

# The Municipality

Your Voice Your Wisconsin.

February | 2020  
**TRANSPORTATION**



DPW for All  
the Seasons

**4**

Wisconsin Ports -  
Making an Impact  
Beyond the Waterways

**6**

Local Investments  
in Cycling Yield  
Healthy ROI

**8**

Public Transportation  
in Small & Rural  
Communities

**11**

MetroForward» A Bold  
Step for Dane County  
Transportation

**14**

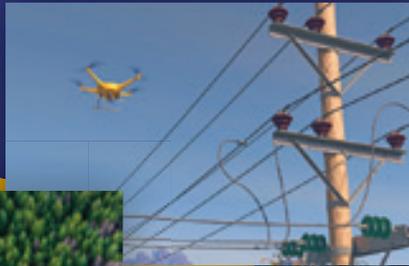
Municipal  
Transportation  
Revenue Sources

**16**

The Robots Are Coming:  
How Cities Can Plan for  
Autonomous Vehicles

**21**

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# The Municipality

February | 2020

## Feature

Numbers, Numbers, Numbers	DPW for All the Seasons	Wisconsin Ports - Making an Impact Beyond the Waterways	Local Investments in Cycling Yield Healthy ROI
<b>3</b>	<b>4</b>	<b>6</b>	<b>8</b>
Public Transportation in Small & Rural Communities	MetroForward>> A Bold Step for Dane County Transportation	Municipal Transportation Revenue Sources	New Regional Training: Avoiding Common Mistakes
<b>11</b>	<b>14</b>	<b>16</b>	<b>19</b>

## Legal

The Robots Are Coming: How Cities Can Plan for Autonomous Vehicles	HR Matters - Calculating the Regular Rate of Pay for FLSA Overtime	Legal Captions	"For the Good of the Order" will be back in March
<b>21</b>	<b>29</b>	<b>31</b>	

## News/Updates/Training

New Regional Training: Avoiding Common Mistakes	Transitions	2020 League Workshops, Institutes, and Conferences	January Badger Book Article Correction
<b>19</b>	<b>31</b>	<b>32</b>	<b>32</b>

## On the Cover

**Planes, Trains and Automobiles**

This issue of *The Municipality* is about transportation in all its forms. We cover roads, ports, bicycling, and transit. We'll add planes, trains... motorcycles and electric scooters to the E-Muni, the League's E-Newsletter that provides direct links to resources. If you don't get the E-Muni, you can subscribe at <http://bit.ly/LWMSubscribe>

Thanks to Tara Camfield for the cover image. She enjoys exploring her home base via trail running, walking, and bicycling, always ready to document the interesting and/or beautiful with her camera. Follow her on Instagram @honeyoliveblaire.





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# Numbers, Numbers, Numbers

Jerry Deschane, Executive Director, League of Wisconsin Municipalities



January always gets me thinking about numbers. Perhaps it's from decades of preparing and presenting year-end reports to radio listeners (in a younger life) or boards of directors (in my..ahem..prime). When the calendar says it's January, I automatically start to tally things up. For example, League Event Manager Carrie Jensen just told me that more than 2,000 people attended League conferences and workshops last year, a modern record high. Communications Director Gail Sumi explained that in 2019 *The Municipality* magazine "touched" the hands of local leaders and staff 463,000 times. You can learn a lot from numbers.

Another very enlightening number that I heard this week is \$1.4 billion, followed by the number 1,596. The \$1.4 billion is the total amount needed to fund each of the 1,596 transportation projects that have been submitted by cities, villages, towns, and counties in response to a one-time grant program created by the Wisconsin Legislature and managed by the Wisconsin Department of Transportation. The "Multimodal Local Supplement" (MLS) grant was created by lawmakers who were being told that local transportation systems were in need of catching up after years of deferred repairs. It was funded with \$75 million. Demand has exceeded available funding by over 1,800 percent.

Review committees made up of local transportation experts are poring over the hundreds of requests now. They have the unenviable job of recommending which ones should be funded. Pity them. The reality is that there will be more applications

rejected than will be funded. At most a few hundred projects will be funded out of the 1,596 requests. Good, necessary projects will be left behind.

Wisconsin has known that its transportation system had some cracks and was suffering deferred maintenance. These January numbers give us a glimpse of just how far behind we are. We obviously still have some work to do.

I don't want to close this column on a "downer." The governor and Legislature deserve credit for making a significant investment in transportation funding (for all modes) in the most recent state budget. The \$75 million one-time MLS grants will provide very important relief. Don't forget that it's not just about roads. It's not easy to balance growing Medicaid, school aids, university, and corrections needs with equally-important roads, bridges, harbors, and transit needs. It's all important and there's just so much money available. Those are hard decisions and we thank our state elected leaders for making them.

But, most of all, I argue that this most recent crop of numbers is a testament to YOU. Local government leaders across Wisconsin deserve a huge pat on the back for keeping those local systems operating as well as you have. The needs have been growing, and this grant program has shown just how big the need is. But, in the meantime, you've been holding it together. In classic, pragmatic local government "can-do" fashion, you have been keeping Main Street plowed and paved, the bike paths open, the harbors deep, and the buses running on time. Thank you.

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# DPW for All the Seasons

Greg Lee, Director of Public Works, City of Dodgeville

## General Responsibilities

As the Director of Public Works/City Engineer, I am responsible for the administration and supervisory duties of planning the engineering, operation, maintenance, and construction of sanitary and storm sewers, streets/transportation, water, wastewater treatment, parks, pools, and cemeteries.

My workday begins at 7:00 am by going through emails and phone messages. Department heads will usually stop by or call at some point during the day for a status check. With a limited staff, I often wear many different hats. I always start the day with a plan, but it almost always changes. One phone call or issue comes up, and it's time to change gears. One of the challenges I face is that no two days are the same (which is a reason I like the job). You must be able to think clearly and effectively to solve problems in a short amount of time.

Winter is the slow time (if there ever is such a thing in a public works director's life). Currently, I am the property manager for newly acquired properties the city has purchased. This means I need to deal with maintenance issues, get leases signed, and make sure the rent is collected. Once the tenants have vacated the premises, I need to have the properties inspected for asbestos so I can start getting bids for tearing down the properties.

Days during this time of year also depend on Mother Nature. If snow is in the forecast, the priority is keeping the streets safe by plowing and salting them. If there are issues with snow (perceived or real) people are typically not afraid to call and let me know. This includes anything from getting snow plowed in their driveway, to the neighbor not shoveling their sidewalk. This is also the time of year when planning on next year's projects is finalized and we meet with the consultants to finalize plans for the upcoming construction season. And let's not forget catching up on the GIS mapping, which is always needed and never seems to end, as we try to make more information available. I also spend time putting together specifications for trucks for the streets, cemetery, and sewer departments, as budgeted, and getting them out to bid. Soon it will also be time to hire for summer positions in the parks, cemetery, swimming pool, and recreation departments.

Spring brings the start of the construction season, which means time out of the office for construction inspections. There are typically some stormwater plans that need to be reviewed for future development. The parks and cemetery are cleaning up branches and debris from the parks and beginning to mow. The street department is patching the streets from water main breaks. The cemetery is topping off graves with dirt and seeding them, so they look nice for the summer. The swimming pool is being prepped for opening – working with contractors to get the diving board repaired, the joints in the floor recaulked, a new pool heater installed, and the possibility of adding a new slide. The sewer department is out cleaning and jetting the sewer mains and manholes to keep up with the Capacity, Management, Operations, and Maintenance (CMOM).

Summertime is the craziest part of the year. The street reconstruction projects are typically in full swing which means I am spending a lot of time doing construction staking and inspection. The public works staff is also extremely busy. The street department is repairing storm sewer problems, patching streets, trimming trees, mowing roadsides, and routing and filling the cracks in the streets. The parks department is busy mowing the parks and maintaining the ball diamonds and playground equipment, while the cemetery department is busy trimming and mowing around headstones. The recreation department is busy with the programs that have been set up for the children during the summer season. The pool is open for the season, providing a nice facility for exercise and entertainment for many families. And the sewer and water departments are working on the general maintenance at their plants.

Fall is the time to wrap up construction projects and work on the budgets. City facilities and equipment must be evaluated and prioritized for the next year. Projects from maintenance to reconstruction to equipment purchase must be budgeted for. Capital project plans and purchases are reviewed. Garbage and recycling contracts are reviewed. Sludge hauling contracts are reviewed for the Wastewater Treatment Plant (WWTP). Budgetary needs are presented to the City Council for review and approval.

**What Else Happens in My Free Time or Lack Thereof?**

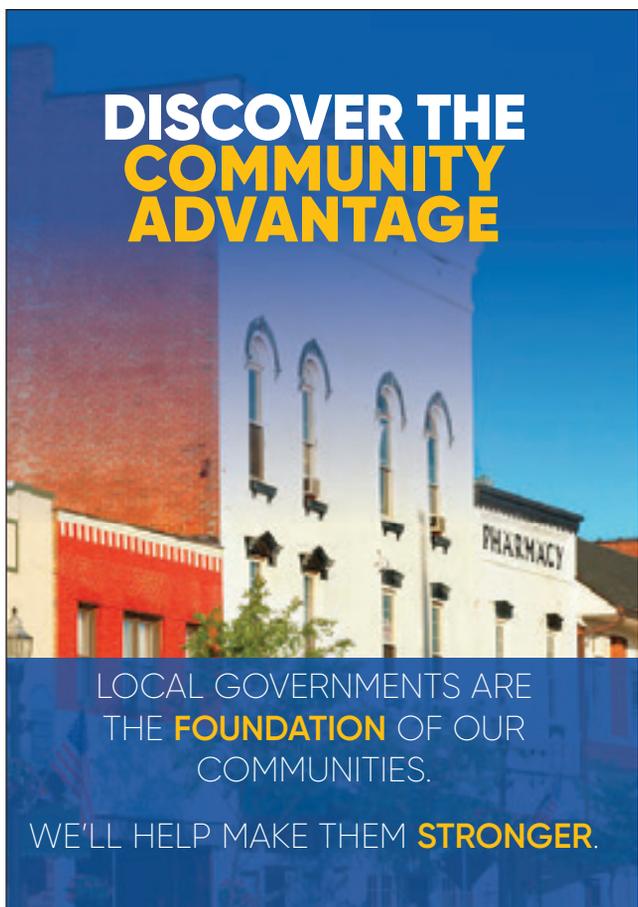
Someone at City Hall or in the public works department is having a problem with their computer. Who do they call? The Public Works Director, as he is also the local IT staff. The building inspector is out of the office, so this job is added to my day as a backup position to provide assistance to the residents of the city for building permits, assessments, and inspections. I am also the City Forester. I take all calls from residents on tree-related items and come up with plans to maintain the city's tree population. It also makes me responsible for setting up the Arbor Day celebration and maintaining the Tree City USA status for the city. As my coworkers will tell you, I am willing to jump in and help out with any assistance and training that is necessary.

Of course, one or two days a week seem to end with a meeting. I am the current chairperson of the Park & Rec Committee, as well as the Facilities Sub-Committee. I am also a member of the Plan Commission, and typically attend the City Council meetings held twice a month.

The main goal at the end of the day is to help city residents meet their needs, while also meeting the needs of the city in a fiscally responsible manner. The many hats worn make the position of Public Works Director challenging and rewarding.

**About the Author:**

Greg Lee is the Director of Public Works/Engineer for the City of Dodgeville, a position he has held for 15 years. He is a graduate of UW-Platteville with a degree in civil engineering. He previously worked for the Illinois Department of Transportation for seven years and was the Director of Public Works in Fennimore for five years. Greg is a Professional Engineer, Certified Municipal Waterworks Operator, and a Certified Building Inspector. Contact Greg at [publicworks@ci.dodgeville.wi.us](mailto:publicworks@ci.dodgeville.wi.us)



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# Wisconsin Ports - Making an Impact Beyond the Waterways

Dean Haen, Port of Green Bay Director/Wisconsin Commercial Ports Association President

For many people in Wisconsin their knowledge of shipping is limited to what they see as they wait for a ship to pass and the bridge to lower in front of them. But waterborne transportation has a significant impact in the badger state, far beyond the 14 commercial port cities along Lake Michigan, Lake Superior, the bay of Green Bay, and the Mississippi River.

The numbers alone are significant. A 2018 study of the Economic Impacts of Maritime Shipping in the Great Lakes-St. Lawrence Seaway region found that Wisconsin's ports had an economic impact of \$1.4 billion while supporting more than 7,400 jobs.

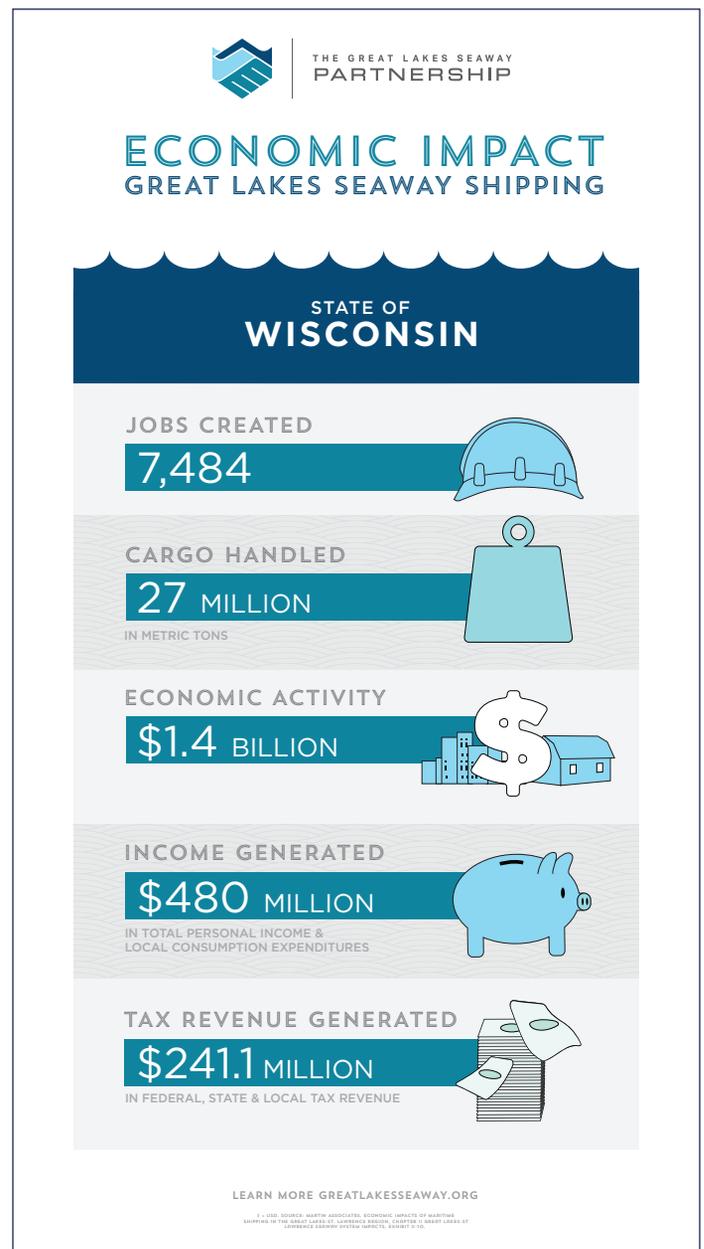
The shipping industry has a tremendous impact on the state of Wisconsin, moving valuable commodities like coal, salt, limestone, petroleum products, cement, steel, iron ore, and grain. These cargos are shipped through the St. Lawrence Seaway between U.S. and Canadian ports and markets around the world. These commodities are vital to products that are used in infrastructure, agriculture, transportation, and manufacturing, often moving from the ports via rail or truck to points throughout Wisconsin and the Midwest.

Not only is waterborne transportation another option for moving goods from one point to another, it also has significant benefits over other forms of transportation, such as trucking and rail. If you look at the fuel used and engine technologies to compare the three modes of transportation (truck, rail, and ship), you find that waterborne transportation (631 ton-miles/gallon) can carry one ton of cargo significantly farther on a gallon of fuel than rail (553) or trucks (91). And a typical, 1,000 ft. Great Lakes vessel can carry 62,000 tons of cargo – that's equivalent to 2,340 trucks or 564 rail cars.

That not only speaks to the efficiency of marine transportation, but also demonstrates the environmental benefits of using the waterway to transport goods.

From a safety standpoint, accidents happen far less often with freights on the water than with trucks on the highway and trains on the railways. This results in less wasted product and a more efficient use of time and other resources.

It's also important to note that Wisconsin's ports have a unique asset – the shipbuilding industry. The three shipyards in the state build and maintain commercial and military vessels while employing 2,200 workers with an annual payroll of \$107 million.



With the new year upon us, Wisconsin's ports remain optimistic. The 2019 shipping season was strong for most of the ports that make up the Wisconsin Commercial Ports Association (WCPA). Those port cities include Ashland, Bayfield, Green Bay, La Crosse, La Pointe, Manitowoc, Marinette, Milwaukee, Port Washington, Prairie du Chien, Sheboygan, Sturgeon Bay, Superior, Washburn, and Washington Island. While the ports do compete with each other, they also work together through WCPA to promote waterborne transportation throughout the state and beyond.

WCPA was created in 2001 by the municipal commercial ports in Wisconsin. Since then, the membership has grown to include privately operated terminals and port-related service providers including engineering firms, construction companies, state and federal government agencies, representatives of other modes of transportation, and others.

Our organization serves as a way for the ports and other members to exchange ideas, methods, information, and experiences that focus on port management. WCPA also works to promote and encourage legislation and regulation that helps the ports and the shipping industry in Wisconsin, keeping in mind the ultimate goal of "Growing Waterborne Transportation in Wisconsin."

Looking to the future, WCPA has been an active participant in the WisDOT Freight Plan and WisDOT Intermodal Study which provide a vision for multimodal freight transportation and provide grants and loans for intermodal facility improvement to position Wisconsin to remain competitive in the global marketplace. The goal is to get the state of Wisconsin to recognize and quantify that the ports are a growth area for moving freight in the badger state.

Ultimately, it's crucial to continue to develop and support the waterborne transportation system to provide economic development, provide resiliency to shipping in Wisconsin, and to minimize the environmental impacts of moving freight.

#### About the Author:

Dean Haen has been leading operations for the Port of Green Bay since 1999, first as Port Manager, then as the Director of the Brown County Port and Resource Recovery Department. He is responsible for planning, administering, and implementing business activity, promotion, and economic development for the Port of Green Bay, which sees more than 2 million tons of cargo shipping into and out of the port each year. Haen is also the President of the Wisconsin Commercial Ports Association, which works to promote and grow waterborne transportation in Wisconsin's 14 port cities. Contact Dean at [Dean.Haen@browncountywi.gov](mailto:Dean.Haen@browncountywi.gov)

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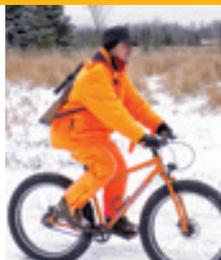
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# Local Investments in Cycling Yield Healthy ROI

Dave Schlabowske, Wisconsin Bike Fed

As a proud son of Wisconsin, I'm quick to brag about my home state to anyone who will listen. Maybe I ride my bike so much that I'm usually hungry, but my list of superlatives typically starts with the first hamburger (Seymour), the ice cream sundae (Two Rivers), and malted milk (Racine). But as an avid cyclist, my home state has a lot to be proud of:

- First rail trail in the nation: Elroy Sparta Trail
- Second rail trail in the nation: Tuscobia Trail
- Largest state mountain biking race series: Wisconsin Off-Road Series (WORS)
- Largest competitive multi-day road cycling event in the U.S.: Tour of America's Dairyland (ToAD)
- Epicenter of the nation's bicycle industry: Answer, Borah Teamwear, Hayes, Manitou, Fyxation, Pacific, Schwinn, Sun Ring, Trek, Waterford, Wheelsmith, and Wyatt
- And we can't forget to thank our dairy industry for our amazing network of low-traffic paved town roads perfect for cycling.

A recent economic impact study by the Outdoor Industry Association shows cycling contributes \$1.4 billion dollars to our state coffers and provides more than 13,000 jobs. In 2018, the City of La Crosse published their own economic impact study. The study predicted that completing an additional 40 miles of projects recommended in the City of La Crosse 2012 Bicycle and Pedestrian Master Plan could result in nearly \$300 million of economic benefits to the local economy.

With that sort of return, it is no wonder that so many of our local communities are investing in bicycling. And while Boulder Junction has deservedly held the trademark as the Musky Capital of the World since 1971, their amazing and unique Heart of Vilas County Trails and nearby WinMan mountain bike trails mean you're apt to see as many cars in town with bike racks as pulling fishing boats.

My mom is from Park Falls (Ruffed Grouse Capital of the World), and when we went up north on our family vacations, all we brought was bug spray, fishing rods, and tackle boxes. The bikes stayed at home. These days, families are looking for more, according to Theresa Smith, Executive Director of the Boulder Junction Chamber of Commerce.

"We've held the trademark as the Musky Capital of the World since 1971. I was a kid back then, and when we came up here, we would go out in the boat early, fish for a couple hours, come in for breakfast, play for a little bit, and then go back out again," Smith said.

"Over time, people's interests have changed and we have tried to adapt," she added. "People still come for the great fishing, but they also want to go shopping, go out to eat, and travel around the county to visit different communities. There are a lot of hard-working communities in Vilas County that are constantly working to attract visitors to the area and give them a vacation experience they will enjoy and remember."

The Heart of Vilas County bike trail started in 1994 with a little loop around the baseball diamond. Today the 52 mile off-road paved trail connects four communities in Vilas County as well as Mercer in Iron County. Unlike many trails built on former flat, straight railroad beds, the Heart of Vilas County Trails were built parallel to the rolling area roads, curving into forests and crossing rivers and marshes.

Want great mountain biking? Now you can ride the paved Heart of Vilas County Trails right to the WinMan trailhead.

► p.9



*Bayfield: A cyclist stops to drop some flies off the coast of Big Bay State Park on Madeline Island after spotting fish below.*



Hayward: The Chequamegon Mountain Bike Festival has been attracting thousands of racers and their family members to the Cable/Hayward area every year for more than two decades.

WinMan had some of the first progressive, machine-built mountain bike trails in Wisconsin, and they now see upwards of 10,000 users a year between bikers, hikers, skiers, and snowshoers. Mountain bikers make up about 70 percent of those trail users, according to Rick Gering, who helped open the trails on family land back in 2011.

“The neatest thing is that we keep having people come up to us at the trails and tell us they now come up here more often because of the trails,” Gering said proudly. “People tell us all the time that they used to just come up once or twice a year, but now they come up four or five times to ride the trails.”

Gering also echoed Smith’s comments about how the trails bring the different communities together. “The communities now have a common shared interest. The trails connect us, and we even have an annual meeting on the Friday after Christmas to get together and talk about our trail system.”

To the west a bit, the giant 143-foot-long fiberglass musky at the Freshwater Fishing Hall of Fame certainly remains the most visible landmark as you drive through Hayward. And while the fishing is also really great over there, the mountain bike and nordic ski trails have made the Cable/Hayward area a mecca for silent sports users.

In order to better leverage their 120-mile network of single-track mountain bike trails and endless gravel road assets, this year the volunteers at the Chequamegon Area Mountain Bike Association (CAMBA) completed more than 400 surveys of trail users. CAMBA is partnering with the University of Wisconsin–River Falls Survey Research Center to conduct a market research study about mountain biking in the Hayward, Cable, and Bayfield areas.

Joe Vadeboncoeur, who volunteers as the new president of the CAMBA board of directors, told me the goal of the survey is to help the CAMBA become a better asset to the community and area businesses.

“We want the CAMBA trails to better serve our local community and local businesses, so we held a bunch of town hall meetings to help us draft the survey questions. We want CAMBA to serve as a kind of free consultant to help local businesses that want to attract more trail users,” he said. “How do we use those trails to better engage with the community and increase their value as a community asset? Awareness is the first thing, so we need to know who is on the trails, where are they from, where they stay, where they eat while they are here, and how much they spend.”

Vadeboncoeur added that it is really interesting what you learn when you volunteer to ask someone 20 questions at a trailhead. He said people really wanted to share more about what CAMBA and the community could do better with the trails and what they are looking for in the community. “I bet 98 percent agreed to answer further questions, so we plan to follow up with more detailed questions.”

Urban and suburban communities have also been working to make bicycling safer, more attractive, and convenient. The Village of Wauwatosa East Tosa North Avenue Plan is a great success story of how adding high-visibility green bike lanes was part of a successful revitalization plan for a 16-block commercial corridor on West North Avenue, from 60th to 76th Streets.

Ed Haydin is an East Tosa resident and principal at ARC-INT Architecture, an architecture and planning firm that has a reputation for designing catalytic placemaking projects. He approached me before a consultant was even

hired to get some feedback about the project goals. Ed is also an avid cyclist, but I remember one of the first things he said was, “Dave, you have to see past the green bike lanes and understand this is not about bikes. This is about economic development, making our neighborhood a better place to live, and increasing property values.”

The project was transformational. The redesigned street with green bike lanes and pedestrian safety improvements quickly saw millions of dollars in renewed investments by existing and new businesses. East Tosa is now one of the hottest shopping and dining destinations in the Milwaukee area.

Municipalities all across Wisconsin are seeing similar returns on their investments in cycling. Green Bay will forever be known as the home of the Packers, but they now plow their bike trails in the winter and have one of the most vibrant cycling scenes in the state. Community volunteers for Bicycle Friendly West Bend are adding bike parking and repair racks in business areas, organizing bike to school days, and improving community connections to their trails.

Thanks in part to their massive investment in new mountain bike trails and the great road riding, People for Bikes selected Wausau as the best small city for cycling in the nation in 2018. And Wisconsin’s biggest city, Milwaukee, added four new protected bike lanes in the last year. Further south, the city of Racine just adopted a new bike plan. Janesville is adding bike lanes, building mountain bike trails, and hosts the Janesville Gran Prix, a new event in the Tour of America’s Dairyland race series.

While many communities are seeing great returns on their investments in improved bike lanes, trails, and by hosting cycling events, it is now more important than ever to make thoughtful investments. Trails like those in Vilas County, the new protected bike lanes in Milwaukee, and the next generation MTB trails in Wausau have raised the bar for what makes a fun, safe, and convenient bike ride. For the most part, elected officials and municipal planning staff seem to be responsive to community leaders and local advocacy groups. It also helps that there are now a number of professional consulting firms that specialize in plans and projects that emphasize bicycle and pedestrian improvements.

At the state level, Wisconsin has a number of serious transportation funding and priority issues to resolve, so it is nice to see so many municipalities choose to make investments in bicycling as one ingredient in a recipe for a healthy, happy, safe, and successful community.

### About the Author:

Dave Schlabowske began his career as a photojournalist and recently retired as the Executive Director of the Wisconsin Bike Fed. With a father from Milwaukee and a mother from Park Falls, you are as likely to find him riding his bike to his favorite neighborhood restaurant in the big city of Milwaukee as you are to find him pedaling his fat bike to a deer stand in the big Northwoods of Ashland County. Contact the Wisconsin Bike Fed at [info@wisconsinbikefed.org](mailto:info@wisconsinbikefed.org)



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# Public Transportation in Small & Rural Communities

Carrie Diamond, Transportation Specialist, Greater WI Agency on Aging Resources, Inc.,  
Certified Mobility Manager, Wisconsin Association of Mobility Managers Board

Susan Lemke, Transportation Superintendent, City of Stevens Point

*“Public Transit provides a lifeline to those who depend on it to obtain medical care, make shopping trips, travel to school or work and to meet other basic needs. Approximately 55 percent of Wisconsin transit riders travel to work, 14 percent to school, 20 percent to retail, tourism or recreational destinations, and 11 percent to health care services. Greater transit availability means greater mobility for Wisconsin citizens. Transit service is a key component of a comprehensive, multimodal transportation system and contributes to an enhanced quality of life in Wisconsin communities.”* MAPSS Performance Improvement Report, Oct. 2019 <https://wisconsindot.gov/Documents/about-wisdot/performance/mapss/perf-report.pdf>

## Wisconsin's Transportation Network

We are fortunate in Wisconsin that both state and federal funding is available to support public transportation services in rural and small communities. Without state and federal funding, it would be virtually impossible for municipalities and counties to provide much-needed service to their constituents. Municipalities and counties invest in public transportation within their jurisdiction by providing a match for grant funding.

*Why are small and rural communities choosing to invest local levy funding for public transportation?* Public transportation is increasingly being recognized as an important public service to help community members stay healthy, employed, and engaged,



*Northwoods Transit Connections serves Oneida and Vilas Counties with a total ridership in 2019 of 39,300, including 17,228 seniors and senior non-ambulatory riders. They serve senior nutrition sites in Eagle River and Rhinelander and food pantries in Eagle River, the Lakeland Area, and Rhinelander.*

as well as to maintain and attract new residents. The American Public Transportation Association notes that for every dollar invested in public transportation, four dollars are generated in economic returns. The vast majority, 87 percent of public transportation trips, directly benefit the economy by getting people to work and connecting them to local businesses.

There are 74 transit systems in the state of Wisconsin. These, along with specialized transportation programs operating in every county, make up the transportation network that serves students, older adults, and people with disabilities, as well as the general public. Specialized transportation services may be offered by an Aging & Disability Resource Center (ADRC), Independent Living Center, Community Action program, or transit agency.

## Mobility Management

Aside from the wheels on the ground, another successful element of the transportation network in Wisconsin are the Mobility Management programs. Mobility Management programs consist of transportation professionals, often called mobility managers, who build partnerships with local agencies and businesses and provide training to meet the mobility needs within the community.

Mobility managers are essential components of transportation programs in municipalities, counties, or regions. Establishing partnerships with agencies, businesses, employers, healthcare providers, and others allows gaps in service to be identified and solutions created.

Many Mobility Management programs include travel trainers. Travel trainers teach individuals how to independently maneuver within a public transportation system or how to use multiple transportation options to accomplish their trip. Training provided by a travel trainer is all-inclusive and based on the individual's needs. Although the goal of the training is to successfully reach the desired destination, it may also consist of street crossing skills training, individual safety training, or preparation for extreme weather. Every training is different and tailored to match the individual's needs.

► p.12

## Coordination

Doing more with less, as it relates to transportation programs, has been an ongoing challenge for small and rural systems throughout Wisconsin. Transportation needs within municipalities and counties in Wisconsin continue to increase as communities age and individuals choose not to own automobiles. The challenge for municipalities and counties is how to maintain current services and expand to meet growing demands when funding has not kept pace.

The State Department of Transportation requires all counties to create a “Locally Developed, Coordinated, Public Transit-Human Service Transportation Plan” every 4-5 years. Plans must be developed with broad stakeholder involvement and are often led by the Regional Planning Commission. Plans must include how the service area will operate grant-funded programs and how those programs will coordinate with other services providers and transportation programs. Coordination is a key strategy in helping to address funding shortages.

## Central Transportation, Portage County

Prior to January 2018, the city of Stevens Point operated a small public transit system and the Aging and Disability Resource Center (ADRC) of Portage County operated a countywide specialized transportation program. After years of working closely together, it became apparent that a consolidation of services would be advantageous in respect to overall efficiencies, including cost sharing. In CY2018, through an inter-governmental transportation agreement, the city of Stevens Point agreed to oversee both city and county transportation services. A “one call” transportation center for Portage County was developed. To give the coordinated service its own identity, the consolidated program was rebranded “Central Transportation.”

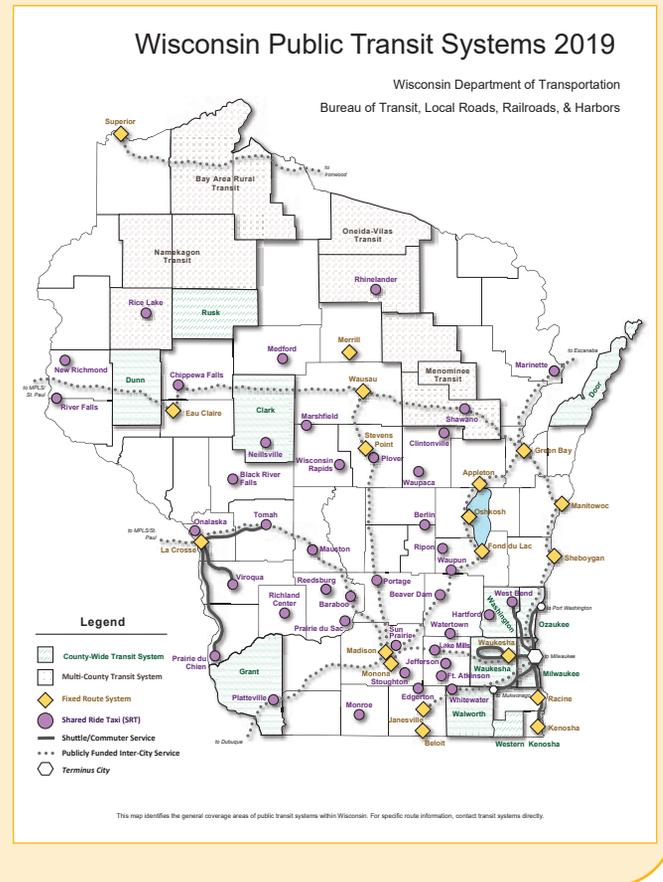
The consolidation of the two programs has allowed for all public transportation services within the county to be housed in one facility. Management staff, program supervisors, the mobility team including travel trainer, maintenance staff, bus operators, and vehicles are in one location. The ability for clients to call one phone number for any transportation need has proven to be a success. The arrangement has enabled the city and county to maximize the funding opportunities for specialized transportation and transit programs to create a comprehensive system for all residents of Portage County.

Central Transportation is only one example of a rural transportation program, BART in the Ashland/Bayfield area has been operating for decades, while others, like Northwoods Transit Connections in Vilas and Oneida Counties began operations more recently.

## Transit systems are broken down into four tiers:

- Tier A1: Milwaukee County Transit System
- Tier A2: Madison Metro
- Tier B: Systems serving a population of 50,000 or more that are not in Tiers A1 or A2
- Tier C: Systems serving areas with a population between 2,500 and 50,000

Note: Tier C systems operate as fixed-route services, demand response service, or as shared-ride taxi programs.



## Everyone Benefits from Public Transportation

Transportation is one of the most requested services by older adults. AARP surveys indicate the majority of us want to remain in our homes or communities as we age, however, 53 percent of non-drivers remain isolated in their homes. The need for driving alternatives continues to outpace the growth of mobility services. On average, we outlive our ability to drive

by 7-10 years. Public transportation plays a key role in filling that gap.

Younger professionals are also seeking to live in areas where there are alternatives to single occupancy vehicle travel. Therefore, the transportation network plays a key role within the workforce and economic development of communities. All adults, younger and older, want communities where they can remain engaged.

Many university students are dependent on public transportation. La Crosse, Eau Claire, Oshkosh, and Stevens Point are examples of municipalities that currently provide fixed-route bus service to students. The contracted services allow students the ability to get to and from classes and boost the economy by enabling students to work, dine, attend local events, and shop locally.

Regardless of whether a public transportation system is small and rural, or large and urban, the system is essential for the growth and prosperity of a community. Residents of all ages and abilities depend on the opportunities and independence public transportation offers, and businesses depend on the economic benefits public transportation brings to their front doors.

The Wisconsin Public Transportation Association (WIPTA) provides a strong and cohesive voice for Wisconsin transit. WIPTA members work to improve transit systems across the state by communicating with our elected officials on issues that impact transportation in Wisconsin. WIPTA represents all of Wisconsin's local bus systems, 45 shared-ride taxi services, and numerous partners and stakeholders. <http://wipta.org/>

About the Authors:

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Susan Lemke is the Transportation Superintendent with the city of Stevens Point, a position she has held since 1997. Prior to her employment with the city she held the position of Transportation Coordinator for the CAP Services Head Start programs in Portage, Waushara, Waupaca, and Marquette counties. Contact Susan at [slemke@stevenspoint.com](mailto:slemke@stevenspoint.com)

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# MetroForward>> A Bold Step for Dane County Transportation

Tom Lynch, Director of Transportation, City of Madison

Madison and Dane County's population and traffic congestion have grown significantly over the past few years. In the past decade, the number of daily commuters driving to Madison from outlying municipalities and neighboring counties has increased, with nearly 30 percent of the populations of Green, Iowa, and Columbia counties commuting into Dane County each day. As of 2014, more than 95,000 people were commuting into Madison from outside of the city. As a result, congestion has become a daily experience. Along with the growing frustration over time spent in traffic, there are other serious implications on a region's economic growth and stability, quality of life, and environment.

This congestion is anticipated to continue to grow. Over the last five years, 14,000 dwelling units have been approved in Madison, and over the last three years, about 3.3 million square feet of office, commercial, and institutional space has been approved within city limits. Just as Madison's population has grown, so too has those of neighboring communities. By 2050, Dane County is projected to garner another 100,000 residents and 85,000 jobs, 45,000 of which are anticipated to reside in the Madison area. This increase will add 800,000 trips to Madison's already congested streets each day – with modeling indicating that congestion will double by 2050. Main arterial city streets like East Washington Avenue, University Avenue, and Park Street, simply have no room to add lanes. Beyond more congestion, the number of private and public parking garages would need to double to accommodate just the parking demand, with a price tag exceeding \$125 million. And yet these jobs are important to the region, the state, and the families who rely on them.

## Investing in Metro Transit Makes Sense, Now More Than Ever.

Currently, Metro Transit serves six municipalities and carries 57,000 people each workday. Ten percent of the metro region workforce uses transit to get to work. Another 10 percent of the region's residents do not have access to a car – Metro Transit helps these people get to the grocery store, doctor appointments, school, and work.



*Madison regularly experiences stop-and-go congestion on its key arterials.*

A full bus takes less than five percent of the roadway needed to carry the same number of people by car. With traffic congestion as one of our region's significant challenges, transit is the most cost-effective and least impactful way to meet the region's growing transportation needs.

In August 2019, Mayor Rhodes-Conway, supported by members of the common council, launched MetroForward>>, a multi-faceted transit initiative designed to get Dane County residents to jobs, education, and services. It is the most aggressive transportation initiative the city has pursued in three decades. MetroForward>> includes addressing Metro's over-capacity and outdated storage facilities, implementing Bus Rapid Transit, and restructuring Metro routes to better serve the region's residents and employers.

Madison is in the process of renovating Metro's 100-year-old bus storage facility. In the 1980s, the building was redesigned to hold 160 buses, though now houses 218. The interior air quality, electrical, and old equipment pose health and safety hazards.

These deficiencies are being addressed through a four-phase project planned for completion in 2022. Already the bus wash has been relocated to an external addition, soon to be decreasing water particulates and exhaust within the building. In December, Mayor Rhodes-Conway turned on the city’s new 120 kilowatt solar array on the roof of Metro’s bus storage facility. This is just one of many ways MetroForward>> is helping to meet the city’s sustainability goal of using 100 percent renewable energy and becoming carbon neutral by the year 2030.

The Federal Transit Administration recently awarded Madison \$7 million for the purchase of a satellite facility which will allow Metro the opportunity to expand. One site being considered, a former Oscar Mayer plant, would give Metro the capability to eventually store 70 additional buses. In the near term, the satellite facility would house up to 20 new electric buses that will form the foundation of Bus Rapid Transit, a high-frequency, limited-stop service, designed to shorten travel times and increase access.

Bus Rapid Transit (BRT) is often compared to light rail, in that it receives dedicated lanes, priority at signalized intersections, and high-quality stations. Despite the similarities, BRT costs a fraction of what light rail does, allowing Madison to pursue a 15-mile Phase 1 implementation that spans from West Towne Mall to East Towne Mall, touching major employers and destinations along the way. Compared to traditional bus service, BRT has incredible potential for faster service and increased ridership. For example, Indianapolis just opened their BRT, IndyGo Red Line, in September 2019. The first month showed system-wide ridership increases of about 30 percent. Richmond Virginia’s BRT system, the Pulse, opened in June of 2018, and saw increased ridership of 17 percent.

Metro’s BRT system is planned to have electric buses, faster service with more than 50 percent dedicated bus lanes, and greater frequency. Instead of waiting 30 minutes to an hour for a bus, the frequency could be as high as every 10 minutes during peak hours. About 145,000 jobs, 110,000 residents, two higher education institutions, and three hospitals will be within a 10-minute walk of the East-West BRT line. Phase 2 of the BRT system plans to serve Madison’s north and south sides, Dane County Regional Airport, and portions of Fitchburg.

Madison will pursue Small Starts grant funding from the U.S. Federal Transit Administration, which can fund up to 80 percent of the capital cost. The goal is for the East-West line of BRT to be operational by 2024, with the Phase 2 North-South line following soon after.

Finally, to support and prepare for BRT, Metro Transit is enlisting a consultant to study route structure. While Metro Transit reaches most of the metro region, some areas are not well-served and require long travel times and transfers. The study process will help Metro balance the competing goals of frequency and coverage.

The benefits of implementing MetroForward>> are anticipated to be significant. Beyond reduction of traffic congestion and carbon emissions, BRT will support our growing regional economy. An American Public Transit Association study found that every dollar invested in public transportation generated four dollars in economic returns. Recently, it was found that Cleveland’s BRT, the Healthline Euclid corridor, generated \$9.5 billion in economic development – the highest return on a transit investment in the nation. This is just one of many successful stories that we have seen of municipalities across the nation implementing BRT. It is reasonable to expect these investments will enable continued economic growth, helping Wisconsin’s metro areas stay competitive with other metro regions throughout the nation.

To support our regional growth, recruit and retain strong business and talent, protect our environment, and ensure a great quality of life for our residents, Madison is investing in success – MetroForward>> sustainable, accessible, and reliable transportation.

If you would like to learn more about the MetroForward>> initiative, visit [cityofmadison.com/metroforward](http://cityofmadison.com/metroforward)

About the Author:

Tom Lynch is the Director of Transportation for the City of Madison which includes Metro Transit, Traffic Engineering, and the Parking Division, with a combined operational budget of over \$85 million annually. Contact Tom at [TLynch@cityofmadison.com](mailto:TLynch@cityofmadison.com)



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# Municipal Transportation Revenue Sources

Curt Witynski, Deputy Director, League of Wisconsin Municipalities

Wisconsin cities and villages have limited sources of revenue available to pay for transportation-related operations like street maintenance, snow plowing, traffic control, and transit. The property tax is the primary source. Other revenues include state transportation aid programs, shared revenue, and the expenditure restraint program. Additional revenue options communities may consider are local vehicle registration fees and transportation utility fees.

This article describes in more detail state transportation aid programs and other sources of revenue that are available to help municipalities pay for transportation operations.

## State Transportation Aid Programs

**General Transportation Aids.** The general transportation aids (GTA) program is the most important source of state aid for local transportation purposes. It is the second largest program in the Department of Transportation's (WisDOT) budget and represents 25 percent of all state transportation fund appropriations. The program helps cities, villages, towns, and counties defray the costs of local road construction, maintenance, traffic enforcement, and other transportation-related costs. The 2019-2021 state budget increased funding for the GTA program for cities, villages, and towns by \$35 million or 10 percent, from \$348,639,300 to \$383,503,200 for 2020 and thereafter. The mileage aid rate was also increased by 10 percent from \$2,389 to \$2,628 per mile for calendar year 2020 and thereafter.

All cities and most villages receive their GTA payments under the share of cost formula, which is based on the average amount a community spent annually on transportation costs over the most recent six-year period. Almost all towns are paid GTA on the rate per highway mile basis. DOT is statutorily required to distribute GTA funds first to towns under the rate per mile component of the program. Then, the remainder is distributed to cities and most villages on a share of cost basis.

Cities and villages received GTA payments equaling 16.3 percent of their total six-year average costs in 2019. Towns

received GTA mileage aid equaling 45 percent of the total six-year average costs in 2019. The percentage of costs covered by GTA for towns is likely to go up in 2020 since changes made in the 2019-2021 state budget allow 144 towns to receive payments equaling 100 percent of their transportation costs in 2020. Prior law capped a community's GTA payments to 80 percent of the community's transportation costs.

**Connecting Highway Aids.** Assists municipalities with costs associated with increased traffic and maintenance on roads that connect segments of the state highway system. There are 117 municipalities that receive quarterly payments on a per lane mile basis, with rates varying according to population and appropriations set in the state budget.

**Mass Transit Operating Assistance.** The Mass Transit Operating Assistance program assists transit systems (bus systems) with operating costs. Eligible applicants include municipalities with populations greater than 2,500 including counties, municipalities, and towns – along with transit or transportation commissions or authorities. Eligible public transit services include bus, shared-ride taxicab, rail, or other conveyance either publicly or privately owned.

## The Local Vehicle Registration Fee

Municipalities have been allowed to impose an annual vehicle registration fee, or "wheel tax," on motor vehicles since 1967. In 1979, this authority was extended to counties. Until 1983, the fee applied only to automobiles and station wagons. The fee was limited to 50 percent of the state registration fee and was collected by the local government that imposed it. Since 1983, state law has permitted any municipality or county to adopt an ordinance that imposes a flat, annual registration fee on automobiles and trucks of not more than 8,000 pounds customarily kept within that jurisdiction. Vehicles may be subject to both a municipal and a county fee. All vehicles exempt from the state fee are also exempt from local fees. There is no limit on the amount of the fee.

The WisDOT collects the fee when the annual state registration fee is paid. DOT retains 17 cents per registration for administrative costs. The rest of the fee is remitted to the jurisdiction imposing the fee. Municipalities are permitted, but not required, to share any portion of the fee with the county or vice versa. Revenues from the wheel tax must be used for transportation-related purposes. See Wis. Stat. § 341.35(6r).

A municipal governing body must enact an ordinance in order to impose a local vehicle registration fee. The municipality must notify DOT at least 120 days prior to the first day of the month in which the ordinance takes effect. Repeal of the fee is also by adoption of an ordinance by the local governing body. At least 60 days' notice to DOT is required prior to the first day of the month in which the repeal is effective.

As of December 20, 2019, the following cities and villages are collecting a wheel tax:

- Appleton (city, \$20)
- Beloit (city, \$20)
- Bellevue (village, \$20)
- Eden (village, \$20)
- Evansville (city, \$20)
- Fort Atkinson (city, \$20)
- Gillett (city, \$20)
- Green Bay (city, \$20)
- Iron Ridge (village, \$10)
- Janesville (city, \$20)
- Kaukauna (city, \$10)
- Lodi (city, \$20)
- Madison (city, \$40)
- Manitowoc (city, \$20)
- Milton (city, \$30)
- Milwaukee (city, \$20)
- Montello (city, \$20)
- New London (city, \$20)
- Platteville (city, \$20)
- Portage (city, \$20)
- Prairie du Sac (village, \$20)
- Rice Lake (city, \$20)
- Sheboygan (city, \$20)
- Tigerton (village, \$10)
- Waterloo (city, \$15)

► p.18



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## Transportation Utility Fees

A few communities have relied on statutory home rule powers to create a transportation utility to help pay for road maintenance and other transportation-related costs.

The village of Weston imposed a transportation utility fee based on the number of trips typically generated by each class of property within the community. The village used the revenue to help pay the city of Wausau for extending bus transit services to the village. The village repealed the fee after two years.

Recently, the city of Neenah implemented a transportation utility fee, which they call the Transportation Assessment Replacement Fee (TARF). The fee is based on the amount of impervious surface area on a parcel. The theory being that larger developed areas with more impervious surface translate to increased traffic benefiting the rate payer. Neenah uses TARF revenue exclusively to pay for pavement reconstruction, resurfacing, and replacement. The city no longer imposes special assessments for such costs.

Other communities have seriously considered creating a transportation utility and imposing a fee based on trip generation. A PowerPoint discussing a trip generation-based transportation fee case study prepared for the village of North Fond du Lac and a research paper exploring the pros and cons of Clintonville implementing a transportation utility fee are posted on the League's website: <https://www.lwm-info.org/724/Alternative-Transportation-Funding-Options>

## Conclusion

Besides the property tax, Wisconsin cities and villages have limited sources of revenue available to pay for transportation operations. A local sales tax is not an option. Local income taxes, taxes on telecommunication service providers,

utilities, and other users of street rights-of-way are similarly unavailable.

Because of strict levy limits and relatively flat or sinking state aids, more communities are considering adopting local vehicle registration fees and transportation utility fees to help pay for transportation operations.

*Author's Note:* DOT administers numerous transportation aid programs designed to help communities pay for street and bridge construction projects. <https://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/default.aspx>  
This article focuses on state aid that helps communities cover operational costs relating to transportation services.

## About the Author:

Curt Witynski is the League's Deputy Director. He manages the League's lobbying program, representing the League before the Legislature, the governor's office, and state agencies. He writes the *Legislative Bulletin* and *Capitol Buzz* newsletters, organizes legislative material and the Budgeting Toolkit for the League's web page, and answers questions from the media and members about legislation that the League is following. Curt joined the League staff as assistant legal counsel in 1987 and was named Deputy Director in 2000. Contact Curt at [witynski@lwm-info.org](mailto:witynski@lwm-info.org)

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vision to reality

# New Regional Training: Avoiding Common Mistakes

The League of Wisconsin Municipalities (League) and the League of Wisconsin Municipalities Mutual Insurance Company (League Mutual) are partnering to educate city and village officials on how to avoid situations and behaviors that are most likely to land their municipalities in hot water. The most common problem areas involve land use decisions, open meetings law violations, and human resources.

The concept of regional training on “hot water” issues was inspired by League Mutual’s new CEO Matt Becker. League Mutual provides workers’ compensation, liability, and automotive damage insurance to most of Wisconsin’s cities and villages. Becker said there are clear trends in the loss data. “We know that land use decisions are what cost cities and villages the most,” he said. “We also know that human resource decisions and mistakes made by board members ‘behaving badly,’ can also result in big losses, both financial and in terms of the public trust.”

Unlike Local Government 101 training, which provides a broad overview of basic information on the fundamentals of city and village government, these sessions will focus on scenarios inspired by real-life examples to illustrate how controversial decisions, compounded by poor municipal governance, can quickly spin out of control. League attorneys, Claire Silverman and Maria Davis, will provide an overview of the legal framework governing body members must use when making decisions and explore how deviating from that framework can expose municipalities to liability, damage the municipality’s reputation, and hijack the municipal agenda. On the HR side of things, Lisa Bergersen of EngageHR Law, LLC will help attendees navigate a number of human resources and employment law compliance issues that come up with some frequency including wage and hour, harassment/discrimination/bullying, family and medical leave laws, and social media. Lisa will also cover best practices in areas such as handbooks, workplace safety, counseling/discipline/terminations, and documentation.

Attendance is free for League members insured by League Mutual; for League members not insured by League Mutual, the League has reduced its usual one-day training registration fee to \$50. Registration is available on the League’s website at <https://lwm-info.org/>

## Join Us!

- **Friday, March 6** - R&R Insurance in Waukesha
- **Thursday, May 14** - Chula Vista Resort in Wisconsin Dells (this training is in conjunction with the League Mutual Insurance Policyholders Conference)
- **Wednesday, July 8** - Rice Lake City Hall
- **Thursday, September 10** - Par4 Resort in Waupaca

The program will run from 9:00 a.m. to 4:00 p.m. with breakfast and registration at 8:30 a.m. (lunch included).

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## DID YOU KNOW?



# One-Time Transportation Grant Program

The bi-partisan Wisconsin 2019-21 biennial budget provided \$75 million to local and tribal governments in one-time funding through the Multimodal Local Supplement (MLS) program. The funding allocation included \$18.4 million for cities and villages, \$26 million for counties, and \$28.9 million for towns.

According to WisDOT, 1,596 eligible grant applications were submitted by cities, villages, towns, counties, and tribal governments. *The needs detailed in the applications total \$1.47 billion.*

Demand has exceeded available funding by more than 1,800 percent.

- Total Available MLS Funding for Cities/Villages: .....\$18,452,832
- Total Number of Cities/Villages Applications:..... 461

Cities/Villages Committee Applications

- Road.....270
- Bridge .....14
- Harbor ..... 8
- Railroad..... 3
- Bicycle/Ped.....56
- Transit..... 7
- Multimodal.....103

Cities/Villages Total Project Value.....\$673,618,163  
 Cities/Villages State Share (90%).....\$534,294,355



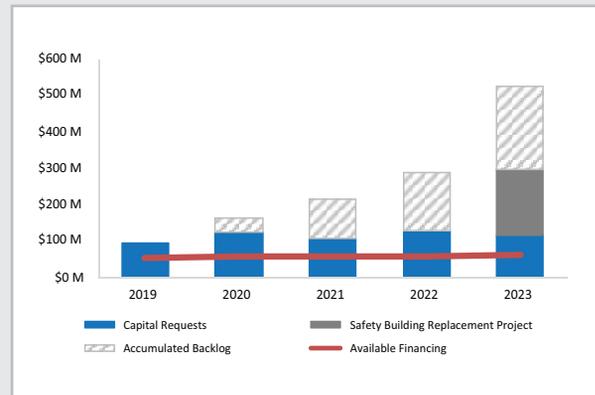
## Metro Milwaukee Infrastructure Backlog Requires “All-of-the-Above” Response

The cost of maintaining much of the public infrastructure on which Greater Milwaukee’s economy and quality of life depend exceeds the capacity of local governments to meet it, according to an in-depth analysis the Wisconsin Policy Forum released in June 2019.

One of its conclusions is that a new funding source will be required to address Milwaukee County’s - and possibly the city of Milwaukee’s - infrastructure needs. (The chart seen here compares the cost of Milwaukee County’s capital project requests to its capital finance capacity during the next five years.)

We also find the region’s backlog of infrastructure for transportation, public safety, arts and culture, utilities and parks - totaling more than \$400 million in the next four years for Milwaukee County alone - will require area leaders to pare back their list of desired infrastructure projects.

Our findings for transportation infrastructure include that more than half (57 percent) of city of Milwaukee streets were rated in poor or fair condition in 2016. This creates a need for dozens of major reconstruction

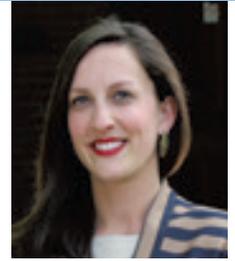


projects in the next 15 years. Milwaukee County, meanwhile, faces significant replacement needs for its aging fleet of more than 400 buses.

*This information is a service of the Wisconsin Policy Forum, the state’s leading resource for nonpartisan state and local government research and civic education. Learn more at [wispolicyforum.org](http://wispolicyforum.org)*

# The Robots Are Coming: How Cities Can Plan for Autonomous Vehicles

Crista M. Cuccaro, Assistant City Attorney, Durham, North Carolina



Imagine this: you need to get to the airport and catch your flight to the upcoming IMLA Conference. Instead of paying exorbitant airport parking fees, you hail a ride through an app on your phone. After a short wait, a ride share vehicle pulls up to the curb. The trunk opens and you load your luggage. When you climb into the back seat, you're alone in the car. No one is driving; instead, the ride share is an autonomous vehicle (AV).

Apprehensive about this scenario? You're not alone. According to a recent Reuters poll, half of adults in the United States think AVs<sup>1</sup> are more dangerous than cars operated by people.<sup>2</sup> A majority of Americans also believe that self-driving cars should be held to higher safety standards than traditional vehicles.<sup>3</sup> The Reuters poll may underestimate public unease. A 2019 AAA survey found that nearly 75% of Americans are afraid to ride in fully autonomous cars.<sup>4</sup> Despite this, the majority of the public also believes that most vehicles will be fully

autonomous by 2029.<sup>5</sup> And the public is probably right.

Currently, automotive and tech companies are in an expensive race to the top. In 2016, GM spent \$581 million to acquire AV start-up, Cruise Automation.<sup>6</sup> Next year, GM will likely release a fleet of electric AVs with its affiliate, Lyft, in which GM purchased a share for \$500 million.<sup>7</sup> Honda has committed \$2.75 billion as part of an exclusive agreement with GM to develop and produce a new kind of AV.<sup>8</sup> Ford has partnered with Argo AI and plans to introduce Level 4 AVs vehicles in 2021 as part of a ride-hailing service.<sup>9</sup> Last year, Volvo and Uber entered into a \$300 million joint venture with the goal of having its fully autonomous vehicle on the road in 2021.<sup>10</sup>

Other companies have plans underway to create fully autonomous vehicles, including freight trucks, within the next five years. Some of these firms have tested their AVs on public roadways. In 2009,

Google began testing its self-driving cars and by end of 2018, the company had logged more than two million miles of autonomous driving.<sup>11</sup> In December 2018, Waymo, owned by the same parent company that owns Google, launched an "autonomous" ride-hailing service in Chandler, Arizona; however, that service is yet to be fully autonomous, in part because tests have revealed that self-driving technology still has significant shortcomings.<sup>12</sup>

During the past several years, minor and major incidents have shaken industry and public confidence in automated driving systems. In February 2016, a Google research car "made contact" with a public bus.<sup>13</sup> The car and test driver predicted that the bus would yield as the Google vehicle attempted to merge into traffic, but it didn't.<sup>14</sup> Following the crash, Google updated its software to "more deeply understand that buses and other large vehicles are less likely to yield" to its cars than other types of vehicles.<sup>15</sup>

Later in 2016, the driver of a Tesla Model S died in an accident while the Autopilot was activated.<sup>16</sup> According to Tesla, the vehicle's camera couldn't detect a trailer as an obstacle because of the trailer's "white color against a brightly lit sky" and its "high ride height," and the car's radar classified it as an overhead road sign.<sup>17</sup> And in March 2018, a Volvo SUV owned by Uber and outfitted with Uber's self-driving system struck and killed a pedestrian.<sup>18</sup>

The number of incidents involving AVs pales in comparison to the tens of thousands of Americans who die every year in accidents involving traditional vehicles.<sup>19</sup> The National Highway Traffic Safety Administration (NHTSA) projects that 36,570 people died last year in traffic fatalities in the United States.<sup>20</sup> Remarkably, an estimated 90 percent of motor vehicle crashes are caused at least in part by human error.<sup>21</sup> While juxtaposing human drivers and AVs may not be a fair comparison,<sup>22</sup> advocates insist that AVs will make roadways much safer. Regardless of the specifics, the arrival of AVs is imminent, as is cities' need to plan for and regulate them.<sup>23</sup>

This article explains the current legal framework for AV regulation in Part I and the policy implications for cities to consider in Part II.<sup>24</sup>

## I. The Legal Framework

The United States ranks highly in the technology and innovation needed to support AVs, but lags in policy and legislation and infrastructure.<sup>25</sup> These latter two pillars of the AV Readiness Index are squarely within the realm of federal, state, and local governments. This section explores state and federal regulation of AVs to date.

### A. State Regulation of AVs: A Mixed Bag

As would be expected, states have varied approaches to regulating AVs. Broadly, state legislation covers: vehicle testing,<sup>26</sup> infrastructure requirements, licensing and registration, operation on public roads, task forces, operator requirements, privacy of collected vehicle data, and

more. Nevada was the first state to authorize the AV operation.<sup>27</sup> Florida and Arizona were also at the forefront in AV testing. In 2012, Florida passed a bill allowing AV testing after meeting certain requirements including proof of insurance.<sup>28</sup> In 2015, Arizona's Governor signed an Executive Order enabling pilot programs.<sup>29</sup> More cautious states have adopted laws restricting AV testing to platooning (electronically pairing two or more vehicles to allow smaller distances between them), although some of these have later loosened the restrictions.<sup>30</sup> Currently, the District of Columbia and the following states allow AVs on public roadways<sup>31</sup> in testing with a driver, without a driver, or in a platoon: Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.<sup>32</sup>

State-level regulation of AVs does not necessarily confer municipal authority to do so. As cities know all too well, some states preempt local authority over emerging businesses and technologies.<sup>33</sup> One jurisdiction that has not been preempted is Boston, which created a graduated system of AV testing.<sup>34</sup> In the first phase, Boston's model allows AV companies to test only in a limited geographical area during good weather and daylight hours.<sup>35</sup> Once a company reaches certain milestones, permission is expanded to allow testing in other areas of the city, at night and during inclement weather.<sup>36</sup> Additionally, Boston requires companies to enter into a Memorandum of Understanding, covering issues such as accident reporting, minimum safety standards, and, of course, indemnification.<sup>37</sup>

Not all cities have been as friendly to AVs as Boston, however. Chicago's Board of Aldermen stalled a proposal to allow AVs in the city, citing concerns about cybersecurity and loss of jobs.<sup>38</sup> This local resistance did not evade the eye of

Illinois' General Assembly. In 2018, the state passed a law prohibiting localities from banning AVs. Not all opposition occurs within City Hall: in Chandler, Arizona, where Waymo has been testing its vehicles, the company's driverless test vehicles have weathered nearly two dozen attacks from irate locals over the past two years, including tire slashings and being pelted by rocks.<sup>39</sup>

This patchwork approach has spurred industry advocates to call for federal regulation of AVs. Volvo Cars President Håkan Samuelsson argued that the United States risks losing its leading global position in the development of self-driving cars if federal legislation is not passed.<sup>40</sup> The next section explains the current status of federal guidance on AVs.

### B. Federal Regulation of AVs: Tapping the Brakes

Despite the industry's urging, the federal government has left regulation of AVs to the states – for now. This failure is not for lack of trying. In 2017, The Safely Ensuring Lives Future Deployment and Research In Vehicle Evolution Act, also known by its clever acronym SELF DRIVE,<sup>41</sup> was introduced in the House. The Act would have preempted states from enacting laws regarding the design, construction, or performance of AVs unless such laws were identical to federal standards. In its report, the House Committee on Energy and Commerce highlighted the need for uniformity by pointing out conflicts between proposed laws in North Carolina and New York.<sup>42</sup> The SELF DRIVE Act passed the House in September 2017. A companion bill was introduced in the Senate, with an equally clever acronym of AV START Act, standing for the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act. However, the AV START Act never made it to the floor of the Senate in part because of objections from several key senators.<sup>43</sup>

Congress has renewed its efforts to regulate AVs and in August 2019, a

new version of the AV START Act was circulated for comments from stakeholders. The current legislation preempts local regulation of AVs, creates a Highly Automated Vehicles Advisory Council, directs the Comptroller General to evaluate the feasibility of removing personally identifiable information from AVs, proposes a rulemaking process – and more. With a bicameral effort behind the legislation, there is optimism that Congress will act on AVs during its current session.

While progress has been slow on the Hill, the United States Department of Transportation (USDOT) has been pressing forward. In September 2016, the NHTSA<sup>44</sup> and the USDOT issued a Federal Automated Vehicles Policy that set forth a proactive approach to providing safety assurance and facilitating innovation.<sup>45</sup> One year later, the NHTSA issued Automated Driving Systems: A Vision for Safety 2.0. Most recently, the

agency released Preparing for the Future of Transportation: Automated Vehicles 3.0, which builds upon – but does not replace – the voluntary guidance provided in the earlier version. The current 80-page document provides best practices for states for the training and licensing of test drivers. It also offers guidance for testing entities about driver engagement methods during testing. In May 2019, NHTSA and the Federal Motor Carrier Safety Administration (FMCSA), issued advance notice of proposed rulemaking to seek public comment on the challenges of testing and verifying compliance of AVs with existing Federal Motor Vehicle Safety Standards.<sup>46</sup> Clearly, AVs are a priority for federal agencies, but there is no definitive timeline for comprehensive laws. Thus, where they have not yet been preempted, cities are left to contend with AVs on their own. The next section examines the myriad issues to anticipate and contemplate as AVs arrive in municipalities.

## II. Policy Considerations

While safety occupies a significant portion of the discussions about AVs, many more issues arise for cities: traffic impacts, shifts in the workforce, effects on transit systems, privacy and data concerns, land use modifications, infrastructure support, equity in access, liability and insurance, and last, but absolutely not least, impacts to municipal budgets. And although AVs may seem relevant only to major cities, the International City/County Management Association (ICMA) advises that suburban and rural residents, because they often commute into larger cities, are the ones who are most likely to take advantage of self-driving technologies, and to participate in first mile or last mile AV ride-sharing from public transit hubs.<sup>47</sup>

The impact of AVs on cities depends largely on whether the dominant model is shared fleets or individual vehicle ownership.<sup>48</sup> A fleet model means that communities will have less need for

► p.24

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commercial car dealerships and service stations, thereby freeing up significant tracts of land. Additionally, AV fleets will likely be electric, and cities will need to allow for a more expansive electric charging infrastructure. Experts anticipate that the shared fleet model will prevail; one authority states that AV companies “don’t actually want to sell people these cars – they want to rent us these services. They want us to pay every month, every trip.”<sup>49</sup> Moreover, given the cost of sensor technology and computing power needed to deploy AVs,<sup>50</sup> individual ownership will initially be too expensive. The remainder of this article largely assumes a shared AV fleet model.

## *A. Impacts to Cities’ Bottom Lines*

Last year, a headline in *Wired* magazine read “Autonomous vehicles might drive cities to financial ruin.”<sup>51</sup> While the reality may not be so dire, cities would be wise to plan for AVs in their budgets. State and municipal revenue from metered parking and tickets, traffic violations, vehicle registration and licensing fees, and gas taxes will clearly be affected.<sup>52</sup> The Sustainable Cities Initiative characterizes the budgetary impact of AVs as a “secondary impact.” However, upon analyzing the numbers, this should be a – if not *the* – primary concern to cities.<sup>53</sup>

One useful benchmark is fuel tax. In 2017, Delaware collected \$123 million in fuel tax revenue.<sup>54</sup> While that is considerable, Texas collected a massive \$3.7 billion in motor fuel taxes in the 2018 fiscal year.<sup>55</sup> These figures are significant because AVs will likely be electric, and are expected to consume less fuel than standard vehicles even if gas-powered.<sup>56</sup> Additionally, parking revenue from meters and fines will decrease because AVs will not necessarily need to park for short periods of time, or may be sent to free spaces outside of pay-for-parking areas.<sup>57</sup> A sharp decrease in parking fees could cripple a municipality like the tourist town of Rehoboth Beach, Delaware, which is predicted to generate \$6 million in parking fees in fiscal year 2019 – constituting 28% of the city’s

overall budget and its largest single revenue source.<sup>58</sup>

Not all of the news about AVs and cities’ budgets is negative. Using San Francisco as its model, scholars at the Sustainable Cities Initiative have projected that alongside a decrease in parking revenues, cities should expect to see an increase in property tax revenues.<sup>59</sup> With a shared fleet model, cities will no longer need as many parking spaces and that land can be put to more productive uses that will generate property tax revenue.

In order to mitigate some of these shifts, states are enacting a robot tax.<sup>60</sup> Floated by Bill Gates, the tax would be paid by companies for every robot or automated system that replaces a human worker, whether in a factory, a mine, or on the roadway. The revenue could help fund training and incentives to move people to occupations less vulnerable to automation, as discussed in the next section. Some states have already made this move. Tennessee recently enacted a law that will establish a one-penny-per-mile tax on AVs.<sup>61</sup> In Massachusetts, proposed legislation would impose a 2.5 cent per mile tax on AVs, increasing when there are no passengers riding.<sup>62</sup>

Even where cities cannot enact taxes, there are creative ways to generate revenue that influences AV use. Seattle proposed a tiered road-pricing mechanism, which incentivizes AVs with three or more occupants.<sup>63</sup> Other mechanisms might include variable congestion pricing, Vehicle Miles Traveled (VMT) fees, and curbside use fees for pickup and drop-off.<sup>64</sup> Regardless of the approach, building pricing into AV use can partially offset revenue losses.<sup>65</sup> Cities are not alone in feeling a financial squeeze with the arrival of AVs; certain sectors of the workforce are also at risk, as discussed next.

## *B. Shifts in Cities’ Workforces*

As cities adjust their budgets for AVs, they should also examine their workforces. An estimated 80 percent of the typical city police department is involved in some

way with traffic control.<sup>66</sup> As vehicles become able to navigate without human intervention or assistance – including that of law enforcement – cities will need to reallocate police or possibly reduce the size of their forces.<sup>67</sup> On the other hand, cities may need to hire more employees in other sectors. For example, transportation planners will be needed to conceptualize a new physical infrastructure for AVs.

The largest workforce effects of AVs will be felt in industries such as transportation, and particularly the freight sector. A 2016 White House report estimated a potential displacement of 3.7 million drivers of trucks, taxis, and buses.<sup>68</sup> The consequences are likely to be most significant for men of color.<sup>69</sup> These lost jobs will be replaced with lower-wage jobs with few benefits, or jobs requiring additional technology-related knowledge and skills. As AV use increases, workforce shifts will challenge cities’ commitment to equity.

One way that cities can influence these outcomes is workforce development. AVs will expand job growth in a number of key industries. Electrical engineers, computer scientists, and software developers will be needed to develop vehicle control systems and the telecommunication networks required for AV functionality.<sup>70</sup> To train displaced employees, cities can support apprenticeships, combining on-the-job training with classroom instruction, and AV sector-specific training – especially in higher education.<sup>71</sup>

A silver lining, perhaps, is that the lower cost and increased efficiency of AV travel may enable people to commute farther, increasing access to job opportunities.<sup>72</sup> But throngs of people traveling to work in AVs could also create more congestion and cripple public transit, as discussed in the following sections.

## *C. Traffic Impacts: Utopian or Dystopian?*

It’s obvious that AVs have the potential to significantly affect traffic flows, but there is not yet a consensus about how.<sup>73</sup> There

are two competing perspectives on the subject.<sup>74</sup>

In the utopian vision, often touted by AV manufacturers, AV fleets consist of shared vehicles, leading to fewer cars and fewer accidents and fatalities, reduced congestion, lower carbon emissions and improved air quality, and compact development patterns in which walking, biking, and transit thrive. In the dystopian version, however, the AV fleet consists of privately-owned vehicles, while zombie cars – those with zero occupancy – roam the streets, resulting in greatly increased traffic, severe reductions in other transportation modes, increased pollution and greenhouse gas emissions, and more sprawl as people live farther from work.

With such disparate predictions, it's difficult to know how to proceed as a city. Clearly, it is imperative to account for AVs.<sup>75</sup> Many current municipal planning processes rely on assumptions about the nature of travel – including models of vehicle ownership, route choice, and residence and work locations – that may not be true for AVs.<sup>76</sup> While not always popular with the public or industry, it may be prudent for cities to approach AV regulation conservatively and plan for added traffic congestion. The Center for Transportation Research at the University of Texas predicts that AVs will increase vehicle miles traveled (VMT) because drivers will experience fewer travel inconveniences.<sup>77</sup> People using AVs will be more comfortable heading to more distant locations and those unable to drive themselves will be able to travel safely.

With that in mind, there are measures that cities can take to influence AV use. As already mentioned, a tiered road-pricing mechanism can incentivize ridesharing in AVs.<sup>78</sup> Cities could also require AVs to be electric, which would minimize emissions.<sup>79</sup> There may be ways for cities to promote small or micro-sized AVs for personal use. Cities could create designated AV lanes, which would have the added benefit of reducing conflict with other modes of transportation. And, as

already mentioned, cities could impose a VMT fee. Some challenge these on the basis that sharing vehicles will increase demand.<sup>80</sup> Instead, policies may need to make driving less rather than more attractive relative to other transportation modes.<sup>81</sup> Accordingly, it is necessary to explore the effect of AVs on public transit, which is covered in the next section.

#### *D. The Transit System: A Possible Victim of Convenience*

Public transportation advocates are worried that AVs may result in curtailing investment in more communal transit options – and with good reason. While services such as Uber and Lyft are marketed as complements to public ways of getting around, these services actually compete with public transit. Although economic growth is usually accompanied by an uptick in public transit use, this pattern has been disrupted by ride-sharing and ride-hailing services. Public transit ridership is down in San Francisco, where half the residents use Uber or Lyft. Nationally, ride-hailing services have reduced public transit ridership by an average of 12 percent.<sup>82</sup>

AVs may accelerate this trend, and where public transit ridership falls, levels of investment in public transit will decline.<sup>83</sup> Equity remains a vital part of the conversation, because the rise of AVs will put struggling sections of cities at a particular disadvantage.<sup>84</sup> Unemployment tends to be lowest in isolated, majority-minority neighborhoods,<sup>85</sup> where the main barrier to employment is access to transport.<sup>86</sup>

Improved transit systems may persuade users to maintain or increase ridership. Theoretically, one way to do this is to increase the frequency of service. Practically speaking, as dollars for public transit dwindle, this option is probably not viable on its own. Another option, already used in many larger cities, is to provide transit-only lanes. In-vehicle travel time on buses has to be faster to compete with

vehicular travel. A particularly creative solution is to provide comprehensive trip-planning information, so the public has the ability to evaluate their travel options with information on travel time, cost, and environmental impact.<sup>87</sup>

Another option for public transit is to become autonomous.<sup>88</sup> Buses on fixed routes are easiest to transition to AV use. Vehicles and transit schedules can be “right-sized” so fleets are used effectively, reducing empty buses.<sup>89</sup> Additionally, autonomous buses could potentially free up public funds because transit operating costs are mostly labor. A driverless model could radically increase public transit frequency, the single most important factor in transit ridership. Ultimately, “people need to see autonomous public transit, and see that it gets them where they need to go just as efficiently, in order for them to choose that over their own car, a ride provided by Uber or Lyft, or, someday in the future, their own driverless car.”<sup>90</sup>

#### *E. AV Infrastructure Support in Technology and the Built Environment*

Simply put, smart cars (and buses!) need smart cities.<sup>91</sup> For now, most AV applications depend on vehicles with limited connectivity needs. Higher speed uses, such as platooning trucks, rely on vehicle-to-vehicle communications and higher levels of connectivity. These applications demand increasing bandwidth on existing wireless networks, but are currently constrained by the absence of sensor and communication technology embedded in infrastructure. Self-driving cars, and especially connected vehicles, will need significant support to work properly.<sup>92</sup> This means providing radio transmitters to replace traffic lights, higher-capacity mobile and wireless data networks to handle vehicle-to-vehicle and vehicle-to-infrastructure communication, and roadside units to relay real-time data about weather, traffic, and other conditions.<sup>93</sup> Atlanta, as an example, “may need 50,000 environmental sensors, 20,000 pedestrian and mobility sensors

and 10,000 cameras” to support its plan to move ahead with AVs.<sup>94</sup>

Some states are already building this infrastructure. Colorado’s Department of Transportation is installing road-side units along Interstate 70, which are expected to communicate with driverless cars by sharing information about upcoming road hazards and current driving conditions.<sup>95</sup> Virginia has launched SmarterRoads, a cloud-based portal that will provide raw data pertaining to road conditions, incidents, work zones, multi-modal transportation, and road signs to the AV industry, third-party enterprises, and the public.<sup>96</sup> And Wisconsin is using road widening as an opportunity to install infrastructure for AV communication.<sup>97</sup>

Not all improvements to support AVs demand as much effort and money. AVs need clear lane markings and signage in order to operate effectively. An AV at a 2016 Los Angeles Auto Show behaved erratically due to poor road markings, indicating that local governments can ease AV integration by attending to basic roadway maintenance, such as striping.<sup>98</sup> Moreover, the APA advocates that when cities are reimagining streets with AVs, they should design roadways for mixed traffic – not just AVs and conventional vehicles, but also pedestrians and cyclists – so as to avoid conflicts between different modes. Cities should look to recapture this right-of-way and repurpose streets for bikers and pedestrians.<sup>99</sup> The next section is a more comprehensive discussion of how to handle this newly available land.

### *F. Land Use: Sprawl or Density for All?*

Undoubtedly, AVs will disrupt city land use patterns. Self-driving vehicles could encourage unnecessary driving and exacerbate sprawl, or, conversely, a network of predominantly shared AVs could reduce the need for parking and road expansion, creating the potential to repurpose space.<sup>100</sup> The outcome depends, in part, on parking-related zoning regulations, including the conversion of parking lots and decks, curbside management, and placement of infrastructure such as electric charging stations.

If shared AVs are the standard, municipalities probably will be able to reduce their required parking spaces. And the dimensions, location and design of AV parking structures will likely not need to take humans into consideration, resulting in reduced space requirements. Additionally, fewer parking garages may be needed in urban areas, which may lead to conversion into micro-housing unit communities, elevated parks, luxury homes, apartments, and offices.<sup>101</sup> Of course, when they are not being used, AVs will have to go somewhere. Cities should think about the best locations for AV storage, recharging, and maintenance. Municipal lawyers may want to assess whether their jurisdictions’ current zoning definitions are adequate for new uses such as AV staging, support services, and electric recharging. Additionally, land use regulations should incorporate guidance for locating and designing on-street drop-off and pickup areas.<sup>102</sup> Providing safe and easy access for riders of hailed AVs may require changes to curb access and traffic flows.<sup>103</sup> In tackling the AV parking puzzle, Chandler, Arizona is poised to be the first city to adjust its zoning laws to incentivize AVs through parking reductions and creating standards for AV loading zones.<sup>104</sup>

AVs will likely change the retail landscape, particularly for e-commerce businesses. Truck drivers are limited to driving no more than 11 hours in one sitting, and their wages accounts for 75% of shipping costs.<sup>105</sup> AVs in delivery (and at distribution centers) could reduce costs for e-commerce retailers. This means that brick and mortar retail stores may dwindle, as they are undercut by online shopping.<sup>106</sup> On the other hand, the convenience of AVs could lead to more discretionary vehicle trips for shopping, and could expand the customer base of large and regional shopping centers. AVs will also bring with them an enormous amount of data, with which cities will have to contend, as detailed in the next section.

### *G. Dealing with All the Data*

Generally, privacy concerns around AVs fall into two categories: “government

access to and use of locational and other personal data, and the private, primarily commercial, use of the personal data.”<sup>107</sup> The Bloomberg Aspen Initiative on Cities & Autonomous Vehicles speculates that AVs could be the most important opportunity in history for a city to expand the scope and quality of data about its goings-on.<sup>108</sup> Municipal lawyers know that collection of data about residents is particularly sensitive and raises constitutional concerns.<sup>109</sup> The potential benefits of AV data are compelling, given that automated systems could capture individualized information such as vehicle speed, position, arrival rates, and rates of acceleration and deceleration.<sup>110</sup> This data could allow for a greater optimization of traffic patterns; for example, through manipulation of traffic signals. The data could also provide insights for street and curb space management, and even for noise pollution.<sup>111</sup> Ultimately, users’ privacy will be critical.<sup>112</sup> In crafting AV regulations, cities will need to approach data privacy thoughtfully. This section explores privacy issues and touches on cybersecurity risks involving AVs.

Regarding AV data and privacy, cities have a chance to address a void in existing United States law.<sup>113</sup> The federal Drivers’ Privacy Protection Act<sup>114</sup> protects motor vehicle records from disclosure only by state motor vehicle departments. Moreover, the Electronic Communications Privacy Act<sup>115</sup> does not necessarily prevent a service provider, such as a shared AV owner, from capturing and using a vehicle’s electronic or stored communications. There have been several attempts to address this gap. The Security and Privacy in Your Car Act (SPY Act)<sup>116</sup> instructed NHTSA to develop privacy standards that would force manufacturers to be more transparent in how vehicle data are collected, stored, and used.<sup>117</sup> However, the SPY Act never made it out of Committee. Like federal law, state law has generally failed to address the privacy problems with AVs.

The lack of federal and state oversight does not mean cities can avoid privacy concerns. AVs will create many of the

same legal questions as cellular data, GPS technology, and internet usage. Courts have already begun to answer some of these questions through the lens of the Fourth Amendment.<sup>118</sup> In *U.S. v. Jones*, the Supreme Court confronted the acquisition of information without a warrant that generated “a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.”<sup>119</sup> In *Jones*, the government placed a GPS device directly on a vehicle, prompting the Court to find that the government’s action was a search. However, the Court did not rule on the reasonableness of the search, and as Justice Scalia opined, what is considered a reasonable intrusion into privacy may shift as technology advances.

For now, the “third-party” privacy doctrine appears to be solid ground, in terms of AV privacy; it affords a loophole in Fourth Amendment constraints where the government can ostensibly obtain AV locational data from private, third-party sources to whom the vehicle users have granted access. Some argue, though, that this loophole could be eliminated by expanding the definition of “papers” under the Fourth Amendment to include data held by third parties.<sup>120</sup>

Ultimately, lawyers cannot be certain how courts will treat governmental use of location data from AVs, especially if the government is not involved in the installation of tracking technology.<sup>121</sup> When accessing or making use of AV data, local governments should proceed cautiously to ensure they are within constitutional parameters.

One of the largest privacy concerns is the capability for (and likelihood of) AV companies to monetize the information. As with smartphones, AVs will generate a tremendous amount of tracking data that will prove valuable for advertising and marketing purposes.<sup>122</sup> One think tank estimates that car data monetization will generate a whopping \$450-750 billion by 2030.<sup>123</sup> For now, the industry has agreed to regulate itself. In 2014, 20 automakers

signed a voluntary set of automotive privacy principles, effective with 2017 models, agreeing to ask permission before using or sharing sensitive information about occupants, and to limit what they share with government and law enforcement. While there may be some justifications that AV consumer privacy laws should develop at the state level, it is doubtful that these laws would be broad and comprehensive enough to regulate AVs.<sup>124</sup> Due to the interstate qualities of AVs, a federal approach – such as the one currently underway at the NHTSA and the Federal Trade Commission – makes more sense.<sup>125</sup>

Finally, there is a very specific threat to data privacy: cyber-attackers. AVs and their supporting infrastructure will inevitably hold personal data which will be of interest to cyber-criminals.<sup>126</sup> Many experts believe that the installation of ransomware could pose a considerable threat to connected cars. Undoubtedly, AVs will be vulnerable to malicious attacks, which implicates AV technology producers from a liability standpoint, but also presents significant safety concerns for consumers as well as cities, which enforce traffic and criminal laws and respond to emergencies.

While consumer protection and cybersecurity protection are not the bailiwicks of local government, municipalities should still press AV operators to understand how data about their residents will be collected, used, and protected.

#### *H. Not Boilerplate: Liability and Insurance*

Who is to blame if a self-driving car gets in a wreck? The answer, not surprisingly, is complicated. In order to resolve the question of fault, the courts will indeed need to consider “novel and in some cases challenging questions.”<sup>127</sup> For now, responsibility for AV accidents will fall on the human driver, the AV technology providers, the car manufacturer (which could be the same entity as the AV technology provider), and, in some instances, cities.<sup>128</sup>

This section describes how the legal system may eventually apportion fault in AV accidents.

Much of the complexity about liability lurks in autonomy Levels 3 and 4, during the handover from vehicular control to human control. Experiments have found time lags in drivers retaking control and other delays with humans returning to baseline driving performance.<sup>129</sup> This has led companies such as Waymo and Ford to advocate for fully autonomous cars that avoid the need for handovers – the process through which control shifts to the vehicle. As the Harvard Business Journal points out, this may be too large of a leap. With no driver as backup, there is a risk that AVs will be thrust into environments that they can’t yet navigate.<sup>130</sup> The best route is for regulators to establish standards that define an effective handover, and reasonable time periods for a driver to retake control.<sup>131</sup>

Despite this dilemma, legal scholars are confident existing tort and contract legal frameworks are sufficient to address liability questions surrounding AVs.<sup>132</sup>

From a legal perspective, AV liability should shift from the compensation regime applied to conventional driving, largely premised on vehicular negligence, to a compensation regime that increasingly implicates product liability.<sup>133</sup> As technology enables increasing automation of vehicles, AV manufacturers will increasingly bear the burden for liability.<sup>134</sup> While more general theories of tort liability are viable,<sup>135</sup> products liability has emerged as the dominant theory for AV litigation. Thus, the remainder of this section focuses on manufacturer liability.

In a products liability case, liability usually depends on defects, of which there are three types: manufacturing defect, design defect, and failure to warn.<sup>136</sup> A manufacturer’s liability for manufacturing defects in AVs will be largely limited to quality-control problems with the hardware of the operating system, including the cameras, lasers, radars, and other physical components of the system

or vehicle.<sup>137</sup> Experts predict, though, that much of the AV product liability litigation will not involve manufacturing defects.<sup>138</sup>

In contrast, AV software is considered part of the AV's operating system, and defects in software implicate design defects claims. AV users will probably argue that manufacturers did not design the AV adequately to protect its occupants during a crash. Under the "risk-utility" analysis more commonly applied by courts in design defect claims, manufacturers will stress the extraordinary safety benefits of AVs, while consumers will allege that designs can be improved.<sup>139</sup>

Finally, when AV litigation arises based on failure to warn claims, manufacturers will argue that they cannot warn for every imaginable scenario. Yet, the enormous amounts of data available to manufacturers could lead to enhanced obligations. Practically speaking, as regulators craft legislation to clarify the legality of operating AVs on public roads, it is impossible to answer all of the associated liability questions that need to be addressed. Luckily, products liability law has proven to be remarkably adaptive to new technologies.<sup>140</sup>

The Brookings Institute has proposed several guiding principles as governments at the federal, state, and local level grapple with liability issues.<sup>141</sup> First, Congress should not preempt state tort AV remedies, except that liability of commercial AVs should be addressed federally. Second, manufacturers of non-AVs should not be liable for alleged defects introduced through third party conversions in an AV. Additionally, while clarification of liability will take time to sort out, NHTSA's guidance document offers a first-step recommendation: states should explicitly define what is meant by "drivers" of AV for the purpose of traffic laws and enforcement. NHTSA recommends that when the AV systems are monitoring the roadway, the surrounding environment, and executing driving tasks (Levels 3 through 5), the vehicle itself should be classified as the driver, and licensed human operators classified as drivers for Levels 1 and 2

functionalities.<sup>142</sup> This guidance from the NHTSA is instructive for cities, as cities will need to align their municipal codes with trends in state and federal law.

Besides manufacturers, insurance companies possibly stand to lose the most when it comes to AV liability. AV technology could shrink the auto insurance sector by \$137 billion by 2050.<sup>143</sup> The number of total claims submitted to insurance companies is expected to decline, but the cost per claim is anticipated to increase due to the expensive components integrated into AVs.<sup>144</sup> Additionally, while AVs have the potential to increase safety and reduce accidents, the severity of those accidents will be much greater if AV systems fail.<sup>145</sup>

State Farm, the nation's largest automobile insurer, notes that the industry will need to overhaul the way it measures risk for auto insurance, which could significantly impact insurance rates.<sup>146</sup> Likely, as a condition of providing insurance for drivers of AVs, insurers may require greater access to data that could be used to reconstruct the actions of the "driver" – whether human or automated – before an accident.

For cities, insurance impacts are relevant for two reasons. First, cities may specify insurance requirements for AVs in their jurisdiction, and need to understand the demands by the insurance industry. Second, cities may employ their own AVs, as part of solid waste management or public transit, and will need to budget accordingly for changes in insurance rates.

## Conclusion

Cities need to start planning now for AVs, which clearly create a litany of issues: impacts to municipal budgets, shifts in the workforce, traffic impacts, effects on transit systems, equity in access, infrastructure support, land use modifications, privacy and data concerns, and liability and insurance.

The American Planning Association (APA) urges that localities not take a "wait and see" approach.<sup>147</sup> The APA has numerous checklists that identify

AV action items: developing a fact sheet on autonomous technology; forming an internal working group with stakeholders from critical departments, such as IT, transportation, and economic development; and identifying internal barriers for regulation or adoption, such as budgets or legacy technology contracts.<sup>148</sup> The APA resource also recommends how to engage city residents and community stakeholders about AV technology.

Undoubtedly, law and policy will play a critical role in shaping the trajectory of AV development and deployment on municipal streets, and local government lawyers will have a significant role in paving the way.

## Transportation 1

*Editor's Note:* This article was published in the September-October 2019 *Municipal Lawyer* by the International Municipal Lawyers Association (IMLA) and is reprinted with IMLA's permission. The full article, with endnotes, is available on the League's website here: <https://lwm-info.org/191/Legal-Articles>

## About the Author:

Crista M. Cuccaro is an Assistant City Attorney in Durham, North Carolina, where she focuses on community development, municipal finance, and economic development. Prior to joining the City of Durham, Crista was a Staff Attorney in Knoxville, Tennessee. In Tennessee, her practice included land use and redevelopment, and she served as Vice-President of the Tennessee Municipal Attorneys Association. Crista earned her B.A. degree from the University of North Carolina and her J.D. degree from the University of Tennessee College of Law, but she is a Duke basketball fan. Contact Crista at [Crista.Cuccaro@durhamnc.gov](mailto:Crista.Cuccaro@durhamnc.gov)



and reimbursements from the City's HRA plan, were determined to be compensation that should have been included in the regular rate calculation. The court ruled that the HRA payments needed to be included as compensation because the City did not make irrevocable contributions to a trustee or third-party administrator with fiduciary obligations that the court believed were required by the regulations.<sup>5</sup>

## Conclusion

Staff charged with oversight for payroll should receive training in state and federal wage and hour laws to ensure compliance with the regular rate rules, along with the myriad of other provisions governing overtime and other compensation paid to employees. Conducting an assessment of your wage and hour practices and policies with employment counsel may also be a sound idea.

## Resources for employers:

- Overtime Pay Fact Sheets: <https://www.dol.gov/agencies/whd/overtime/fact-sheets>
- Compliance Assistance Toolkits: <https://www.dol.gov/agencies/whd/compliance-assistance/toolkits>
- Overtime Calculator: <https://webapps.dol.gov/elaws/otcalculator.htm>

## Employees 358

2. This list is not exhaustive. For a complete list see: <https://webapps.dol.gov/elaws/whd/flsa/otcalc/docstatac.asp>

3. The new guidance went into effect on January 15, 2020: <https://www.federalregister.gov/documents/2019/12/16/2019-26447/regular-rate-under-the-fair-labor-standards-act>

4. U.S. Department of Labor - Fact Sheet: Final Rule to Update the Regulations Governing the Regular Rate under the FLSA (December 2019)

5. 29 U.S.C. § 207(e)(4)(Exclusions include "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits to employees."); 29 C.F.R. § 778.217(a)(The trustee or third person "must assume the usual fiduciary responsibilities imposed upon trustees by applicable law.")



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## Legal Captions

### Employees 358

Lisa Bergersen's HR Matters explains what constitutes "regular rate of pay" for purposes of calculating FLSA-required overtime wages for non-exempt employees.

### Transportation 1

Article highlights the current legal framework governing autonomous vehicles (AVs) and policy implications AVs may have for municipalities such as traffic impacts, shifts in the workforce, effects on transit systems, privacy and

data concerns, land use modifications, infrastructure support, equity in access, liability and insurance, and impacts to municipal budgets. Article by Crista Cuccaro, reprinted from IMLA's *The Municipal Lawyer* (Sept./Oct. 2019).

## Transitions

**Assistant Planner:** Weston - Emily Wheaton

**City Clerk:** New Richmond - Michelle Scanlan

**City Manager:** Platteville - Adam Ruechel

**Economic Development Coordinator:**

Weston - Tom Chartrand

**Village Administrator:** Hartland - Tim Rhode

### Have an update?

Please send changes, corrections, or additions to Robin Powers at [rpowers@lwm-info.org](mailto:rpowers@lwm-info.org), fax (608) 267-0645 or mail to the League at 131 West Wilson Street, Suite 505, Madison, WI 53703

### RETIREMENT



#### South Milwaukee.

Congratulations to Wastewater Treatment Facility Superintendent Andy Bakalarski on his retirement! Thank you for your 34+ years of public service!



## 2020 Building Inspectors Institute

**April 15-17, 2020**

*Lake Lawn Resort, Delavan*

**\$205 Member Tuition, \$230 Non-Member Tuition** (Staff and officials from cities and villages that are currently members of the League and League Business Partners may register as members.)

**Hotel Information:** Make reservations directly with Lake Lawn Resort at 800-338-5253. \$82 single or double. Use booking ID *WI Building Inspectors Institute* to receive the block room rate. Deadline for room reservations at the block rate is March 25, 2020, or until group block is sold out, whichever comes first. 72-hour cancellation policy. Check-in is at 4:00 p.m. Check-out is at 11:00 a.m.

**Agenda and Registration Online at:** <http://lwm-info.org>

**Registration Deadline:** April 8, 2020

## 2020 League Workshops, Institutes, and Conferences

EVENT	DATES	LOCATION	LODGING	REGISTRATION FEE
Building Inspectors Institute	April 15-17	Delavan	Lake Lawn Resort 262-728-7950   \$82 Single/ double ID: WI Bldg Insp. Inst.	\$205 Member \$230 Non-Member
Local Government 101	May 8	Pewaukee	Holiday Inn Pewaukee - West   262-506-6300 Usually does not require overnight stay but small block is available	\$100 Member \$125 Non-Member
Local Government 101	May 15	Eau Claire	Lismore Hotel Eau Claire   715-835-8888 Usually does not require overnight stay but small block is available	\$100 Member \$125 Non-Member
Local Government 101	May 29	Oshkosh	Best Western Premier Waterfront   920-230-1900 Usually does not require overnight stay but small block is available	\$100 Member \$125 Non-Member
Local Government 101	June 5	Madison	Crowne Plaza Hotel Madison   608-244-4703 Usually does not require overnight stay but small block is available	\$100 Member \$125 Non-Member
Clerks, Treasurers & Finance Officers Institute	June 10-12	Oshkosh	Best Western Premier Waterfront 920-230-1900   \$82/single double ID: Clerks, Treasurers, Finance Officers	\$135 Member \$160 Non-Member
Municipal Attorneys Institute	June 17-19	Sturgeon Bay	Stone Harbor Resort   877-746-0700 \$135 single/double ID: League of WI Muni Attorneys Institute	\$295 Member \$320 Non-Member
Local Government 101	June 26	Oconto Falls	City of Oconto Falls Administration Building Usually does not require overnight stay	\$100 Member \$125 Non-Member
Chief Executives Workshop	August 19-21	Wausau	City Grill at Jefferson St. Inn   866-855-6500 \$128 single/double ID-Chief Execs Workshop	\$200 Member \$225 Non-Member
Local Government 101	September 11	Waupaca	Par 4 Resort   715-256-9000 Usually does not require overnight stay but small block is available	\$100 Member \$125 Non-Member
Municipal Assessors Institute	September 15-17	Stevens Point	Holiday Inn Hotel & Convention Center 715-344-0200 • \$82 single/\$109 double ID: Municipal Assessors Institute	\$190 Member \$215 Non-Member
Plumbing Inspectors Institute	September 23-25 *Date may change	Eau Claire	Lismore   715-835-8888 \$82 single/double ID: League of WI Muni's - Plumbing Insp Institute	\$165 Member \$190 Non-Member
Annual Conference and Engineering & Public Works Institute*	October 7-9	La Crosse	Radisson   608-784-6680 \$119 single/\$129 double ID: League of WI Municipalities Several overflow hotels. See website*	\$270 Member \$295 Non-Member
Police & Fire Commission Workshop	TBD	TBD	1-day workshop Usually does not require overnight stay but small block is available	\$130 Member \$155 Non-Member

**\* Room block open July 1, 2020**



**CORRECTION:**

In our January 2020 *The Municipality* article titled, *Badger Book Overview*, it is important to clarify that Badger Books, used to check in and register voters and process absentee ballots at local polling places, do NOT use an internet connection.



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