

Municipal Law Newsletter

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Immigration Enforcement Updates in Wisconsin Municipality Law: Federal Pressure, Local Responses, and Operational Protocols

Wisconsin has emerged as a focal point in the national debate over immigration enforcement and municipal authority. As the Trump administration intensifies its immigration enforcement agenda throughout 2025 and into 2026, Wisconsin municipalities find themselves navigating unprecedented legal and political pressures. With approximately 70,000 undocumented immigrants residing in the state—many working in critical industries like agriculture and dairy farming—the tension between federal mandates and local governance has profound implications for Wisconsin communities.

Federal Designation of Wisconsin Jurisdictions

In May 2025, the Department of Homeland Security (DHS) designated four Wisconsin jurisdictions as “sanctuary” areas: the cities of Milwaukee and Madison, along with Dane County and Shawano County. The inclusion was controversial, particularly for Shawano County, where local officials expressed bewilderment at their designation.

Wisconsin’s Legislative Response

Wisconsin’s legislature has responded with competing legislative proposals that reflect deep partisan divisions over immigration enforcement. In October and December 2025, Democratic legislators introduced Senate Bill 493 and Assembly Bill 739, which would prohibit state and local government officials from aiding in the detention of individuals solely based on immigration status. These companion bills specifically target so-called 287(g) agreements, which are federal-local partnerships that authorize local law enforcement to perform immigration enforcement functions. The legislation would bar Wisconsin state agencies and local governmental units, including law enforcement agencies, from entering into or continuing such agreements with the federal government (Wis. Stat. § 20.932).

Additional protective legislation has been introduced to limit state cooperation with federal detention operations. Senate Bill 484 and its Assembly companion would prohibit state agencies, political subdivisions, and county sheriffs from using or permitting the federal government to

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use state-owned facilities to detain individuals solely based on immigration status (Wis. Stat. § 20.935). The bill would also prohibit expenditure of state or local funds to establish or operate immigrant detention facilities within Wisconsin. These legislative efforts represent an attempt to codify protections similar to those adopted through executive action in other jurisdictions.

Municipal Approaches in Wisconsin's Largest Cities

At the local level, Wisconsin's largest cities have taken varied approaches to the sanctuary city designation. Milwaukee Mayor Cavalier Johnson has explicitly declined to declare Milwaukee a sanctuary city. Dane County has taken more proactive steps, with Sheriff Calvin Barrett announcing earlier in 2025 that his department would no longer participate in the federal State Criminal Alien Assistance Program (SCAAP), which had required sharing immigration data with federal authorities (WPR, 2025).

Constitutional Protections for Municipalities Under the Tenth Amendment

Cooperation between the federal government and state and local jurisdictions is voluntary, a prerogative of the state or locality, not a legal obligation.

As a matter of constitutional law, the Tenth Amendment of the U.S. Constitution limits the federal government's authority to require states and localities to carry out immigration enforcement activities. *Id.* As Justice Antonin Scalia wrote for the majority in *Printz v. United States*, 521 U.S. 898, 925 (1997), the Tenth Amendment creates an anti-commandeering doctrine that limits federal authority over local officials: "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. Such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

In essence, the anti-commandeering doctrine says that the federal government cannot require states or municipalities to directly carry out or enforce federal

enforcement policies, including immigration law. This doctrine has been upheld in many landmark cases, including *Murphy v. NCAA*, 584 U.S. 453, 470 (2018), in which the Supreme Court concluded that Congress lacks "the power to issue orders directly to the States."

This means Wisconsin municipalities can legally decline to assist with federal immigration enforcement operations, refuse to honor ICE detainers without judicial warrants, and establish sanctuary policies without violating federal law. Because the federal government is unable to commandeer state and local officials to carry out federal immigration enforcement activities, it is a constitutional prerogative for states and municipalities to set their levels of collaboration with federal immigration agencies.

How Wisconsin Municipalities Should Respond When ICE Arrives

The most critical operational challenge facing Wisconsin municipal officials is knowing how to respond when Immigration and Customs Enforcement agents arrive at government facilities. Recent developments in federal policy have made this issue particularly urgent and complex.

Understanding Warrant Types

Municipal officials must understand the crucial distinction between judicial and administrative warrants. A judicial warrant is issued by a court and signed by a judge, authorizing entry into private, non-public spaces. An administrative warrant, by contrast, is issued by ICE itself without judicial review and traditionally has not authorized entry into areas where there is a reasonable expectation of privacy. However, a controversial May 2025 ICE memo claimed authority for agents to forcibly enter homes using only administrative warrants departure from decades of agency policy that has raised serious Fourth Amendment concerns.

Recommended Protocols for Government Facilities

Wisconsin municipalities should establish clear protocols for when federal immigration enforcement arrives at municipal buildings:

- **Designate Point Personnel:** Municipalities should designate specific staff members—typically legal counsel, city managers, or senior department heads—to serve as the primary contact when ICE

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agents arrive. Front-line employees such as receptionists should be trained to immediately contact designated personnel rather than making independent decisions about access.

- **Verify Agent Identity and Documentation:** Staff should request proper identification from all agents and carefully examine any warrant presented. Officials have the right to read the warrant thoroughly to determine whether it is judicial or administrative, verify that it is properly signed, confirms it names the correct person or location, and ensure it is within the valid execution timeframe.
- **Know Your Rights Regarding Access:** ICE generally does not need permission to enter public areas of government buildings, such as lobbies or waiting rooms. However, to enter non-public areas such as offices, employee break rooms, or restricted spaces, ICE needs either explicit permission from the municipality, a subpoena, or a judicial warrant (Minnesota AG, 2025). Administrative warrants alone do not authorize entry into non-public spaces without consent.
- **Document All Interactions:** Municipal staff should thoroughly document encounters with federal agents, including recording names, badge numbers, agency affiliations, time of arrival and departure, areas accessed, and any statements made. Audio or video recording of interactions is permissible.
- **Protect Employee and Visitor Information:** Unless presented with a judicial warrant or subpoena, municipalities should not provide sensitive information that is not generally available to the public, such as employee schedules, home addresses, or release dates for individuals in municipal custody.
- **Do Not Consent Without Legal Review:** Municipal representatives should not sign any documents or provide consent to searches of non-public areas without first consulting with legal counsel. Staff should clearly state if they do

not consent to a search while avoiding physical obstruction of federal agents.

- **Maintain Constitutional Protections:** Wisconsin municipalities have no obligation under the Tenth Amendment to assist with federal immigration enforcement (Minnesota AG, 2025). Local officials should be aware that courts have held that the federal government cannot commandeer state and local resources for immigration enforcement purposes.

Conclusion

As 2026 unfolds, Wisconsin municipalities must carefully navigate legal constraints, fiscal pressures, and community values while protecting the constitutional rights of all persons within their jurisdiction. By establishing clear protocols for responding to federal enforcement actions, Wisconsin communities can uphold the rule of law while maintaining their commitment to public safety and community trust.

— Jennifer C. Johnson

Welcome Nick Bratsos!

Boardman Clark is excited to announce that Nick Bratsos has joined the firm as an associate. Nick graduated *cum laude* from the University of Wisconsin Law School in 2020. Upon graduation, Nick spent two years clerking for Judge Joel Marker at the United States Bankruptcy Court for the District of Utah, and then three years clerking for Judge Catherine Furay at the United States Bankruptcy Court for the Western District of Wisconsin. He graduated from the University of Wisconsin-Madison in 2016. In his free time, he likes to spend time with his wife, ride bikes, and cheer on Wisconsin sports teams.

Nick will be working primarily in the Litigation Practice Group, but is providing assistance to our municipal utilities when handling bankruptcy matters.

Do Municipalities Have to Allow Emotional Support Animals?

Many municipalities are unaware of their obligations under the Fair Housing Act Amendments Act of 1988 (FHAA) to reasonably accommodate a handicapped or disabled person's request for an emotional support animal. The failure to do so is considered unlawful discrimination, which could subject an offending municipality to discrimination claims for actual and punitive damages. Wisconsin's Open Housing Law contains a similar reasonable accommodation requirement for people with disabilities. See Wis. Stat. § 106.50(2r)(b).

A common misconception is that the FHAA only applies to entities providing housing, but it also applies to the application of municipal ordinances (including zoning ordinances) that impact a handicapped or disabled person from accessing housing that is equal to that of those who are not disabled. This includes ordinances that prohibit or restrict the keeping of certain animals (such as prohibiting the keeping of livestock, poultry, or exotic animals), ordinances that prohibit the keeping of dangerous dog breeds (like pitbulls), and ordinances that limit the maximum number of dogs or cats that can be kept. In certain circumstances, the FHAA requires municipalities to make exceptions to such ordinances to reasonably accommodate a request for an emotional support animal.

It is important to recognize the distinction between "service animals" that are protected by the Americans with Disabilities Act and "emotional support animals" which are covered by the FHAA. "Service animals" are dogs or miniature horses that are individually trained to do work or perform tasks for the person with a disability. An "emotional support animal" on the other hand can be any type of animal and is not required to have training, but rather just needs to provide emotional support comfort, or companionship for the person with a disability.

To determine whether a municipality should provide an exception to its ordinance to allow an emotional support animal, the requester needs to show that they have a disability or handicap, and that the accommodation is reasonable and necessary to afford them the equal opportunity to use and enjoy a dwelling. Thus there are three elements to consider: 1) whether the requester is handicapped or disabled, 2) whether the requested accommodation is reasonable,

and 3) whether the requested accommodation is necessary.

The FHAA defines handicapped or disabled as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment."

In determining whether an accommodation for an emotional support animal is reasonable, the municipality will need to weigh the burden the requested accommodation would place on the municipality and public against the benefit the accommodation would provide to the requester. A reasonable accommodation is one which imposes no fundamental alteration of the nature of a program or ordinance, or undue financial and administrative burdens. An exception to an ordinance is unreasonable if it is so at odds with the purpose behind the ordinance that it would be a fundamental and unreasonable change. FHAA guidance states, "that a reasonable accommodation for an assistance animal, including an emotional support animal, may be refused if the animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal." So, if evidence shows the emotional support animal poses a danger or public nuisance, a municipality may be able to deny the request.

To determine whether an accommodation for an emotional support animal is necessary, the municipality will need to consider if the requested accommodation is necessary to prevent harm or injuries that would otherwise prevent the requester from receiving the same enjoyment from the property as a non-disabled or non-handicapped person would receive. This requires that there be evidence that the emotional support animal in question be essential to the requester's equal enjoyment of the property, not just preferable. So while it may be necessary for a requester to have an emotional support animal, there also needs to be evidence that the particular type, breed, or quantity of animals is necessary. Nothing in the FHAA gives a requester a right to their preferred option, but there may be evidence that their preferred option is necessary.

The requester has the burden of proving that they are handicapped or disabled and that their request is

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both reasonable and necessary. This may require the requester to provide evidence of their handicap or disability, if the disability is not apparent. It also may require the requester to provide documentation from their healthcare provider showing that they have a disability related need for their preferred emotional support animal and how their preferred emotional support animal is necessary, if the need is not apparent.

Municipalities can ask why an individual needs a specific animal or animals, particularly if the animals are unique or exotic (like livestock) or if the requester already has other permitted animals that could provide emotional support. While no Wisconsin courts have weighed in on this issue, the Nebraska Supreme Court held it was not necessary for the requester to possess a second dog of a breed that was prohibited by ordinance (pitbull) when they already had a permitted dog that provided the necessary emotional support. See *Wilkison v. City of Arapahoe*, 926, N.W.2d 441, 452 (Neb. 2019).

If a municipality does not find sufficient grounds for granting an accommodation, it risks a challenge to its determination under the FHAA. Unfortunately, the FHAA has no clear-cut guidelines for determining whether a requested accommodation must be granted. The Courts also have not established any bright-line rules. For this reason, determining whether requested accommodations are required is highly fact-specific, and often comes down to case-by-case determinations.

Municipalities should make sure to have a clear process for an individual to make a request for an accommodation to have an emotional support animal. Without a clear process, it is more likely a court will find an issue with the municipality's determination or process.

Municipalities should consider whether other exceptions to the ordinance have been made, whether for reasonable accommodation or otherwise. Municipalities should be mindful of the precedence such past exceptions set. If there are distinguishing factors, municipalities should be sure to document them.

Municipalities should keep in mind that while complaints about the animal can be helpful to support denial of accommodation, the lack of complaints can be equally detrimental if the animal has gone undetected by the municipality for a long period of time.

It is difficult to argue an animal will be a danger and nuisance when it hasn't been for several years.

With the growing use and acceptance of emotional support animals, municipalities will likely see more requests to accommodate them. Municipalities are strongly encouraged to reach out to their legal counsel when such requests are received to avoid unlawful discrimination under the FHAA.

— Eric B. Hagen

Welcome Heather Curnutt!

Boardman Clark is excited to announce that Heather Curnutt has joined the firm as an attorney. Heather has over 20 years of legal experience in both the private and public sector. After graduating *cum laude* from New York University School of Law, Heather spent two years clerking for the Honorable Barbara B. Crabb in the United States District Court for the Western District of Wisconsin. She has worked as an attorney in private practice in New York and Wisconsin and for three Wisconsin state agencies. In her free time, she enjoys competing in triathlon, cyclocross and cross-country skiing events and watching her daughter play soccer.

Heather's primary practice areas are labor and employment, school law, and litigation.



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