
ORDINANCE NO. 2023-22**ORDINANCE TO CREATE CHAPTER 93 OF THE VILLAGE CODE REGARDING
CREATION OF A FIRE-EMS PROTECTION FEE**

WHEREAS, the Village of Pewaukee contracts for Fire-EMS services the costs of which continue to substantially increase; and

WHEREAS, Wis. Stat. secs. 61.34(1) and 62.11(5) grants city and village governing bodies broad authority to, among other things, manage and control municipal property, finances ‘and the public service,’ and to ‘act for the government and good order of the [municipality], for its commercial benefit and for the health, safety, welfare and convenience of the public. See also *Hack v. City of Mineral Point*, 203 Wis. 215, 233 N.W. 82 (1931); and

WHEREAS, Wis, Stat, Section 66.0627(2), Stats., authorizes municipalities to impose special charges against real property for current services provided to it, which the Village believes include fire and EMS services; and

WHEREAS, the Wisconsin Department of Revenue has recognized that municipalities may impose fire fees and discussed how such fees would be addressed for levy limit purposes under Wis Stat Sec 66.0602(2m)(b); and

WHEREAS, the Wisconsin Court of Appeals determined in *Town of Hoard v. Clark County*. 366 Wis.2d 239, 873 N.W.2d 241, 2015 WI App 100. that a town contracting to have a fire district at the ready in the event of a fire within the town limits is a fee-eligible fire protection service, and additionally the court held that the charge is a fee and not a tax because of its connection to a specific expense, i.e. the presence of a fire district standing by ready to extinguish fires, while a specific statute exists allowing for the charging of fire protection fees this case supports the proposition that the providing of fire protection services may be considered a fee and not a tax; and

WHEREAS, the Village of Pewaukee reviewed funding options for fire-EMS services during 2023 and determined, after a study on the possible methodology of a fee based on property type and call data is the most appropriate method to provide the necessary funds; and

WHEREAS, the Village Board concluded through the study that the costs incurred by the Village in contracting fire-EMS services would be recovered through assessments to properties in proportion to the benefit received by the demand for service as reflected in the calls from service from each respective property class.

NOW, THEREFORE, the Village Board of the Village of Pewaukee, Waukesha County, Wisconsin, do ordain as follows:

SECTION ONE:

Chapter 93 – FIRE-EMS PROTECTION FEE

Section 93.100 – Purpose and Intent.

- (a) Adequate and sustainable funding is essential for life-safety related services. A Fire-EMS protection fee apportioned to all properties provides a sustainable source of funds for the provision of fire-EMS services to all properties within the Village of Pewaukee.
- (b) The Village Board reviewed funding options for fire-EMS service funding provided under contract with the City of Pewaukee, including a fee charged to all properties within the Village, during 2023 and determined that establishment of a fee charged to properties based on property usage and call volume is the most appropriate method to provide the necessary funds. The Village Board further concluded through the study that the costs incurred by the Village in contracting fire-EMS services would be recovered through assessments to properties in proportion to the benefit received by the demand for service as reflected in the calls from service from each respective property class.
- (c) In creating this Chapter, the Village is acting pursuant to authority granted by Chapters 61 and 66 of the Wisconsin Statutes, including but not limited to Sections 66.0301 and 66.0627.
- (d) The Village Board shall review the Fire-EMS Protection Fee at least every five years to evaluate the success of the activities funded and the appropriateness of the rate structure. The first review shall occur by or before June 30, 2026.

Section 93.101 Definitions.

- a. “Department” means City of Pewaukee Fire Department.
- b. “Emergency Service Equivalent” or “ESE” means the base amount used to calculate the amount of fees charged to each single-family/duplex property, regardless of size or value.
- c. “Developed Property” means a parcel or legal portion of real property, on which an improvement exists or has been constructed.
- d. “Services” means the fire and EMS services provided to the Village of Pewaukee by the City of Pewaukee or another entity.
- e. “Village” means the Village of Pewaukee, Waukesha County, Wisconsin.
- f. “Single-Family/Duplex” means single-family homes and duplexes as a 1- and 2- family home.
- g. “Multi-family” includes apartments and condominium complexes.
- h. “Senior living” includes residential care facilities, care facilities and senior living residential developments which are marketed and/or limited to residents 55 years of age or older.
- i. “Care Home” includes residential board and care or 24-hour care nursing homes, where care is provided for four or more persons.
- j. “Commercial” includes properties zoned B-1 Community Business District, B-2 Downtown Business District, B-3 Office and Service District, and B-4 Business Park District.
- k. “Industrial” includes properties zoned B-5 Light Industrial District.
- l. “Open space” may include the portion of a single lot outside of the development envelope that is characterized by important natural resources and/or may encompass the contiguous boundaries of important natural resources located on multiple lots.

- m. “Right-of-way” is an area of real property in which the Village has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way.

Section 93.102 Authority.

- a. This Ordinance is enacted pursuant to Wisconsin Statutes Section 61.65, 66.0301, and 66.0627 and other applicable laws for the purpose of providing the funding for the Services within the Village. The recitals set forth herein are incorporated by reference as though more fully set forth herein.

Section 93.013 Geographic Application.

- a. This Ordinance applies to all developed property located within the Village.

Section 93.104 Annual Fire/EMS Protection Fee

- a. There is hereby imposed upon every developed property described in Section 3 above an annual fee for the provision of Fire and EMS Services to such Real Property. Such fees shall be annually established by the Village by means of adoption of a fee schedule by Resolution of the Village Board on or before the last Tuesday of November of each year commencing with the year 2023. The fee charged shall be sufficient in the amount to allow the Village to pay in its entirety the amount of the Village’s contract for the receipt of fire and EMS Services. With respect to the annual fees, the following shall apply:

- i. Annual fees shall be based on a methodology utilizing ESEs. The total amount of the required contract for Services for any year shall be divided by the total number of ESEs located within the Village to arrive at a stated dollar amount per single ESE.
- ii. Each tax key parcel within the Village shall be assigned a number of ESEs by the Village as follows:
 - 1. Single-Family/Duplex – 1.0 ESE (per unit)
 - 2. Multi-Family – 1.0 ESE (per unit)
 - 3. Senior Living – 4.75 ESE (per unit)
 - 4. Care Home – 4.75 ESE (per unit)
 - 5. Commercial – 1 ESE per 2,200 sq. ft.
 - 6. Industrial – 1 ESE per 16,000 sq. ft.
 - 7. Institutional – 1 ESE per 4,500 sq. ft.
- iii. Fire/EMS protection fees shall be included on the annual property tax bills as a special charge in accordance with Section 74.01, Wis. Stats. Payments shall be paid in full by January 31 and any unpaid fee shall be considered delinquent and subject to interest and penalties. A delinquent special charge becomes a lien on the property against which it is imposed as of the date of delinquency. The delinquent special charge shall be included in the current or next tax roll for collection and settlement. All special charges that become delinquent shall be paid, together with interest and penalties, to the County Treasurer in accordance with Section 74.11(11), Wis. Stats.
- iv. The Village may collect delinquent special charges in any other manner provided for by law.

Section 93.105 ESE Appeals

- a. Any person aggrieved by the determination of ESEs applicable to the Real Property of such person or entity or as to the amount of the special charge associated therewith may file a written appeal to the Village Clerk. The written appeal shall specify the grounds for the challenge to the amount of the ESEs and shall state the amount of fee that the appellant considers to be appropriate.
- b. Such petition shall be made in writing and be filed with the Village Clerk within 30 days of the receipt of the bill.

- c. The appeal must specify the basis for the appeal and may include dwelling unit documentation for residential ESE determination or building square footage documentation for non-residential ESE determination.
- d. The Village Administrator shall review the petition and make a determination if there is an error in any order, decision or determination made pertaining to the calculation of ESEs. Once a determination has been made on a calculation, no additional request may be filed for the same developed property unless there has been a significant material change from the prior determination. The decision of the Village Administrator shall be provided in writing to the applicant. A property owner may appeal the decision of the Village Administrator to the Public Works & Safety Committee for a recommendation to the Village Board. The appeal must be filed in writing to the Village Clerk within 30 calendar days from the date the decision of the Village Administrator was mailed to the property owner.
- e. The Village Board, upon review and recommendation of the Public Works & Safety Committee, shall hear and decide appeals made on the basis other than an alleged error in the determination of residential ESE or building square footage ESE determination. The Board shall determine whether the number of ESEs assigned is fair and reasonable in accordance with the terms of this ordinance and, in the event the appeal is granted, whether or not a refund is due the appellant and the amount of the refund. The Board shall conduct a hearing and provide notice to the appellant at least five business days prior to the hearing. The Applicant shall be afforded the opportunity to be heard and to present evidence in support of their appeal. The Village Administrator shall provide evidence in support of how the original assessment was made. The Board shall render a written decision based upon the evidence presented.

Section 93.106 Severability.

- a. In any provision, paragraph, word, section, or article of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, section, and chapters shall not be affected and shall continue in full force and effect.

SECTION TWO: All ordinances or parts of ordinances contravening the terms and conditions of this ordinance are hereby to that extent repealed.

SECTION THREE: The several sections of this ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of other portions of the ordinance.


SECTION FOUR: This ordinance shall take effect upon passage and publication as required by law.

Passed and adopted this 7 day of November, 2023, by the Village Board of the Village of Pewaukee.

APPROVED:


 Jeffrey Knutson, Village President

Countersigned:


 Cassie Smith, Village Clerk