

CITY OF MANITOWOC

WISCONSIN, USA

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19-0853



July 19, 2019

TO: Public Infrastructure Committee

FROM: Elizabeth Majerus, Assistant City Attorney

RE: *Ordinance to Amend 7.110 Regulations of Railroads Operating in the City of Manitowoc- Penalty*

Enclosed is an ordinance drafted in response to a recent Wisconsin Court of Appeals decision in City of Weyauwega v. Wis. Cent. Ltd., 2018 WI App 65. In this case, the court held that Weyauwega's ordinance prohibiting trains from obstructing traffic for more than ten minutes was preempted by federal laws regulating railroad safety. Manitowoc's existing ordinance has a provision more restrictive than Weyauwega's wherein we prohibit any railcar, engine, or tender from obstructing traffic for more than five minutes. I could not find any citation issued for violating this offense going back several years, which led me to believe our ordinance is not being enforced. Nonetheless, in response to this case, we are obligated to strike (4) prohibiting obstruction of crossings by trains.

I also modified (1) to comply with federal law. A municipality may enact a regulation affecting rail operation if it is "necessary to eliminate or reduce an essentially local safety hazard, ... is compatible with federal laws and regulations, ... and... does not create an undue burden on interstate commerce." City of Weyauwega, 2018 WI App 65, P15. I believe (1) would satisfy this test as long as the purpose behind it is one of safety, rather than tidiness. I therefore modified the purpose statement contained within (1) from one of tidiness to one of safety.

I respectfully ask that this ordinance amendment be accepted by Committee and referred to Council for formal adoption.

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