



CITY OF MANITOWOC¹⁹⁻⁰⁸⁵³
WISCONSIN, USA
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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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ORDINANCE

An Ordinance to amend Section 7.110 of the Manitowoc Municipal Code regulating Railroads Operating in the City of Manitowoc.

The Mayor and Common Council of the City of Manitowoc do ordain as follows:

Section 1. Section 7.110 is amended to read as follows:

“7.110 Regulations of Railroads Operating in the City of Manitowoc – Penalty.

(1) Construction and Maintenance Debris and Materials. In order to minimize the risk of harm to persons who come across construction debris and maintenance materials, all construction debris and maintenance materials created by or used in the necessary tasks pertaining to the operation of any railroad operation located within the City limits shall be removed within a 12-month period beginning at the time of placement. ~~The purpose of this section is to assure a tidy rail operation. Therefore, material relocation as a remedy to this section shall not be sufficient to accommodate the intent of this section.~~

(2) Maintenance Within the City ROW. When operations of the railroad require work to be completed within the City ROW, 48 hours’ notification of such work shall be given in writing to the City Engineer before such work commences.

(3) Snow Removal in Railway Crossings. The City of Manitowoc will remove the snow located on the track crossings where they intersect public roads. The railroad shall remove snow from the pedestrian crossings at the same tracks and in accordance with other applicable ordinances and agreements.

~~**(4) Obstruction of Crossing by Trains.** No person in charge of any railroad car, engine or tender, or any railroad in the City of Manitowoc, shall suffer any railroad car, engine or tender under his control or charge to operate, or remain in any street crossing in the City, so as to obstruct the free passage of traffic along said street and across such railroad track more than five minutes at any one time. A street crossing shall be determined blocked when kept closed to traffic by acts of the railroad, the railroad’s equipment or equipment operated by the railroad, or the railroad’s agents or employees, in permitting the operating of a train over a street crossing for more than the specified five-minute periods without allowing a two-minute interval for the movement of traffic. If two railroad lines are involved, the one occupying the street crossing at the time the five minutes are exceeded shall be deemed in violation.~~

(4) (5) Penalty. Any railway company, its successors or assigns, or any person or persons in charge, who shall fail, neglect or refuse to comply with any of the provisions of this section, shall be punished by a forfeiture of not less than \$100.00 nor more than \$500.00.”

Section 2. This ordinance shall take effect the day after publication.

INTRODUCED _____ ADOPTED _____

Justin M. Nickels, Mayor

Fiscal Impact: \$0
Funding Source: N/A
Finance Director Approval: /sc
Approved as to form: /kmm

This resolution was drafted by Elizabeth Majerus, Assistant City Attorney