

Guidelines for Ordinances on Commercial Buildings

Prepared for the Alliance for Regulatory Coordination

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This document contains general information and is not legal advice. The author is not a lawyer and Regulatory Guidance and Design, LLC is not a law firm. Although great effort was made to make sure the information contained in this guidance is accurate and useful, I recommend that you consult a lawyer if you want legal advice.

Background

Municipal ordinances in Wisconsin must comply with [2013 Wisconsin Act 270](#), which created a state uniform commercial building code effective April 18, 2014. Prior to that date, for buildings other than multifamily dwellings, the state commercial building code was a minimum code with broad allowance for municipal ordinances to contain more stringent requirements than found in the state code.

With some exceptions, 2013 Wisconsin Act 270 prohibits municipal ordinances from having more stringent standards for constructing, altering, or adding to public buildings or buildings that are places of employment. Those exceptions relate to fire detection, prevention, or suppression components of buildings. Generally, for such building components, a town, village or city may enforce an ordinance containing standards more restrictive than the state code if the ordinance was enacted before May 1, 2013, and the Wisconsin Department of Safety and Professional Services (DSPS) determines that the ordinance requires standards that are at least as strict as the state uniform commercial building code. In addition, cities of the 1st or 2nd class may enact and enforce an ordinance that relates to fire suppression and requires existing buildings to be altered to comply with the rules found in the state uniform commercial building code for the construction of buildings.

Municipal ordinances in Wisconsin must also comply with section [101.86, Wisconsin Statutes](#), which specifies that municipal ordinances governing electrical wiring and inspection of electrical wiring must strictly conform to the state electrical code, [Chapter SPS 316](#), Wisconsin Administrative Code. The requirement for ordinances to “strictly conform” was added to statute section 101.86 by 2015 Wisconsin Act 55 and went into effect on July 14, 2015.

Codes made uniform by 2013 Wisconsin Act 270

Under 2013 Wisconsin Act 270, standards contained in municipal ordinances, for constructing, altering, or adding to public buildings or buildings that are places of employment, must strictly conform to rules promulgated under Wisconsin Statute Section 101.02 (15) (j). The following table shows the Wisconsin Administrative Code Chapters that have Wisconsin Statute Section 101.02 (15) (j) as underlying authority. The codes shown in the table are now uniform state codes as they pertain to public buildings and buildings that are places of employment.

Code Chapter	Chapter Title
SPS 318	Elevators, escalators and lift devices
SPS 341	Boilers and pressure vessels
3PS 345	Mechanical refrigeration
SPS 361 - 366	Commercial Building Code
The State Plumbing Code, Chapters SPS 381 – 387 Wisconsin Administrative Code, is also a state uniform code in accordance with section 145.13, Wis. Statutes.	

Regulation of building design was made uniform by 2013 Wisconsin Act 270

Municipal ordinances on building maintenance not affected

While 2013 Wisconsin Act 270 unifies most requirements concerning the design of public buildings (constructing, altering, or adding to public buildings or buildings that are places of employment), it does not unify requirements related to building maintenance. Therefore, Wisconsin Administrative Code [Chapter SPS 314](#), Fire Prevention, remains a minimum code as it relates to building use, operation and maintenance.

Municipal ordinances relating to building use, operation and maintenance may generally be more restrictive than the Wisconsin Fire Prevention Code, Chapter SPS 314, and the Wisconsin Uniform Commercial Building Code. However, municipal building code ordinances may not be so restrictive as to negate or disqualify a building design that complies with the state uniform codes, shown in the table above, for building uses or operations allowed by those state codes.

State Statutes Governing Municipal Zoning Authority Not Changed

Wisconsin law provides zoning authority to counties, towns, villages and cities. Among other things, such zoning authority includes the ability to regulate the location, height, bulk, number of stories and size of buildings and other structures. Zoning authority also includes the ability to regulate the location of buildings and structures that are designed for specified uses. State laws on zoning can be found as follows: [s. 59.69\(4\)](#) for counties; [s. 60.61\(2\)](#) for towns; [s. 61.35](#) for villages; and s. [62.23\(7\)](#) for cities.

Municipal adoption of national model codes and standards

Municipal adoption of national model codes or standards must adhere to the parameters of 2013 Wisconsin Act 270 and section 101.86, Wisconsin Statutes. Special attention should be given in cases where an ordinance references a national model code or standard which has provisions concerning topics other than building design. Many national models do just that. For instance, *NFPA 1, Fire Code*, written by the National Fire Protection Association, and the *International Fire Code*, written by the International Code Council, both address not only building use, operation and maintenance – they also address building design. When such models are adopted through municipal ordinance, care must be taken to ensure that provisions of the model that deal with building design are in compliance with current Wisconsin State Statutes and the state uniform codes mentioned earlier.

Municipal ordinances that relate to fire detection, prevention, or suppression components of buildings, and which have been grandfathered by the DSPS in accordance with provisions of 2013 Wisconsin Act 270, may continue to contain building design requirements that are stricter than the Wisconsin Uniform Commercial Building Code.

In addition, municipal ordinances that relate to fire detection, prevention, or suppression components of buildings, and which have been grandfathered by the DSPS in accordance with provisions of 2013 Wisconsin Act 270, may be amended if the amendment will not broaden the applicability of the ordinance to any building components that are not subject to the ordinance as grandfathered, and if the amendment will not change the specific subject matter regulated by the ordinance. Such ordinance amendments must be submitted to the State and be published in accordance with the provisions of 2013 Wisconsin Act 270.

Municipal Fees Not Affected

Fees charged for municipal services such as plan review and inspection are not affected by 2013 Wisconsin Act 270 or section 101.86, Wisconsin Statutes. Act 270 addresses ordinances that establish minimum standards for constructing, altering, or adding to public buildings and buildings that are places of employment. Act 270 does not address ordinances that set fees for municipal services. Section 101.86, Wisconsin Statutes, specifies that municipal electrical ordinances must strictly conform to the state electrical code; Chapter SPS 316.

Wisconsin Administrative Code Chapter SPS 302, Fee Schedule, applies to fees paid to the DSPS for services provided by the DSPS. Section SPS 302.001 states in part *“The fees established in this chapter shall be paid to the Wisconsin department of safety and professional services, for providing those services authorized in the Wisconsin Statutes.”*

Ordinances need clear scope and application provisions

Municipal ordinances should specify the scope and application of their requirements. Scoping provisions of the ordinance should specify the types of buildings being regulated. Application provisions of the ordinance should address things such as effective date and retroactivity. In other words, how the ordinance applies to new buildings as well as to existing buildings. For example, new buildings could be required to comply with the ordinance as it exists on the date of building plan approval or the date the building permit is issued.

Municipal adoption of state codes is important

To facilitate municipal enforcement of state building and fire codes, municipal ordinances should adopt the state codes mentioned earlier, as well as Wisconsin Administrative Code Chapter SPS 314, Fire Prevention. Such adoption must be fully coordinated with any approved municipal ordinance provisions that may be more restrictive than state codes as allowed by [Wisconsin Statute Sections 101.02 \(7m\) and 101.02 \(7r\)](#).

Chapter SPS 361 of the Wisconsin Uniform Commercial Building Code and Chapter SPS 314, the Wisconsin Fire Prevention Code both contain extensive provisions that specify the purpose, scope and application of those codes and of all the national model codes and standards adopted therein. With passage of 2013 Wisconsin Act 270, and 2015 Wisconsin Act 55, coordination of municipal ordinances and those statewide scope and application provisions is more important than ever before.