Now, with town governments experiencing challenges of knowing what their next steps should be or who to contact, they are better equipped to take action faster in future disasters.

Beyond updating and strengthening an emergency management system, town governments learned the power of technology and virtual communication. In a way, town governments were forced to find new ways to maintain communication with their board members because of the pandemic. The usual in-person meetings and appointments were canceled due to protective measures set in place to limit the spread of COVID-19. However, these cancellations could not mean the end of a functioning town government. Emergency management systems had to be put in place and other duties still had to be performed, so many boards learned how to use virtual communication platforms. Robbie Sequeira's *The Times* article explains the use of virtual communication that Georgia's Hall County's local governments implemented at the beginning of the pandemic, the article reads, "...officials' decision to move to a virtual live streaming presentation has made it a consistent communication vehicle throughout the pandemic, and that is expected to continue following the pandemic..." The article went on to mention that other services such as payments were now offered as services online rather than only in person. By experiencing the inability to meet in person, town governments became more knowledgeable on the connectivity that online communication platforms can offer them. This lesson of problem-solving will allow for emergency management systems in the future to continue to be implemented successfully by town governments even if in-person communication is unavailable.

Linked to town government virtual communication is the overall lesson of expanding communication reach. Town governments and other levels of government have seen this past year through the pandemic the importance of factual information and proper coordination to share information with the public. In Matt Ward's *ICMA* article, he presents a simple infographic that local government officials should take into account. One of his tips is to, "Distribute handouts to local businesses, non-profit groups, and other local interests to outline available federal and state resources." By taking this step of educating and increasing awareness of the resources available whether they may be relief funds or vaccines in the case of the pandemic or food bank supplies in other disaster cases, the public will be more trusting and connected to their local governments. Uncertainty does not sit well with anyone, so when accurate information is available on the current state of the emergency management system, updates should be provided to the public. All in all, town governments have learned their responsibility of being a communication line between emergency management systems plans and the public.

As we have all seen growth in areas of problem solving and perseverance this year by living through the COVID-19 pandemic, town governments have learned valuable lessons as well. Initially, the lesson of having a usable, realistic, and updated emergency management system plan was learned. With the same importance, lessons of adapting to virtual communication methods and communicating often and honestly with the public were ingrained into the minds of town government officials. Ultimately, this past year has been a learning process and through it our town governments have become better prepared to combat and respond properly to any future disaster with their improved emergency management systems.



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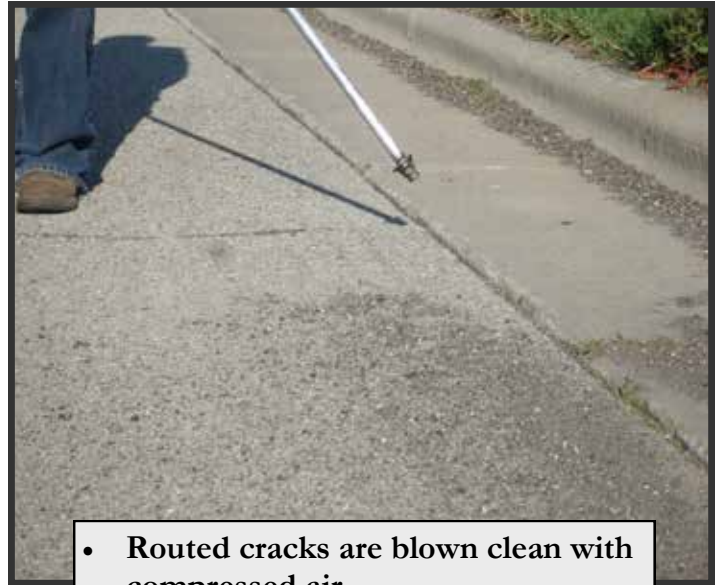
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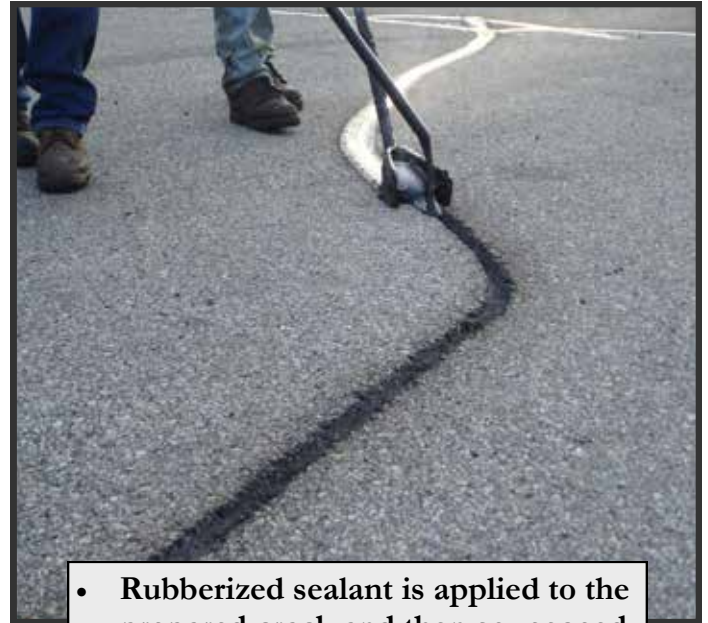
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