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**FREQUENTLY ASKED QUESTIONS
ABOUT FIRE DEPARTMENTS**

**2007 Town Officials Workshops
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- *What type of fire departments can a town organize to meet the statutory requirement of providing fire protection to its citizens?*
- *Are fire departments subject to the open records and meetings law?*
- *What are the rules or terms of agreement governing joint fire departments?*
- *What do the by-laws say about the following issues:*
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1. What type of fire departments can a town organize to meet the statutory requirement of providing fire protection to its citizens?

The town board, under s. 60.55(1), is required to provide fire protection within the town. There is no authority under the town meeting powers, ss. 60.10(1), (2) or (3), for the town electors to dictate the form of fire protection that shall be provided. This is the responsibility of the town board under s. 60.55. The town board however may wish to receive citizen input on any changes to fire protection service before making any decision or commitments.

All fire departments must meet the health and safety standards required under COMM 30. A copy of that administrative rule can be found in *Attachment A*. Towns have the following four alternatives available to them in providing fire protection service.

The town board can establish a town fire department under s. 60.55(1)(a)1. Under this option, the town board *is* the fire board with the town chairperson and board members determining policy, purchases, and personnel decisions. Another alternative to town board management is to establish a citizen advisory committee by ordinance. The committee can advise the board on personnel, budget, purchases and daily management. The board is still responsible for making final decisions; however, this addition to board management provides regular citizen input and may help to resolve political pressures. The ordinance should include committee representation, terms, appointment, authority, and governance. If a town establishes a fire commission under s. 60.57, then the town must follow the requirements and procedures of such a commission under s. 62.13.

The town board can establish a joint fire department with another town, village or city under s. 60.55(1)(a)2. The town board should establish a joint fire board under this option. The joint fire board is made up of representatives from participating municipalities. Cities and villages that are required under the law to establish a fire department have the option of establishing a joint fire department with other municipalities. If cities and villages exercise this option, they must establish a joint fire board under ss. 62.13(2) and 61.65(2). The municipalities involved establish the rules and authority of the board, usually reserving the ability to approve the fire department budget, capital expenditures, and other important decisions to the participating municipal boards.

The town board can contract with a private fire department (organized under ch. 213) under s. 60.55(1)(a)4 or a nonprofit department (organized under ch. 181) for fire protection services under s. 60.55(1)(a)3. Under this option, the board contracts for fire protection service and determines the level and coverage of that service. The board can negotiate the terms of the contract with the provider that include but are limited to the cost of service, term of contract, and circumstances under which the contract needs to be renegotiated. Private companies or nonprofit corporations have the equipment and personnel and provide the service under contract.

The town board can contract with another municipality to provide fire protection services under s. 60.55(1)(a)3. Cities with a population of 4,000 people or more and villages with 5,500 or more people are required under the law to have their own fire department. Towns near cities and villages of this size may wish to consider contracting for all or a portion of their fire protection service or forming a joint fire department. Similar to contracting with a private or nonprofit fire company, towns must negotiate the terms of the contract with municipalities.

The contract should be written in clear language specifying the services to be provided (fire suppression, emergency medical services, hazardous materials response, fire inspections, training and planning, equipment maintenance), authority and discretion of the fire chief, mutual aid agreements and contracts with private property owners, enforcement and litigation costs, cost allocation, payment procedure, circumstances of municipal board review and other matters.

2. Are fire departments subject to the open records and meetings law?

All municipal fire boards are subject to the open records and open meetings law as they are considered agencies of the municipality(ies). Private and nonprofit fire companies are not subject to the open meetings law; however, they are subject to the open records law if over half of their funding comes from public entities.

An association of fire fighters within a department is not considered a “governmental body” and therefore the association’s meetings and training sessions are not subject to the open meetings law.

3. What are the by-laws or terms of an agreement governing joint fire departments?

Using the North Shore Fire Services agreement (see *Attachment B*) as a model, the terms of a joint fire department agreement consist of several parts that speak to:

- (a) The fire board’s membership and terms of office.
- (b) The authority and powers of the fire board.
- (c) What is considered a quorum of members in voting decisions.
- (d) When a super majority or unanimous vote of the board is required.
- (e) The board’s meeting schedule.
- (f) Officers.
- (g) Services to be provided.
- (h) Compensation of board members.
- (i) Creation of a fire commission if required by law, member powers, and compensation.
- (j) Appointment of a fiscal agent for the fire board.
- (k) A budget process, timetable, and reporting requirements to participating municipal boards.
- (l) Handling of contributions, such as fire equipment from participating municipalities.
- (m) Ownership of assets.
- (n) Allocation of cost to member municipalities, payment procedure, promise to pay in the event of a dispute over cost and method of arbitrating disputes.
- (o) Payment and billing procedure.
- (p) Term of the agreement.
- (q) Effect of withdrawal or expulsion.
- (r) Process for terminating the agreement.
- (s) Distribution of assets in the event of termination.
- (t) Process for incorporating other municipalities into the fire district.
- (u) Boundaries of the fire district.
- (v) Process to amend by-laws.
- (w) Liability of the fire department.
- (x) Provisions to transition into a fire district, including the termination of existing agreements.

Participating municipalities approve and adopt the agreement or by-laws. While the aforementioned by-laws are for a joint fire board, which are shown in **Attachment B**, many of the basic components should be included in any fire contract with a private fire company, nonprofit or municipality. Even town fire departments should have by-laws that speak to the powers of the fire board, when supermajority or unanimous votes are required, mutual aid agreements, the process of extending services, and so forth. When a town contracts for service with a municipality or a private or nonprofit fire company, they will have by-laws that speak to the organizing decision rules and procedures of the department. The town should inspect these by-laws as a basis to inform contract negotiations over issues of governance that are of concern to the town. In addition, the town should carefully negotiate all procedures, services, terms and oversight it wishes to include in the contract. While the contracting municipality may not be amendable to these changes in the contract, a town will never know without examining the items under the agreement and negotiating for them. It may be that as a result of such negotiations, the town obtains its desires and/or begins to explore options for alternative service delivery.

4. What do the by-laws say about the following issues:

Is there a budget process?

For town fire departments, the town board appropriates money to the fire department as a part of the town's annual budget process that is subject to the provisions of s. 65.90.

The North Shore Fire Services Department clearly lays out a budget process in sections 5 and 13. The joint fire board submits a budget for the fire department to governing bodies of the participating municipalities no later than October 1. Action on the budget by the municipal governing bodies cannot be beyond November 15, and five of the seven municipal bodies must approve the budget for its adoption by the joint fire board. Failing approval by the required municipalities, the agreement outlines that the fire department will operate at the budget appropriation of the prior year until agreement is reached among the municipalities.

For towns that contract for service, the towns have no approval authority over the budget and just pay their bill to the contracted fire department, unless there are express provisions in the contract that grant the town board oversight and approval of the budget or certain items in the budget.

Approval and payment of bills?

For towns with their own fire department, the town board approves the fire department's budget and the clerk brings the bills before the town board for approval prior to payment. Expenditures cannot be made that were not part of the budget appropriation and approval prior to purchase is required, unless the authority to purchase has been delegated to the fire chief in the by-laws or as part of town policy. Monies are all handled through the clerk and treasurer using the regular claims procedure, not through the fire department. In addition, monies are allocated as they are spent just as they are for all town expenditures. Changes to the fire department's initial budget appropriation, if it involves increases, decreases or transfers among allotted amounts in the adopted budget document, require a town board amendment of the budget.

Using the example of the North Shore Fire Services Department, the by-laws commonly invest the fire board with recommending approval of the budget to participating municipalities, including both operating and capital expenditures. In this particular case, the budget needs approval of five of the seven municipal boards before being adopted by the fire board. The by-laws also specify

appointment of a fiscal clerk who maintains financial records, receives and disburses funds; administers the payroll, insurance and benefit programs, and payments from the municipalities; and, develops financial reports for the fire board and municipalities. In the case of the North Shore Fire Services Department, claims are signed by the fiscal agent and fire chief. Expenditures over \$25,000 are brought before the joint fire board for approval prior to expenditure.

For towns that contract for services, there is no approval of specific expenditures by the town board of the contracted fire department unless expressly written into the contract. Towns should ensure that provisions are included in the contract that specify an approval process for unforeseen costs incurred by the contracted fire department if they will be liable for them in the present or future. In addition, towns may wish to gain participatory rights in the contract for approval of capital plans and expenditures for the fire department.

Who has the authority to purchase fire equipment?

The by-laws should specify how fire equipment is purchased and who makes the spending decision. As an example, the North Shore Fire Services board approves the purchase of fire equipment that is appropriated in the budget that is over \$25,000. Otherwise, the fire chief for the North Shore Fire Department purchases equipment subject to the appropriations within the budget. For town fire departments, the town board approves equipment purchases, unless this authority has been delegated to the fire chief and then it is usually up to a specified amount. For towns that contract for services, either the contracted municipality or private fire company determines what fire equipment will be purchased under their allotted budget unless there is an express provision in the contract that gives the town board oversight and approval of equipment purchases.

It is a common practice in board by-laws to grant the fire chief discretion of purchases under a specified amount without board approval. However, the fire chief is still restricted to those items appropriated in the budget and is subject to the claims procedure of the municipality. This discretion does not authorize the fire chief to exceed the fire department's approved budget appropriations without a budget amendment approved by the board.

What is the fire chief's authority to buy or replace equipment during and after a fire?

The fire chief cannot purchase equipment during or after a fire unless it is specifically authorized in the budget and within the parameters set within the by-laws. The fire chief, however, can make a budget request anytime during the fiscal year to amend the budget so that a purchase can be made to meet unforeseen needs. Budget amendments are at the discretion of the fire boards, whether they are town boards, joint fire boards, or boards for private companies. Joint fire boards and boards of private and nonprofit companies, however, will need the approval of participating municipal boards if their payments increase to meet these expenditures.

Can fire fighters have their own association fund?

Yes, fire fighters can form an association and establish a fund for any monies they raised during events they conduct, without fire board approval, if the association has established its own legal identity as a nonprofit and obtained a federal identification number for tax exempt purposes. If it uses the municipal number in its account, the fund is part of the fire department budget regardless of whether it is a town, joint or private fire department and not a separate account for the fire fighters association.

If the fire fighter association has its own legal identity and federal identification number, the fire fighters can decide how the monies are to be used without fire board approval. While the fire fighters may be within their rights to keep the revenue and expenditure information from the fire board, disclosure of the information may further the fire fighters' cause with the fire board at budget time.

2001 Wisconsin Act 16 created s. 66.0608 that authorizes municipalities to create an ordinance that allows fire fighters associations who have not established themselves as a separate legal entity for tax exempt purposes to create their own separate account for monies raised during community events they conduct to support the fire department. The ordinance can establish an official who is responsible for the fund and sole control over expenditures of the fund. The ordinance can further establish the following limitations: (1) a limit on the amount and type of funds that are deposited in the account, (2) a limit on the amount of the withdrawals from the account and the purposes for which they are made, and (3) reporting and auditing requirements for the account. See *Attachment C* for a copy of the law.

Please note that a fire fighter association is very different than a private fire company or a nonprofit department established under ch. 213 or ch. 181, respectively. In both cases, articles of incorporation will be filed with the Wisconsin Secretary of State's office and the town will have a contract for fire protection service with the entity.

5. What policies and standard operating procedures are established in the operation of a fire department?

Fire departments must comply with the state administrative rule, COMM 30, which sets out safety and health standards for fire departments and their employees. See *Attachment A* for a copy of COMM 30. The rules set out the authority for fire inspections, penalties for violations, standards for equipment, training, protective gear, new recruits, vehicles, and a fire fighter referral program. The Wisconsin Technical College System provides training and certification for fire fighters. The fire board may wish to familiarize themselves with this document to understand the requirements of state law, fire fighter training requirements, and the degree of expertise required of fire fighters and the fire chief.

The fire board may give the fire chief discretion to establish the standard operating procedures and guidelines of the fire department. These procedures and guidelines must be consistent with state law and are contingent upon board approval. The procedures and guidelines can include the election of the fire chief, meetings, compensation, work rules, criteria and procedures for discipline and termination, and training requirements beyond state standards. See *Attachment D* for a sample set of guidelines for the New Glarus Fire Department.

6. What state rules govern fire departments?

The primary rules and laws that govern fire departments are:

- (a) The authorizing statute for municipalities establishing or contracting with fire departments (s. 62.13 for cities, s. 61.35 for villages, and s. 60.55 for towns).
- (b) The laws under which a fire department is incorporated (nonprofit under ch. 181 or private company under ch. 213).

- (c) The rules that lay out fire fighter and inspector training required by law (COMM 30), rules that govern fire inspections of public buildings (COMM 14), or laws that specify certification requirements, such as s. 146.50 for first responders.
- (d) The laws under which a municipality's liability is limited or excluded, such as the general liability provisions for fire departments found under s. 893.80. This section establishes a procedure for making claims against fire departments and limits the liability of the municipality to \$50,000 and \$25,000 for volunteer companies incorporated under ch. 213 or ch. 181.

7. What procedures are used to select the fire chief, deputy or assistant?

Where there is a volunteer fire fighting force, the fire fighters often select the chief and assistants contingent upon board approval, provided those terms are spelled out in the by-laws. Towns with their own departments and municipalities participating in a joint fire department approve and adopt the bylaws of their respective departments. Selection of the fire chief depends upon the by-laws organizing the department. Town or joint fire boards should include in their by-laws the selection or approval process of the fire chief and any recruits.

City and village fire departments, which are not joint fire departments, are required under s. 62.13 to establish a fire commission. Towns with their own fire departments may establish under s. 60.57 a board of fire commissioners that is subject to the requirements and limitations of city and village fire commissions under 62.13. The primary purpose of the commission, which is a body of citizens, is to deal with personnel matters of the fire department. The chief officer of the municipality (mayor, village president, town chair) appoints the members for staggered terms. The commission hires, fires or disciplines the fire chief; approves all appointments of the fire chief; approves competitive exams for applicants; approves the list of eligible candidates for positions, may suspend employees; hears charges against employees; and hears any appeals from hearing actions.

8. Must the governing body approve the selection of the fire chief, deputy and assistants if the fire fighters make the selection?

Volunteer fire fighters can select their own fire chief upon a vote of the membership without approval by the fire board. This selection procedure, however, should be expressly stated in the fire board's by-laws. The selection procedure and term of office for the fire chief and assistant should be outlined in the by-laws of the fire department. Fire department by-laws and work rules are approved by the fire board, except where this is within the domain of a municipal fire commission.

For towns that contract for fire protection services, there is no approval authority in the selection of the fire chief unless such authority is expressly written as a term of the contract. This item of negotiation is limited by cities and villages that are required by law to establish their own fire departments and who must also establish fire commissions.

9. How are new recruits for fire fighters hired?

Anyone can apply to become a fire fighter, but the applicant must successfully pass a physical exam and the training requirements listed under COMM 30.08 within the specified time period. The training must meet the requirements of NFPA 1001 and must include the minimum requirements specified by the WTCS board, an approved apprenticeship program, and an in-house training

program. The fire chief hires new recruits, although these hires are subject to approval by the town fire board or joint fire board. Towns that contract for service commonly do not have a voice in the hiring process unless that is made an explicit term of the agreement. If there is a fire commission established under s. 62.13, then the commission approves hires and assists in the hiring process.

10. What procedures are used to remove fire fighters to ensure due process?

For town fire departments that have full-time personnel, town boards can establish a fire commission that deals with personnel issues and town boards can approve standards of conduct and work rules for which fire fighters are subject. Towns can negotiate such items within the by-laws of joint fire departments. Commonly the work rules and procedures of the fire departments will lay out the expectations of fire fighters and the grounds for disciplinary action or termination. Pages 5 and 6 of *Attachment D*, the by-laws of the New Glarus Fire Department, lay out the general work rules applicable to all fire fighters. Section 10 on page 6 lays out the criteria for termination and the procedures used to take disciplinary action. Complaints are made to the fire board and the board conducts a hearing on the complaint. The board must render a decision within 10 days of the hearing.

The by-laws or rules should ensure that due process is afforded to the fire fighters. In cases where a fire fighter has a drug or alcohol addiction, fire departments are required to refer them to the services listed under COMM 30.16. Since such addictions are perceived as a disability, these cases must be handled carefully and the fire fighter reasonably accommodated in their recovery. For example, an alcohol addiction may not be sufficient grounds for termination, but a suspension may be warranted until the fire fighter has successfully completed a recovery program. For towns that contract for services, the town commonly does not have a say in personnel matters unless such terms are negotiated in the contract. Realistically, such towns should review the by-laws of the department and the governing board and try to negotiate any changes it sees fit.

11. What are the benefits and pay or compensation for fire fighters?

For full-time fire fighters, their compensation is typically laid out in a contract with the municipality or fire department and is usually on an hourly basis. The contract lays out compensation, fringe benefits, vacation and sick leave.

Volunteers are compensated in a variety of ways, from a per diem for each fire or emergency response to an hourly wage. The municipality may also provide some forms of insurance coverage. The fire board should have a written policy regarding compensation and benefits.

When does a town have to pay social security and Medicare (FICA) for fire fighters?

This is often a contentious and unclear issue in many volunteer fire departments. The IRS has made it clear, however, that fire fighter per diems and the reimbursement of expenses that are not made under an accountable plan are considered income and are subject to social security and Medicare taxes.

Firefighters who are on call and work regularly but intermittently do not qualify for the social security and Medicare exception for emergency workers defined in IRC section 3121(b)(7)(F)(iii). This exception is only for temporary workers who respond to unforeseen emergencies (e.g., floods or tornados). When a worker who is termed a *volunteer* receives compensation, that compensation is considered “wages” subject to social security and Medicare tax if the worker is an employee (unless

an exclusion applies). For instance, volunteer fire fighters may not receive salaries, but they may receive amounts intended to reimburse them for expenses. They may also receive other cash or in-kind benefits that may be wages. Volunteer fire fighters can receive tax-exempt reimbursements for their expenses, but these reimbursements must be under an *accountable plan* within the meaning of IRC section 62(c) and regulations. An accountable plan is one that is designed to reimburse only actual, substantiated business expenses. This provision is effective for tax years after 1988. An accountable plan must meet the following three requirements: (1) business connection – the volunteer could have deducted the item had he or she not been reimbursed for the expenditure, (2) the volunteer is required to substantiate the expenditure, and (3) the volunteer is required to return any amounts received in excess of the amounts substantiated within a reasonable period of time. Reimbursements and advancements that are not paid under an accountable plan are wages subject to employment taxes, including income tax withholding, Social Security tax (OASDI), and Medicare tax. A *per diem* or fixed amount paid to a firefighter (or other worker) that does not reimburse actual, documented expenses, is included in income and subject to income tax withholding, Social Security tax, and Medicare tax. Before considering employer provided vehicles for the fire chief contact the IRS or research the Fringe Benefit guide on the <http://www.irs.gov/govts/> website. Review the information under non-personal use.

The UWEX Local Government Center in conjunction with the Wisconsin Department of Revenue and the Internal Revenue Service have conducted a WisLine program on April 20 and 27, 2007 on the taxability of per diem, minimal wages, volunteer status, LOSA programs and reporting requirements. To get a copy of the program (materials and tape) go to <http://www.uwex.edu/lgc/program/wisline.htm>, or if you would like to order the online program, go to http://learningstore.uwex.edu/category.aspx?Category_ID=259&.

Reimbursement of expenses policy

Actual enumerated expenses by fire fighters can be reimbursed by the town, joint board or fire department. The by-laws of the town or joint fire board or fire company should include its compensation policy for board members and fire fighters, including itemized and reimbursable expenses along with the rates. If the policy is not included in the by-laws, then the appropriate documents should be referenced that contain the reimbursement policy, compensation and benefits. Fire fighters, however, should enumerate the expenses on a voucher, include appropriate receipts, and sign it before being reimbursed by the town board, joint board, or fire company. Not all expenses or levels of reimbursement are tax exempt under the IRS code. See the following resources for a listing of tax exempt reimbursable expenses: IRS Publication 15-B on Fringe Benefits and the <http://www.irs.gov/govts/> website. If you are a municipal official with questions on your current policy, you can contact Ruthann Watts at the IRS at (262)513-3520.

What benefits are fire fighters eligible for in cases of disability or death while performing their duties?

All fire fighters, if injured in the performance of their duties and unable to work because of those injuries, are protected from loss of income through worker's compensation. There is a presumed wage used in the calculation of \$1165.50 of income per week that must be rebutted by the insurance carrier, which provides a total disability benefit of \$777 per week. The \$1165.50 is the maximum wage for injuries in 2007. If the presumption is rebutted, the wage that is used to calculate the benefit for volunteers is equal to a full-time fire fighter's wage in the same geographic region. The benefit may be reduced by 15% to a maximum of \$15,000 if the injury is a result of a violation of a safety rule or intoxication. The benefit may be increased by 15% to a maximum of \$15,000 if the injury is a

violation of a safety rule by the employer. The insurance carriers covering workers compensation for the town board, joint fire board or private company are responsible for payment of the benefit. If a private company does not have sufficient coverage, the municipality(ies) is responsible.

Also, the dependents (i.e., usually the surviving spouse and children) of fire fighters are eligible to receive a death benefit from two state programs under the Workers Compensation Act and a federal program in the event of a fire fighter's death during a fire or other emergency. Fire fighters are eligible for two types of death benefits under the law in s. 102.46 and an additional one under s. 102.475. These two death benefits are in addition to any other death benefits due them under other insurance coverage. The state program under s. 102.46 calculates the full benefit due the fire fighter's dependents (i.e., surviving spouse and minor children) and the additional benefit is calculated under s. 102.475 at 75% of the primary death benefit under s. 102.46, but cannot be less than \$50,000. The first payment is a monthly payment and the second payment is a lump sum payment. For example, under s. 102.46, using the presumed weekly wage of \$1165.50, the death benefit would be \$3,367 a month payable over 5 years and 10 months totaling \$233,100. Under s. 102.475, the lump sum payment would be \$174,825. Also, dependents may also be eligible to receive up to \$6,000 in burial expense under s. 102.50.

Public Safety 42 USC 3796, enacted in 1976, provides a death benefit to fire fighters by the federal government. To learn more about the details of the program, go to the International Association of Fire Fighters website. As of October of 2006, the benefit amount has been \$295,194. Fire fighters are also eligible for the federal benefit if they become permanently and totally disabled as a result of their fire fighting activities. Check with the Internal Revenue Service concerning the taxability of these benefits.

What retirement benefits can volunteer fire departments provide?

Full and part-time fire department employees are eligible for retirement benefits. However, volunteer fire fighters, for the most part, are not eligible for retirement benefits. IRS rule 1.415-6 states that a pension cannot exceed wages. Volunteer fire fighters that are not compensated by a wage cannot have a pension provided for them. In addition, the state of Wisconsin cannot establish a pension fund for a private entity (e.g., private fire company).

Because of these limitations and the decline in the number of volunteer fire fighters, municipalities are interested in establishing benefit programs that attract and maintain a volunteer force. There are companies that set up life insurance programs with municipalities for each fire fighter. The cash value of the policy grows with the passage of time and, at the point of retiring from the fire department, the policy is transferred into the fire fighter's name.

State law has established a longevity of service award program for volunteer fire fighters and emergency medical technicians. Under this program, the state matches all municipal contributions up to \$283.65 per year. The fire fighter would be eligible for the entire amount of the award after 20 years of service and upon reaching 60 years of age. The vesting period is 10 years. If a volunteer fire fighter retires from the participating department prior to 20 years of service and age 60, a reduced amount of a lump sum award would be provided. See *Attachment E* for a copy of the administrative rule and law governing this program.

Depending on the provisions of the length of service program, the benefits may not be taxable until benefits are distributed to the fire fighter. Contact the Internal Revenue Service concerning the

taxability of these benefits and review IRS Code 457(3)11 at <http://www.fourmilab.ch/uscode/26usc/www/t26-A-1-E-II-B-457.html>

12. May a private fire company or municipally-owned fire department increase the annual charge for fire protection services by any amount?

If a town contracts for fire protection services with a municipality, a private fire company or a nonprofit company, the terms of the contract will determine what annual increases, if any, the contracting fire department can pass on to the town. If the term of the contract is for a multiple year period, the provisions of the contract may limit any annual cost increases that can be passed on to contracting towns. Therefore, towns should carefully review the terms of the contract to ensure: (1) that increased costs for service are adequately reviewed and approved by the town board before the town is subject to the increased fee, (2) that limits to the fee are specified in the contract (e.g., limited to increases in the consumer price index), or (3) that the fee is set for the duration of the contract. If a town does not protect itself in the contract, a private fire department or municipality can increase the annual charge to the town without limit. There are no state laws that regulate the rate or method of charging for fire protection service provided by municipal or private fire departments under contract.

13. Can a town charge for fire calls on highways?

Under s. 60.557(1) and (2), the town has a right to seek reimbursement in the event of responding to a vehicle fire on a county trunk highway, a state highway, or an interstate highway. First, the town must make a reasonable attempt to collect actual fees from the owner(s) of the vehicle(s) and submit proof of this attempt to the county or state prior to reimbursement. Note that this provision does not apply to reimbursement for ambulance service, which is charged to the persons requiring the service. It applies only to vehicle fires that actually occur on county roads and for the threat of fire on state and interstate highways. The maximum rate of reimbursement is \$200 from the county and \$500 from the state.

14. Can a town charge property owners for fire calls?

Section 60.55(2) authorizes four funding mechanisms for towns to pay for fire service protection. These are:

- (1) Appropriating money to pay for fire protection from the general fund.
- (2) Charge property owners a fee for fire protection within the town.
- (3) Levy taxes on the entire town.
- (4) Levy taxes on a particular portion of the town served by a particular source of fire protection. Note that this provision is used when more than one source of fire protection is required to serve different portions of a town.

The Wisconsin Towns Association has written directions for developing an ordinance and procedure for charging property owners for fire calls. See *Attachment F* for the WTA sample ordinance. Towns lay out their schedule of charges for fire service and a billing procedure in the ordinance. The billing procedure specifies a method of collection in the event of nonpayment – the bill is placed as a special charge on the property tax bill with any associated interest charges. The schedule of charges might not reflect the entire cost of service, but only a portion of the cost that the town board feels is justified beyond the general protection provided to all property owners. For example, a barn or peat

fire may significantly exceed the cost of an average fire suppression and a portion of that excess cost may be reflected in the fee schedule by charging for excess time and equipment costs.

15. Can a fire district levy a certain mill rate to pay for the expenses of the district?

A fire district is not a special tax district and does not have general property taxation authority under the law. A fire district is an area with defined boundaries that receives fire protection services from a given department. Towns with their own fire department, towns with a joint fire department, or towns contracting for services from a private company or municipality may choose to levy a certain mill rate to pay for fire protection expenses. But, it is the municipality's decision and not the fire department that is providing a fire district service.

16. How can a town allocate cost for a fire department across municipalities?

There are many ways to allocate costs across municipalities when there is a joint fire board or a contract for service. Municipalities may use one or more of the following factors in their calculations: (1) per capita cost, (2) charges for the average number of fire calls over a multiple year period, (3) equalized valuation, (4) charges for specific services rendered (e.g., fire inspections), (5) an equal amount to each participant. Any number of factors can be used to allocate costs and each participating municipality must negotiate what they consider a fair allocation. There is no state statute regulating the rate and method for charging for fire protection service.

The article by the League of Wisconsin Municipalities, found in *Attachment G*, is an example of how one fire district board allocated costs among its members. The costs of the department are divided into fixed costs (e.g., utilities, building maintenance, insurance and capital equipment reserve) and variable costs (e.g., compensation, supplies and materials, repairs, training, medical exams and other operating expenses). The fixed costs are allocated based on the relative percentage of equalized value for a municipality. Variable costs are allocated based on the average number of fire calls to the municipality over the last five years.

17. What are the 2% fire dues allocations and how are they determined?

The 2% fire dues fund is supported by collections from 2% of the fire insurance premiums written on commercial and residential properties within the state. In 2005-06, this fund contained roughly \$16.2 million. Of this amount, approximately \$643,500 funded the fire protection program in the Department of Commerce and roughly \$1 million was used to support the fire fighter training at the Wisconsin Technical College System. Roughly \$600,000 was used by the WTCS to finance tuition payments for fire fighter training, which supported training for 4,798 fire fighters. The remaining \$14.5 million was distributed to municipalities. For a more thorough discussion of this topic, see "Fire Dues Program," Legislative Fiscal Bureau Informational Paper #92, 2007.

Municipalities must be in substantial compliance with the requirements of COMM 30 and COMM 14 to be eligible for the 2% fire dues allocation. Fire departments self certify their compliance and the Department of Commerce conducts field audits. See *Attachment H* for the form and instructions used in fire department self certification.

Each eligible municipality's allocation is determined by calculating the proportion of the municipality's "equalized value of improvements" relative to other municipalities. For example, if a

municipality had 1% of all the “equalized value of improvements” in the state, that municipality would receive 1% of the fire dues allocation to municipalities.

18. How can the 2% fire dues allocation be used by a town?

For towns that have fire departments, contract with a fire department or are part of a joint fire department, that meet standards, carry out required fire inspections and file the necessary documentation, the towns receive a proportionate share of the 2% fire dues distribution based on the equalized value of improvements in the town. The dues, pursuant to s. 101.575(6), can only be used for the following purposes:

- (1) The purchase of fire protection equipment.
- (2) Fire inspection and public education.
- (3) Training for fire inspectors and fire fighters performing duties under s. 101.14.
- (4) Funding for fire fighters’ pension funds or other special funds for the benefit of disabled or superannuated fire fighters.

The town board will incorporate these monies as part of their general fund payment for fire protection services, but limit their expense to the purposes specified in the law.

19. Must a town give up its 2% fire dues allocation to a municipality or private fire company that it has contracted for fire protection?

The use and distribution of the 2% fire dues should be a part of the contract with a municipal or private provider, or in the case of a joint fire department, should be a part of the by-laws of the board. The allocation is sent to each municipality, not to the fire department of which it is a member or for which it contracts for service. Municipalities incorporate these monies as a part of their fire protection appropriation. In the event that a contract is silent on this provision or the provision is absent in the by-laws of a joint fire department, towns are not required to remit dues to the contracting municipality, private company’s board, or the joint fire board and may use the dues subject to the restrictions in the law.

20. What other authorities does a town have to enhance fire protection service?

Towns have a range of available authorities that supplement the practices of good fire protection. These include:

Citation Ordinance

Under s. 60.555, a town can enact ordinances and regulations to prevent, detect and suppress fire and related hazards, including inspection of property within the town. In order to enforce compliance with a fire inspection order by citation, the town must have a citation procedure and an ordinance under s. 66.0113 laying out penalties, procedures for continued noncompliance, and an appeal process. See *Attachment I* for a sample citation ordinance developed by the Wisconsin Towns Association.

Driveway Ordinance

If the town has village powers, the town can enact a driveway ordinance that lays out the necessary requirements for access by emergency vehicles. See *Attachment J* for a sample driveway ordinance.

Towns should notify property owners of noncompliance with the driveway ordinance in writing, specifying what actions will bring the property owner into compliance and within what required time period. It should also be made clear that the fire department will not be able to provide fire protection service if the actions are not taken. Please note that the town is not required to provide fire protection service if a landowner does not comply with the notice. If, after the time period elapses and the landowner still has not taken the required actions, the town should again notify the landowner in writing that fire protection service will not be provided by the town. The town may wish to copy both letters to the lending institution that is listed on the deed.

Land Use Planning and Zoning

Towns should use their planning and zoning authority to prevent construction of residences or other improvements in areas that make emergency response difficult, if not impossible. While individual property owners may decide to provide their own fire protection service and not comply with town guidelines in the absence of zoning, the property around that owner is placed in some jeopardy where the town may provide fire protection service.

Mutual Aid Agreements

Towns that do not wish to incur costs for certain types of equipment (e.g., ladder truck) or fire protection services (hazardous materials handling) may secure these through mutual aid agreements with other municipal or private fire departments. See *Attachment K* for a sample mutual aid form.

Fire Fighter Training and Supervision

Town and joint fire boards should ensure that fire fighters are adequately trained and supervised in responding to fires and other situations of emergency response. The boards can ensure this through approval of the fire chief, a position description of the chief's authority and responsibilities, approval of new recruits and promotions, and approval of the standard operating procedures of the department. In addition, the town or joint fire board should make sufficient allocations for training and receive reports on training plans.

Other Ordinances and Dry Hydrants

Towns can enact ordinances regarding the use of explosives and burning ordinances that require permits and restrictions. While these are helpful in any situation in preventing fires, they are especially important during droughts or dry conditions. As a part of this effort, the town should ensure an adequate source of water to cover property within the town. For areas not directly served by a water supply, the town should install dry hydrants where possible and make necessary back-up arrangements with other fire departments through mutual aid agreements.

Capital Improvement Planning

All towns should have a capital improvement plan that inventories existing capital assets (e.g., infrastructure, buildings, equipment) and future capital needs. The plan includes a schedule of repair and replacement, cost estimates, revenue sources, and a list of priorities according to established criteria. A capital improvement plan provides a town with a best guess of its capital needs, helps to manage debt, and protects the operating budget from undue capital purchases. In addition, the process of developing a plan makes the board, departments and the community aware of its capital needs, establishes a process for prioritizing them, and helps arrive at consensus about purchases. A town with its own fire department will benefit most directly, however joint boards or municipal and private providers also should have capital plans. In this way, the town can see what capital costs may

be incurred, make its voice known in the matter, and negotiate the most equitable manner to finance them.

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