



# CITY OF MANITOWOC

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September 11, 2019

**TO:** City Council  
**FROM:** Liz Majerus, Assistant City Attorney  
**RE:** Ordinance to Amend MMC §7.110

Our office recently submitted to the PI Committee an amendment to MMC §7.110, *Regulations of Railroads Operating in the City of Manitowoc*, following the Wisconsin Court of Appeals decision City of Weyauwega v. Wis. Cent. Ltd., 2018 WI App 65, wherein the Court summarized various federal regulations that preempt municipal regulation of railroads and concluded that a municipal ordinance prohibiting railroad obstruction of vehicular travel was unenforceable. The amendment presented to Public Infrastructure was intended to bring the City into compliance with that court decision by striking §7.110(4), which also prohibits railroad obstruction of vehicular travel. Alder Kummer expressed concern that the Weyauwega decision was not final because it was issued by the Court of Appeals rather than the Wisconsin Supreme Court and he wondered the degree of precedence set by the decision. Alder Brey asked that our office provide more information or whether the matter can be left to municipalities. This memo is an effort to answer those questions.

The Weyauwega decision was rendered September 20, 2018. It was not appealed. The case is published meaning that it is binding precedent. Importantly, the case does not present new material, but rather, summarizes federal regulations governing how and to what degree cities may regulate railroad operations within their boundaries. Municipalities may not enforce any ordinances that are preempted by federal law. The Federal Railroad Safety Act (FRSA) expressly pre-empts local regulation by declaring that “laws, regulations, and orders related to railroad safety... shall be nationally uniform to the extent practicable.” 49 U.S.C. §20106(a)(1).

States (and municipalities) may only regulate railroads if the regulation “(1) is necessary to eliminate or reduce an *essentially local* safety... hazard, (2) is compatible with federal laws and regulations, and (3) does not create an undue burden on interstate commerce.” §20106(a)(2)(A)-(C). The Weyauwega Court determined that the ordinance at issue relates to railroad safety, regulates the operation and movement of trains and that federal regulations cover the operation and movement of trains. Moreover, the issue being regulated--trains obstructing streets-- is not an essentially local concern. As such, the ordinance was preempted and unenforceable.

MMC §7.110(4) is not currently enforced nor has it been enforced for at least several years. If a citation were to be issued under this provision, I would be obligated to move the Court for dismissal. I encourage Council to adopt the amendment as presented to Public Infrastructure. Our office will continue researching ways we can hold railroad companies accountable and, upon completion, we will provide our recommendations to you for review.

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