

Wisconsin Counties Association

# 2024 ANNUAL CONFERENCE



8:00 – 9:00 AM

**Town Withdrawal from County Zoning:  
What You Need to Know**

# Town Withdrawal From County Zoning: What You Need to Know

2024 WCA Annual Conference  
September 23, 2024

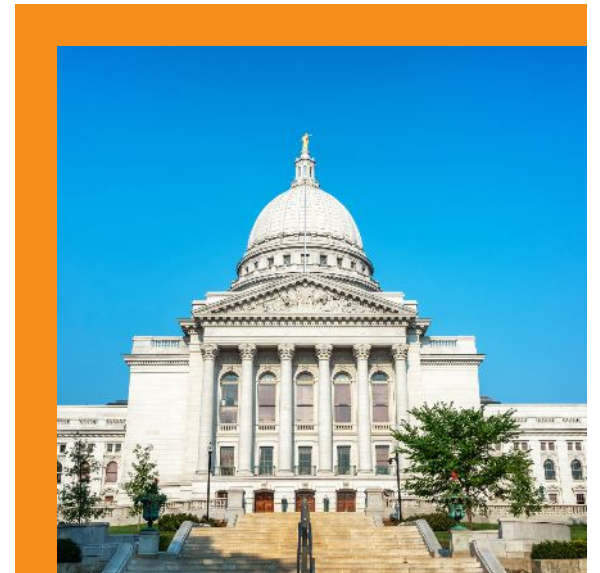
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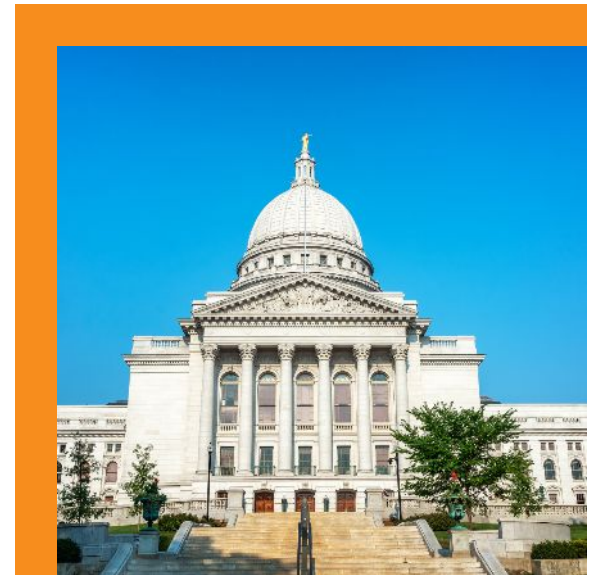


# PRESENTATION OVERVIEW

1. Background – How Did We Get Here?
2. 2023 Wisconsin Act 264
  - a. Backstory and basics
  - b. Timeline implementation
  - c. Implementation requirements
  - d. What is NOT Impacted
3. Special Issues
4. Now What?
5. Questions?



# Background: How Did We Get Here?



An aerial photograph of a city, showing a mix of modern high-rise buildings and older, lower-rise structures. A semi-transparent white rectangular box is overlaid on the center of the image, containing the title text.

## Background: How Did We Get Here?

### Zoning Fundamentals:

“Zoning is one tool used to implement community *goals and objectives* set forth in the community’s *plan*. A zoning ordinance *identifies* different *districts* within a community and *regulates* the use of property within those districts to *advance* the public health, safety and welfare.”

- Brian Ohm, *Wisconsin Land Use and Planning Law*

An aerial photograph of a city, showing a mix of modern high-rise buildings and older, lower-rise structures. A semi-transparent white rectangular box is overlaid on the center of the image, containing the title text.

## Background: How Did We Get Here? (cont.)

### Zoning Fundamentals - County General Zoning:

- Statutory authority: Wis. Stat. s. 59.69
- Impact on incorporated areas of the County
- Impact on unincorporated areas of the County



## Background: How Did We Get Here? (cont.)

### Zoning Fundamentals: Town Options

- “Opt-in” to county zoning by adopting the county’s zoning ordinance upon creation per Wis. Stat. s. 59.69(5)(c), or upon comprehensive revision per Wis. Stat. s. 59.69(5)(d)
- Adopt Village powers pursuant to Wis. Stat. s. 60.62

*Key Point: Adoption of Village powers is not an “opt-out!”*



## Background: How Did We Get Here? (cont.)

2013 Wisconsin Act 287: The “Waukesha County Exception”:

- Wis. Stat. s. 60.62(3)(b): Allows for towns located in counties with a population of at least 380,000 and adjacent to a county with the population exceeding 800,000 (i.e., only Waukesha County) to adopt a zoning code
  - Requires town adoption of village powers under Wis. Stat. s. 60.62(1)
  - Requires county board approval of town zoning ordinance and amendments thereto





## Background: How Did We Get Here? (cont.)

2013 Wisconsin Act 287: The “Waukesha County Exception”:

Based on these requirements, what is the difference between this section and a town exercising village powers under Wis. Stat. s. 60.62(1)?

- No town meeting or referendum requirement required by Wis. Stat. s. 60.62(1)
- Politics



## Background: How Did We Get Here? (cont.)

### 2015 Wisconsin Act 178: The “Dane County Exception”

- Wis. Stat. s. 60.23(34): Allows for towns located in a county with a population of at least 485,000 to withdraw from county zoning and land division controls
  - Only Dane County meets the population requirements and still has townships
- Includes certain conditions and “safeguards”

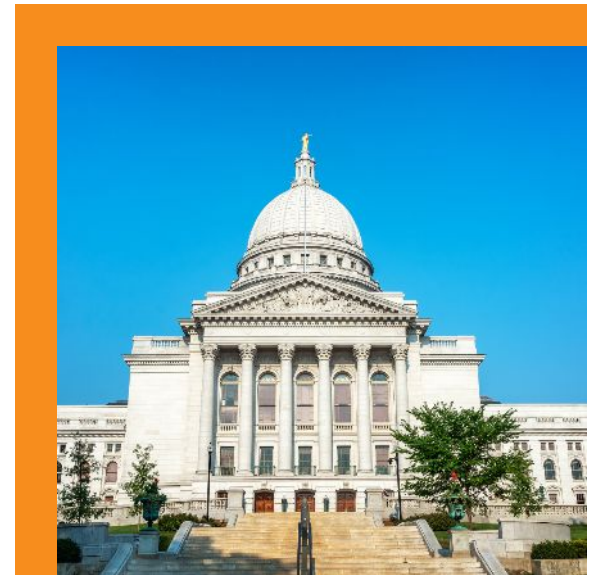


## Background: How Did We Get Here? (continued)

2015 Wisconsin Act 178: The “Dane County Exception” and Wis. Stat. s. 60.23(34)’s “Safeguards”:

- A town must adopt a comprehensive plan under Wis. Stat. s. 66.1001
- A town must enact a zoning ordinance under Wis. Stat. s. 60.62 and must meet specific criteria in Wis. Stat. s. 60.23(4)(c)1.-4.
- A town must establish an official map pursuant to Wis. Stat. s. 62.23(6)

# 2023 Wisconsin Act 264





## Act 264: Summary

- In creating Wis. Stat. s. 60.23(35), the Legislature extended the “Dane County” exception to any town in a county with a county zoning ordinance.
- *However...*



## Act 264: Backstory

Before the “However,” a brief note on the backstory of Act 264:

- Negotiation between several organizations
- Goals:
  - To foster corporation between towns and counties
  - To improve communications between towns and counties

*“The goals are collaboration and communication. If this statute works, the there will be no towns withdrawing under Wis. Stat. s. 60.23(35).” – Andy Phillips*



## Act 264: The New Wis. Stat. s. 60.23(35)

TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to subds. 1. and 2., after March 31, 2029, enact an ordinance withdrawing the town from coverage of a county zoning ordinance that was approved under s. 59.69 (5) (c) and from coverage by a county development plan that was enacted under s. 59.69 (3) (a). An ordinance enacted under this paragraph may not take effect until all of the following occur:

1. Not later than 2 years before enacting an ordinance under this paragraph, the town adopts a resolution of the town's intent to enact an ordinance under this paragraph and provides a copy of the resolution to the county clerk.
2. Not earlier than 2 years and not later than 3 years after adopting the resolution under subd. 1., the town adopts a resolution informing the county of the town's withdrawal from coverage of the county's zoning ordinances, and the town sends certified copies of the documents under subd. 3. to the county clerk.
3. Not later than the effective date of the resolution adopted under subd. 2., the town enacts a zoning ordinance under s. 60.62, a comprehensive plan under s. 66.1001, and an official map under s. 62.23 (6).

An aerial photograph of a city with various buildings and greenery. A semi-transparent white box is overlaid on the center of the image, containing the title text.

## Act 264: The Basics and Implementation Timeline

- Allows a town to withdraw from coverage of a county zoning ordinance and county development at *any* time.
- Timeline (*Enter the “However”...*):
  - Effective Date is March 31, 2024
  - Town may withdraw no sooner than five years after the Effective Date – March 31, 2029



An aerial photograph of a town with various buildings and greenery. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

## Act 264: Implementation Timeline

- No later than two years before enacting a zoning code, a town must adopt a resolution of the town's intent to enact a zoning ordinance and send to the county clerk.
- No earlier than two years and no later than three years after adoption of the notice of intent to withdraw resolution, the town must adopt a second resolution notifying the county of its withdrawal.



## Act 264: Implementation Timeline (cont.)

- Timeline (continued):

*(Here comes the “Big However”...)*

- No later than the effective date of Resolution No. 2, the town must also:
  - Enact a zoning ordinance under Wis. Stat. s. 60.62
  - Adopt a comprehensive plan under Wis. Stat. s. 66.1001
  - Adopt an official map under Wis. Stat. s. 62.23(6)

An aerial photograph of a city with various buildings and greenery. A semi-transparent white banner is overlaid across the middle of the image, containing the title text.

## Act 264: Implementation Requirements

*Key Point: A town must adopt a zoning ordinance that complies with the requirements of Wis. Stat. s. 60.62, a comprehensive plan that complies with Wis. Stat. s. 66.1001, and an official map that complies with Wis. Stat. s. 62.23(6) in order for its withdrawal from county zoning to be effective.*



## Act 264: Implementation Example

Town of Freedom wants to withdraw from Lombardi County zoning ***as soon as possible***:

- Town must adopt Notice Resolution before March 31, 2027 (not later than 2 years prior to enacting the ordinance, which may not occur until March 31, 2029)
- Town may start the planning process on March 31, 2025 (not earlier than 2 years before adoption of Notice Resolution)
- Town may adopt Withdrawal Resolution (which must include the town's zoning code, comprehensive plan and map) no sooner than March 31, 2029 (2 years after Notice Resolution), and no later than March 31, 2030 (3 years after Notice Resolution)



## Act 264: What is Not Included?

- A town withdrawing per Wis. Stat. s. 60.23(35) does not mean withdrawal from:
  - County Shoreland Zoning
  - County Floodplain Zoning
  - Any county zoning ordinance and county development plan provisions that regulate quarry operations
  - Stormwater management regulation
  - Erosion control regulation
  - POWTS permitting

An aerial photograph of a city with a semi-transparent banner overlay. The banner contains the text "Act 264: Special Issues" in a bold, blue font. The background shows a mix of urban buildings and green spaces.

## Act 264: Special Issues

- Land divisions: If a town has withdrawn from county zoning and the county development plan per Wis. Stat. s. 60.62(35), a county no longer has:
  - Approval or objecting authority for certified survey maps
  - Approval or objecting authority for preliminary or final subdivision plat
  - objecting authority if town withdraws per
- Land subject to cooperative plan
- Farmland Preservation certification



## Act 264: Now What?

*Next Big Question: What if a town does not follow the proper steps in withdrawing per Wis. Stat. s. 60.23(35)?*



## Act 264: Now What?

### What We Do Know:

- *The town* must comply with requirements of Wis. Stat. s. 60.23(35). A county is not obligated to assist a town in its implementation process.
- Once a town withdraws per Wis. Stat. s. 60.23(35), a county has no legal obligation to let a town “back in” to county zoning or provide any administration services.
- Once a town opts out under (35), a county may forward all town zoning calls to the town planner or town clerk...





**THANK YOU!**

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