



Legislation Text

File #: 34149, **Version:** 1

Fiscal Note

No appropriation is required.

Title

Repealing and re-enacting Section 34.01(13)(a) and (b) of the Madison General Ordinances to re-enact fire code standards that had been in effect in March, 2012.

Body

DRAFTER'S ANALYSIS: On April 17, 2014, the State of Wisconsin enacted 2013 Wisconsin Act 270 which amended Wisconsin Statutes ch. 101 in order to create state wide standards for construction and maintenance of public buildings. The law has the additional impact of regulating fire detection, prevention, and suppression components of buildings. The State provides an exception permitting municipalities to regulate fire detection, prevention, or suppression components of buildings if the law was enacted before May 1, 2013.

In March of 2012, the City of Madison amended Secs. 34.01(13)(a) and (b), MGO, to adopt the 2009 edition of the International Fire Code (IFC). In June of 2013, the ordinance was again amended by ORD-13-00102 to adopt the 2012 version of the IFC. The IFC standards regulate fire detection, prevention, and suppression components of buildings. Although the ordinance was valid when created, as a result of Act 270, Secs. 34.01(13)(a) and (b) would not be enforceable due to the enactment date.

The act of amending an ordinance has the effect of repealing the former language and re-enacting any language that appeared in both the old and new version. *Goodno v. City of Oshkosh*, 31 Wis. 127, 129-130 (1872). Furthermore, the Wisconsin Supreme Court has stated, “[W]hen a repealing statute re-enacts a provision of an old statute in substantially the same words, no change in the old law is thereby effected, but the original law is deemed to continue in force from its first enactment.” *Van Dyke v. Tax Commission*, 217 Wis. 528, 539 (1935).

This ordinance is intended to repeal ORD-13-00102 and re-enact portions of the ordinance which have existed since March 29, 2012 and are contained in ORD-12-00035. In accordance with *Van Dyke*, the re-enacted language should be “deemed to continue in force from its first enactment,” which was prior to May 1, 2013. The language in this version of Sec. 34.01(13) should be deemed to have been enacted on March 28, 2012 and, therefore, be effective and enforceable under the exception to 2013 Wisconsin Act 270.

Other portions of ORD-13-00102 are valid under the state law as they are not applicable to construction or maintenance of public buildings.

It is in the best interests of the City, residents and property owners for the City to adopt and apply current standards for detection, prevention, and suppression components of buildings. Generally, current editions of the fire code address contemporary issues and reflect enhancements based on current fire data. While most new provisions are more robust, some new sections allow greater flexibility for the owner or design professional to provide an alternate but equal level of fire prevention and safety. In fact, most designers prefer to use the most current fire code. For example, the State adopts the 2009 International Building Code. Due to the code development process and publishing timelines, the code is developed based on information available in 2004-2007. The state-adopted codes still allow an anti-freeze chemical in fire sprinkler systems that actually fuels the fire. Historically, the state’s adoption of standards to improve fire safety is many years behind most other jurisdictions in the country.

Sec. 34.01(13) is an ordinance which adopts the most current state and international standards. While this new version of the ordinance removes the edition year, the purpose of the ordinance is still clear because the language states that the City adopts “the most current edition” and the IFC with certain specified modifications.

2013 Wisconsin Act 270 requires that the City submit any ordinances pertaining to fire detection, prevention or suppression that it finds to be enforceable under the exception, including this ordinance, by June

17, 2014. Due to the time constraints, this ordinance will be submitted to the Building Code, Fire Code, Conveyance Code and Licensing Appeals Board on May 20th and will be introduced for adoption under suspension of the rules at Common Council on that date.

The Common Council of the City of Madison do hereby ordain as follows:

1. Subdivisions (a) and (b) of Subsection (13) entitled "Adoption by Reference: State and National Codes" of the Madison General Ordinances are hereby repealed and re-enacted to read as follows:
“(a) The codes in the *International Fire Code*[®] and the Wisconsin Administrative Codes that are adopted by reference are the most current edition of the referenced code and any subsequent editions of the referenced codes.
(b) IFC. The *International Fire Code*[®], subject to the modifications specified in this chapter.”

EDITOR'S NOTE:

Sections 34.01(13)(a) and (b) currently read as follows:

- “(a) The codes in the 2012 *International Fire Code*[®] and the Wisconsin Administrative Codes that are adopted by reference are the most current edition of the referenced code and any subsequent editions of the referenced codes.
(b) IFC. The *International Fire Code*[®] - 2012, subject to the modifications specified in this chapter.”