



11333 N. Cedarburg Rd.
Mequon, WI 53092
Phone: 262-236-2941
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of the City Administrator

PUBLIC WELFARE COMMITTEE

Tuesday, June 8, 2021

5:30 PM

Virtual Meeting

Agenda

ELECTRONIC MEETING NOTICE: Pursuant to the current recommendation of the CDC limiting the size of public gatherings and the various federal and state orders implementing that recommendation, and to help protect our community from the Coronavirus (COVID-19) pandemic, this meeting will be held virtually through the GoToMeeting platform with each member accessing the meeting remotely. Citizens may also join the meeting online or by phone. Please go to <https://www.gotomeet.me/Mequon/pwelfare> to join the meeting online or call into the meeting by dialing 1-866-899-4679 and enter access code 978-522-373.

WRITTEN PUBLIC COMMENTS may be made in writing in advance of the meeting. Written comments should be directed to the Administration Department at least 2 hours prior to the meeting by email at jschoenemann@ci.mequon.wi.us addressed to the intended committee. Written public comment may also be deposited in the drop box at City Hall on 11333 N. Cedarburg Road, Mequon at least 2 hours prior to the meeting. Comments received timely will be forwarded to all members of the body for their consideration.

VERBAL PUBLIC COMMENTS will be accepted only from members of the public who register in advance. Registration shall be made by sending an email to Assistant City Administrator, Justin Schoenemann at jschoenemann@ci.mequon.wi.us or by leaving a message at 262-236-2942 no later than 2 hours prior to the meeting.

- 1) Call to Order, Roll Call
- 2) Minutes
 - a. Meeting minutes May 11, 2021
 - b. Meeting minutes May 25, 2021
- 3) Ordinances
 - a. **ORDINANCE 2021-1591**- An Ordinance Amending Chapter 58 of the Mequon Municipal Code as it Relates to: A) Conditional Uses in Residential Zoning Districts; B) Conservation Subdivision Requirements in the R-1 District; and C) Other Modifications to Sections 58-8 (Definitions) and 58-265 (Agricultural Overlay)

- 4) Discussion Items
 - a. Chapter 2: Article II – Common Council and Article IV – Officers and Employees Ordinance Updates
 - b. Regulations of Political Signs
 - c. Chickens Minimum Lot Sizes 2021
- 5) Information Items
 - a. Work Calendar
- 6) Adjourn

Dated: June 3, 2021

/s/ Mark Gierl, Chair

Notice is hereby given that a quorum of other governmental bodies may be present at this meeting to present, discuss and/or gather information about a subject over which they have decision-making responsibility, although they will not take formal action thereto at this meeting.

Any questions regarding this agenda may be directed to the City Administrator's Office at 262-236-2941, Monday through Friday, 8:00 AM – 4:30 PM



See Agenda Packet for
Login and Complete Packet Details
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Office of the City Administrator

PUBLIC WELFARE COMMITTEE

Tuesday, May 11, 2021

5:30 PM

Virtual Meeting

Minutes

1) Call to Order, Roll Call

Present:

Chair Mark Gierl
Alderman Glenn Bushee
Alderman Kathleen Schneider

Also Present: Mayor Wirth, City Administrator Jones, Assistant City Administrator Schoenemann, City Attorney Sajdak, and Assistant Director of Community Development Zader

2) Elect Committee Chair

Alderman Gierl was nominated by Alderman Bushee. Alderman Gierl accepted the nomination.
Approved by Voice Acclamation [Unanimous]

3) Approval of Meeting Minutes

a. April 2021 Minutes

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Bushee
SECONDED BY: Alderman Schneider

AYES: Gierl, Bushee, Schneider

4) Resolutions

Action requested: review and recommend approval

a. **RESOLUTION 3846** A Resolution Terminating the City of Mequon's Declared Public Health Emergency in Response to COVID-19

A short discussion took place regarding the general public not being totally vaccinated yet since vaccinations began on 4/5, partitions being up in City Hall, and encouraging businesses to keep providing curbside pickup. The wording of the Resolution was also discussed.

RESULT: **Approved by Voice Acclamation [Unanimous]**
MOVED BY: Alderman Gierl
SECONDED BY: Alderman Bushee

AYES: Gierl, Bushee, Schneider

5) Ordinances

Action requested: review and recommend approval

- a. **ORDINANCE 2021-1587** An Ordinance Amending Chapter 58 of the Mequon Municipal Code, Adding Micro-Distilleries and Micro-Wineries to the List of Conditional Uses in the Town Center Zoning District

Assistant Director of Community Development Zader provided background of the Ordinance as being spurred by Foxtown who has applied for conditional use to brew and sell their own beer at the restaurant.

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Bushee

AYES: Gierl, Bushee, Schneider

- b. **ORDINANCE 2021-1588** An Ordinance Amending Chapter 58 of the Mequon Municipal Code, Adding Outdoor Power Equipment Stores to the List of Conditional Uses in the B-5 (Industrial) Zoning District

Assistant Director of Community Development Zader provided background of the Ordinance as being brought forward due to the sale of Mequon Lawn and Garden and their new location on Donges is zoned as Industrial. They have applied for conditional use.

RESULT: **Approved by Voice Acclamation [Unanimous]**

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Bushee

AYES: Gierl, Bushee, Schneider

- c. **ORDINANCE 2021-1591** An Ordinance Amending Chapter 58 of the Mequon Municipal Code as it Relates to: A) Conditional Uses in Residential Zoning Districts; B) Conservation Subdivision Requirements in the R-1 District; and C) Other Modifications to Sections 58-8 (Definitions) and 58-265 (Agricultural Overlay)

Assistant Director of Community Development Zader explained the Ordinance of approving conservation subdivisions that would allow for 3/4 acre lots which would provide smaller lots for residents to maintain and 60% open space that would be maintained by a HOA. A discussion then took place about resident input and their ability to petition, power being in the Planning Commission's hands rather than the Common Council, ability for owners' to rezone in the future, and making sure requirements and standards are being met by developers. While the motion to approve failed, Aldermen Bushee and Guerl want to see this in another form, will bring back for discussion at next meeting.

RESULT: **Failed [Unanimous]**

MOVED BY: Alderman Schneider

6) Discussion Items

- a. Chapter 2: Article II – Common Council and Article IV – Officers and Employees Ordinance Updates

This discussion was postponed until the Special Meeting on 5/25/21.

7) Information Items

- a. Work Calendar
- b. Special Meeting Coordination

A special meeting will take place on 5/25/21 at 5:30 P.M. to further discuss Ordinance 2021-1591 and Chapter II.

8) Adjourn

A motion to adjourn was made at 6:53 P.M. by Alderwoman Schneider and seconded by Alderman Guerl. All voted in favor by a voice vote.

Respectfully Submitted,

Carrie Enea
Executive Assistant



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Office of the City Administrator

PUBLIC WELFARE COMMITTEE

Tuesday, May 25, 2021

5:30 PM

Virtual Meeting

Minutes

1) Call to Order, Roll Call

Present:

Chair Mark Gierl

Alderman Glenn Bushee

Alderman Kathleen Schneider

Also Present: Mayor Wirth, Assistant Director of Community Development Zader, City Attorney Sajdak, Assistant City Administrator Schoenemann, Executive Assistant Enea

2) Ordinance:

- a. **ORDINANCE 2021-1591** An Ordinance Amending Chapter 58 of the Mequon Municipal Code as it Relates to: A) Conditional Uses in Residential Zoning Districts; B) Conservation Subdivision Requirements in the R-1 District; and C) Other Modifications to Sections 58-8 (Definitions) and 58-265 (Agricultural Overlay)

Assistant Director of Community Development Zader began by explaining how the protest petition was being applied to the Ordinance so residents would have the ability to protest the development layout plan and get referred to the Common Council who would then have the ability to modify the plan if needed. City Attorney Sajdak stated the Common Council could set whatever zoning they wanted and Protest Petitions are not prohibited. More discussion ensued on the language and methodology of how many votes needed to affirm. The 3/4 acre lot size was then discussed and the benefit of preserving the open space. There was a concern about these neighborhoods being overturned in the future and divided. That was possible but highly unlikely due to the joint ownership. The bonus acre given to developers of 40 acre subdivisions as an incentive was also discussed. It was voted to go forward to the Common Council with the .75 acre lots in a conservation subdivision with a protest petition or 2 person Alderman request for evaluation.

RESULT: **Approved with Amendments [Unanimous]**

MOVED BY: Alderman Schneider

SECONDED BY: Alderman Bushee

AYES: Gierl, Bushee, Schneider

3) Discussion Item

- a. Chapter 2: Article II – Common Council and Article IV – Officers and Employees Ordinance Updates

Assistant City Administrator Schoenemann gave an overview of where revisions were at when COVID occurred putting this to the back burner until now.

Discussion began with Actions of a Standing Committee(2-40) where the Mayor needs to put something submitted by a standing committee onto an agenda within 2 months of receiving it. Prior, there was no timeline and a Mayor could potentially not put something on an agenda.

2-41: Procedures for Ordinances and Procedures: No changes, just putting current practice onto paper.

2-42: Rules and Procedures for more Common Council items: New Section A- If objection by an Alderman, objection can be overruled by Majority Vote.

2-43: Voting Procedures: Mayor does not vote unless there is a tie. 5 affirmative votes needed to pass an item. Process for roll call votes, all things financial an Alderman can call for a roll call vote.

There were no questions regarding the reconsideration process, clerk duties, or meeting minutes. They discussed the Mayor's email about flexibility in not delivering hard copies to Aldermens' homes but to send electronically instead. There was no objection.

Assistant City Administrator Schoenemann will make the updates.

Part 3 regarding Administration: Duties between the Mayor and City Administrator will be reviewed at the next meeting. Alderman Mayr will be invited to the next meeting to discuss since he is familiar with this section.

Chickens and the Political Sign Ordinance will be on the next meeting agenda as well.

4) Information Item

- a. Work Calendar

5) Adjourn

A motion to adjourn was made at 6:39 P.M. by Alderman Bushee and seconded by Alderwoman Schneider. All voted to adjourn by voice vote.

Respectfully Submitted,

Carrie Enea

Executive Assistant

Attachment: Public Welfare Mtg Minutes May 25 (6336 : May 11, 2021 and May 25, 2021 Meeting Minutes)



11333 N. Cedarburg Road
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www.ci.mequon.wi.us

Office of Community Development

TO: Public Welfare Committee
FROM: Kim Tollefson, Director of Community Development
DATE: May 11, 2021
SUBJECT: ORDINANCE 2021-1591 An Ordinance Amending Chapter 58 of the Mequon Municipal Code as it Relates to: A) Conditional Uses in Residential Zoning Districts; B) Conservation Subdivision Requirements in the R-1 District; and C) Other Modifications to Sections 58-8 (Definitions) and 58-265 (Agricultural Overlay)

Background

The proposed text amendments include changes to Chapter 58 of the Municipal Code related to conditional uses in all residential zoning districts and conservation subdivisions in the R-1 zoning district. In addition, the proposed amendments include formatting changes, that will help make the Code clearer and more concise.

Analysis

Conditional Uses: The changes to conditional uses in residential zoning districts was based on recently enacted legislation (2017 Wisconsin Act 67) which among other things, makes significant changes to the rules and requirements regarding conditional use grants. The changes have been reviewed by the Planning Commission Policy Subcommittee and the Planning Commission over the last year and are now ready for final review and approval.

In making changes to the conditional use section for residential districts, staff made changes by one of the following methods:

- Change the use from conditional to permitted (In-Home Daycare)
- Move the use to the OA district (Microbrewers, Wineries)
- Remove the use and effectively make it prohibited (Churches, Public Admin.)
- Add specific conditions to the listed conditional use (Guesthouse, ADU's)

As part of this process staff tried to identify any existing uses that would become nonconforming based on the changes being proposed. If the proposed changes are acceptable, then additional action is necessary for a few specific sites (see attached list). To be consistent, with other similar uses, the impacted sites will be rezoned to IPS (Institutional).

Conservation Subdivisions: The use of conservation design subdivisions in the rural areas of Mequon has been extremely popular over the last 20 years not only for developers but for home buyers and residents. Currently, the process to approve a conservation subdivision requires a rezoning amendment to a Planned Unit Development. The proposed language would eliminate

the need to seek a rezoning of the property to utilize a conservation design. The rezoning process can add at least three months to the approval process and adds a layer of uncertainty to all stakeholders involved in the process. In conjunction with eliminating the rezoning requirement, the proposed amendment provides specific design criteria for conservation subdivisions. In the past, staff has relied on several established guidelines that have been used as a template to evaluate proposed development requests. Incorporating these requirements into the ordinance will make the process clear and transparent for all those involved or impacted by the development.

As stated above, the proposed text amendment details specific design and development requirements including the following:

- Specifying a minimum .75-acre lot size
- Requiring a maximum 10% lot coverage ratio
- Requiring a minimum 25 acres
- Specifying each development shall have at least two road connections
- Requiring 60% of the land area as open space
- Allowing a bonus lot for every 40 acres of land that is part of the subdivision
- Requiring a minimum 300-foot open space buffer to existing public roadways and residential lots

Many of the provisions listed above have been required conditions in previously approved PUD's. The most significant deviation from what has occurred in previously approved developments is the allowance for lots to be .75 acres in size. A majority of previously approved conservation subdivisions in the R-1 had lot minimums around 1.5 acres. The smaller lot size minimum is recommended because it will allow for more flexibility in design and will create larger clusters of homesites. This will in turn create larger areas of protected open space. The open space buffer requirement has also been increased from 200 feet to 300 feet as part of these changes. This will allow for a greater setback along existing roads to keep it in a natural setting.

There is a new provision that would allow a density bonus of one lot for every 40 acres. On a 40-acre development, this would change the density from 5-acre lot size to 4.44-acre lot size. The density bonus is meant to encourage the use of conservation subdivisions by offsetting some of the cost associated with developing in this manner. The bonus will also encourage consolidation of smaller parcels to get to the 40-acre threshold.

The proposed ordinance will now require two or more road connections for every new development. For future connections to undeveloped parcels, the Code will dictate that an eyebrow be installed within 150 feet of the property line unless the Planning Commission determines that the adjacent parcel will be developed in a near future. The area from the eyebrow to the property line will be dedicated as unimproved right-of-way and will be the responsibility of the developer of the adjacent parcel to install.

Other Changes: As part of the proposed text amendments, the structure of the Residential Zoning District Section of Chapter 58 has been modified to make it more user friendly. This includes the addition of use tables similar to what are found in the TC (Town Center) Zoning

District. Changes have also been made to Section 58-8 (Definitions) and 58-265 (Agricultural Overlay) of the Code to be consistent with the changes to residential sections.

Public Welfare Committee

The Public Welfare Committee reviewed the proposed language at its May 11th and May 25th meetings. The Committee asked staff to add language that would give the Common Council the ability to review and act on any conservation subdivision application if there were objections from neighborhood residents. Staff has prepared language that would allow neighbors to file a protest petition related to the development layout plan. Approval of the plan would require a super majority of the Common Council. In addition, staff added language that two alderman or one alderman and the mayor would be able to call up the development plan to the Common Council, similar to a conditional use grant. The Committee will be reviewing the proposed language at its June 8, 2021, meeting (see proposed changes attached in Exhibit A).

Fiscal Impact

The fiscal impact is neutral.

Recommendation

On May 3, 2021, the Planning Commission recommended adoption of the proposed ordinance amendments by a vote of 8-0.

Attachments:

Exhibit A With Public Welfare Changes (DOCX)

Exhibit B (DOCX)

Exhibit C (DOC)

Exhibit D (PDF)

Suggested Amendment Language from Chairman Gierl 5 17 21 (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

ORDINANCE 2021-1591

An Ordinance Amending Chapter 58 of the Mequon Municipal Code as it Relates to: A) Conditional Uses in Residential Zoning Districts; B) Conservation Subdivision Requirements in the R-1 District; and C) Other Modifications to Sections 58-8 (Definitions) and 58-265 (Agricultural Overlay)

RECITALS

A. The Common Council of the City of Mequon previously adopted a Zoning Code that is presently codified in Chapter 58 of the Mequon Municipal Code.

B. On May 3, 2021, the Planning Commission approved changes to Chapter 58 as it relates to Conditional Uses in the Residential Zoning Districts, Conservation Subdivisions in the R-1 Zoning District, as well as changes to 58-8 (Definitions) and 58-265 (Agricultural Overlay)

C. The Common Council wishes to amend the Zoning Code as it relates to Conditional Uses in the Residential Zoning Districts and Conservation Subdivisions (as attached in Exhibit A), modify Section 58-8 of the Zoning Code related to definitions (as attached in Exhibit B) and Section 58-265 of the Code of Zoning Code as it relates to the Agricultural Overlay (as attached in Exhibit C), add tables for permitted uses, conditional uses, accessory uses, and technical chart (as attached in Exhibit D)

BASED UPON THE FOREGOING RECITALS, the Common Council of the City of Mequon, Wisconsin, do ordain as follows:

SECTION I

Chapter 58 of the Municipal Code as it relates to Conditional Uses in Residential Districts, Conservation Subdivisions, certain definitions, the Agricultural Overlay and general uses and technical components of the code is amended as shown in the attached Exhibits a through D.

SECTION II

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III

All ordinances and parts of ordinances in contravention to this ordinance are repealed.

SECTION IV

This ordinance shall be in full force and effect upon its passage and on the day after its publication.

Approved by: John Wirth, Mayor

Date Approved: June 8, 2021

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on June 8, 2021.

Caroline Fochs, City Clerk

Published: _____

DIVISION 3. - RESIDENTIAL DISTRICTS**Sec. 58-234. - R-1 single-family rural residential district.**

- (a) *Purpose.* The R-1 district is intended to provide for large lot single-family residential development in rural areas that are not served by public water or sewerage facilities and that are not yet appropriate for development at higher densities. This district shall generally be located within the area designated on the land use plan map as "rural service area."
- (b) *Design standards – generally.* The following design standards shall apply to all residential developments on development sites of 25 acres or larger developed after the effective date of the ordinance from which this section is derived, including both estate lot design subdivisions and conservation subdivisions:
 - (1) Residential dwelling lots shall be accessed from streets classified as land access by Resolution 607.
 - (2) Developments shall include hard surface (asphalt, stone or other materials approved by the planning commission) bikeway/pedestrian path connections to adjoining sites unless, as determined by the planning commission, such connections are not feasible. Connections shall be required even if the adjoining sites do not yet have paths. The owners of a development shall be responsible for the operation, maintenance and replacement as required of the bikeway/pedestrian path connections, including any requirements for snow removal as set forth in this code.
 - (3) Public and private streets shall satisfy the following requirements:
 - a. The development shall have two or more street connections at the boundaries of the development.
 - b. Provided at least one street connection creates legal access to an existing street, any other connection may be made to one or more adjoining undeveloped parcels or, as approved by the planning commission, parcels likely to be redeveloped. For future street connections to undeveloped parcels, the street shall terminate in an eyebrow, in accordance with Standard Specifications of Land Development, within 150 feet of the property line of the undeveloped parcel. The area from the eyebrow to the property line shall be designated as right of way and shall be at least 60 feet wide. The developer shall install bollards on each side of the right of way. The bollards shall be placed at the property line and halfway to the eyebrow. The owners shall maintain the bollards in good condition and repair and replace them as necessary until such time as a street is constructed over the right of way. If an adjoining site has constructed one or more eyebrows as part of a prior development, the subject parcel shall be required to provide a street connection to each previously constructed eyebrow.

Exhibit A

- c. In lieu of the eyebrow described in the preceding paragraph, the planning commission may, if it determines in its discretion that development of an adjoining parcel is likely to occur in the foreseeable future, require the right of way area to be constructed as a street with a hammerhead termination. The planning commission may eliminate the hammerhead requirement if it determines, in its discretion, that the adjoining parcel will be developed before conclusion of the subject development.
- d. Streets shall be designed, as determined by the planning commission, to ensure that adjoining parcels have adequate connection to maximize development.
- e. Public streets and required rights of way shall be dedicated to the city at or prior to final plat final approval.

(c) *Conservation subdivisions.*

- (1) *Purposes.* The city encourages conservation subdivision design for development sites of 25 acres or larger, having determined that, if the majority of future residential developments in the R-1 district are conservation subdivisions, the city will:
 - a. Implement adopted city policies seeking to conserve a variety of irreplaceable and environmentally sensitive resource lands as set forth in the city's land use plan and other similar plans.
 - b. Conserve open land, including those areas containing unique and sensitive natural features such as woodlands, steep slopes, streams, wetlands, floodplains, drainage courses, natural meadows, specimen trees and scenic features, by setting them aside from development.
 - c. Provide greater design flexibility and efficiency in the siting of services and infrastructure, including the opportunity to reduce utility runs and the amount of paving required for residential development.
 - d. Reduce erosion and sedimentation by retaining existing vegetation and the minimizing development on steep slopes.
 - e. Protect areas of the city with productive agricultural soils for continued or future agricultural use by conserving blocks of land large enough to allow for efficient farm operations.
 - f. Create neighborhoods with direct visual access to open land, neighborhood open space and a strong neighborhood identity.
 - g. Create environmental amenities through creative design.

- h. Conserve scenic views and elements of the city's rural character, and minimize perceived density, by minimizing views of new development from existing streets.
 - i. Protect the physical and visual integrity of environmental corridors and natural isolated areas as defined by the Southeastern Wisconsin Regional planning commission.
- (2) *Minimum development site size.* Conservation subdivisions shall only be permitted on development sites of 25 acres or larger. Two or more adjoining parcels may be combined to create a development site of 25 acres or larger.
 - (3) *Minimum protected conservancy area.* At least 60% of the land area in a conservation subdivision shall be protected conservancy area(s).
 - (4) *Density.* One dwelling shall be allowed for every five acres (including protected conservancy areas) in a conservation subdivision. Additionally, as an incentive to develop as a conservation subdivision rather as an estate lot design subdivision, there shall be one bonus dwelling for every 40 acres in a conservation subdivision.
 - (5) *Design standards.* In addition to the standards set forth in (m), the following design standards shall apply to all conservation subdivisions developed after the effective date of the ordinance from which this section is derived:
 - a. A minimum 300-foot open space buffer shall be maintained between preexisting public streets and any residential dwelling lot unless, and only to the extent that, the planning commission determines that a lesser buffer is required to allow construction of the allowed homes while maintaining critical environmental features.
 - b. For lots in conservation subdivisions on which a residential dwelling may be located, the minimum average lot width and lot length shall be flexible and subject to planning commission approval of the conservation subdivision plan.
 - c. For structures on lots in conservation subdivisions on which a residential dwelling may be located, the minimum building setback shall be flexible and subject to planning commission approval of the conservation subdivision plan; however, the location of residential lots shall be subject to the design standards for conservation subdivisions set forth below.
 - d. In addition to bikeway/pedestrian paths, nature trails shall be included to provide subdivision resident access from internal streets to the protected conservancy area(s). The owners of a development shall be responsible for the operation, maintenance and replacement as required of the nature trails.

Exhibit A

(d) *Protected conservancy areas and other common areas and facilities.*(1) *Ownership.*

- a. *Homeowner Association or Condominium Association.* Protected conservancy areas and other common areas and facilities shall be held in common ownership by a homeowner association or shall be controlled through a condominium declaration and held as common elements. In either instance, the following regulations shall apply:
 1. Prior to approval of the final plat, the applicant shall provide the city a description of the organization of the proposed homeowner or condominium association, together with copies of its governing documents, including all documents governing ownership, maintenance and use restrictions for common facilities or common elements. All such documents shall be consistent with the provisions of this ordinance.
 2. The homeowner or condominium association shall be operating (with financial subsidization by the owner or applicant, if necessary) before the earlier of the sale of any dwelling or approval of the final plat
 3. Membership in the homeowner or condominium association shall be mandatory for all purchasers of property in the development and their successors in title.
 4. The homeowner or condominium association shall be responsible for maintaining in good condition and repair, repairing, replacing as necessary and maintaining insurance in connection with common facilities (including without limitation bikeway/pedestrian trails and nature paths), common elements and the protected conservancy area. Such responsibility shall be memorialized in recordable agreements acceptable to the city.
 5. The homeowner or condominium association shall have the power and authority to assess members for their proportionate share of costs associated with maintenance of such common facilities and areas. If the homeowner or condominium association fails to perform the work, the city may do so and special assess all homeowners or condominium unit owners for such costs.
 6. The governing documents for the homeowner or condominium association shall confer legal authority on the homeowner or condominium association to place a lien on the property of any member who falls delinquent in dues or assessments. Such dues and assessments shall be paid with the accrued interest before the lien may be lifted.
 7. Written notice of any proposed transfer of common facilities by the homeowner or condominium association or the assumption of maintenance for common facilities must be given to all members of

the homeowner or condominium association and to the city no less than 30 days prior to such event.

8. The homeowner or condominium association shall administer, maintain, replace as necessary and operate such common facilities.
9. If at any time the homeowner or condominium association does not exist for any reason, each owner of record of property rights in the development shall be liable for the owners' obligations set forth in this ordinance to the same extent such owner would have been liable for the costs of such obligations if such association had been properly formed and currently existing.

b. *Private conservation organization.* Alternatively, with consent of the city, an owner may transfer either fee simple title of the protected conservancy areas or easements on the protected conservancy areas to a private nonprofit conservation organization provided that:

1. The conservation organization is acceptable to the city and is a bona fide conservation organization intended to exist indefinitely in accordance with the Internal Revenue Service Code requirements.
2. The conveyance contains appropriate provisions for reverter or retransfer if the organization becomes unwilling or unable to continue carrying out its functions.
3. The protected conservancy area is permanently restricted from future development through a conservation easement and the city is given the ability to enforce these restrictions; and
4. A maintenance agreement acceptable to the city is established between the owner and the organization.

c. *Dedication of easements to the city.* The city may, but shall not be required to, accept easements for public use of any portion of the common land or facilities. In such cases, the facility remains in the ownership of the condominium association, homeowner association or private conservation organization while the city holds the easements. In addition, the following requirements shall apply:

1. There shall be no cost of acquisition to the city.
2. A satisfactory maintenance agreement shall be reached between the owner and the city designating the owner as responsible for operation and maintenance.

(2) *Uses.* The following uses and no others are allowed in a protected conservancy area unless otherwise prohibited pursuant to applicable law. A use described below is only allowed if it is specified in the easement described below. Each of the

following uses is limited as provided by other applicable laws and shall be subject to all applicable approvals and permits required for them under this code.

- a. Each of the following uses is permitted in protected conservancy areas:
 1. Conservation of open land (e.g., woodland, wetland or managed meadow).
 2. Silviculture in accordance with approved standards for selective harvesting and sustained yield forestry and subject to the city's specimen tree ordinance.
- b. Each of following uses is permitted in protected conservancy areas provided the planning commission, as part of the concept plan approval or upon separate application, determines that the use, in the location proposed, does not interfere with or propose a threat to sensitive natural features and provided such use complies with all other applicable laws:
 1. Agricultural and animal-related uses that are permitted uses in the R-1 district.
 2. Pastureland for horses for non-commercial recreational use.
 3. Passive recreational amenities and designated areas for active recreational amenities. Amenities include, but are not limited to, features such as gardens, trail systems leading to destinations, sport courts, gathering and seating areas and children's play equipment.
 4. Sewage disposal systems, wells and storm water detention/retention systems that service individual lots or for all or part of the subdivision.
 5. Easements and facilities for drainage, access and public sewer and water.
 6. Easements for gas, electric, telecommunications and other city-approved private purpose.
- c. The following are conditional uses in protected conservancy areas:
 1. Agricultural and animal-related uses that are conditional uses in the OA or R-1 district.
 2. Golf courses.
 3. Equestrian facilities for subdivision recreational use.

The planning commission may deny or impose conditions on approval of any such conditional use if the planning commission determines that such use is inconsistent with the protection of the specific natural features of the protected conservancy area or if and to the extent the planning commission would otherwise be allowed to deny or impose conditions upon such use under this code or other applicable law.

- (3) *Design standards.* The following design standards shall apply to all protected conservancy areas:
- a. There shall be no minimum lot size, minimum average lot width or minimum lot length for a protected conservancy area.
 - b. Any structure in a protected conservancy area shall be at least 100 feet from any local street or arterial.
 - c. Whenever possible, protected conservancy areas shall connect with existing or likely protected conservancy areas on adjoining parcels.
 - d. Protected conservancy areas shall be delineated outside individual dwelling lots.
 - e. Each protected conservancy area shall be accessible by subdivision residents from internal streets either directly or from paths that connect to such streets.
 - f. Protected conservancy areas shall be designed with appropriate advice and counsel from professional naturalists, landscape architects, biologists, horticulturists, or other qualified professional acceptable to the city.
 - g. Berms shall be permitted in a protected conservancy area, subject to the city's berm and other applicable regulations, unless and to the extent that the planning commission determines that a proposed berm would be inconsistent with the protection of the specific natural features of the protected conservancy area.
- (4) *Protected conservancy area easement.* Each protected conservancy area shall be subject to an easement in form and content approved by the planning commission. The easement shall, among other things:
- a. Define ownership.
 - b. Obligate the owner for the cost and responsibility of maintaining, replacing as necessary and maintaining insurance in connection with all common facilities (including without limitation bikeway/pedestrian trails and nature paths regardless of whether located in the protected conservancy areas), common elements and the protected conservancy area.
 - c. Define the range of permitted activities and uses and prohibit activities and uses not approved by the planning commission.
 - d. Incorporate the stewardship plan described below.

- e. Define the means for funding the owner's maintenance and insurance obligations, including both long-term capital improvements and annual operating and maintenance costs.
- f. Permit the city to enter the premises and correct any violation of the terms of the easement and provide that the costs of such corrective action, plus administrative costs and penalties, may be charged to the responsible owner and/or individual property owners who make up a condominium or homeowner association and may include administrative costs and penalties. All such costs shall become a lien against all properties in the development.

The approved and executed easement shall perpetually run with the land and be recorded in the Office of the Ozaukee County Register of Deeds.

- (5) *Stewardship plan.* Protected conservancy areas and rights of way adjoining the protected conservancy areas shall be subject to a stewardship plan professionally prepared and in form and content acceptable to the planning commission. The stewardship plan shall:
 - a. Establish objectives and timelines for each open space area and critical environmental area, including:
 - 1. Restoration efforts.
 - 2. Correction of increasing destructive conditions such as erosion.
 - 3. Measures for restoring historic features.
 - 4. The proposed end state for the area.
 - 5. The measures proposed for achieving the end state.
 - b. Commit the owner to control regulated weeds within the protected conservancy areas and adjoining rights of way within a reasonable time established in the stewardship plan, and effectively maintain that control, using either integrated management methods or a single management method only if such method is the most practical and economical method for achieving and maintaining control. As used in this paragraph, the following terms have the following meanings:
 - 1. "Control" means to destroy the above-ground portion of a regulated Weed in a manner and at the proper time to prevent the development and distribution of the Regulated Weed, and to prevent the spread of such Regulated Weed from one area to another.
 - 2. "Integrated management" means the use of a combination of several weed control tools to suppress regulated weeds, stimulate the competitive vigor of desirable plants or landscaping and prevent additional regulated weeds or the growth or expansion of regulated

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weeds, including without limitation the replacement of regulated weeds with recommended plants.

3. “Regulated weeds” means:

- i. All noxious weeds (as defined in Wis. Stat. § 66.96, as amended from time to time);
- ii. Nuisance weeds (as defined in Wis. Stat. § 66.995, as amended time to time);
- iii. The following health-related weeds: common burdock (*arctium minus*), common ragweed (*ambrosia artemisiifolia*), giant ragweed (*ambrosia trifida*), poison ivy (*rhhus radicans*) and wild parsnip (*pastinaca sativa*);
- iv. The following woody plants: autumn-olive (*elaeagnus umbellata*); buckthorn bushes (common buckthorn/*rhamnus cathartica*; glossy buckthorn/*rhamnus frangula*); honeysuckle bushes (morrow’s honeysuckle/*lonicera morrowii*; tartarian honeysuckle/*lonicera tatarica*; bella honeysuckle/*lonicera x bella*); and oriental or Chinese bittersweet (*celastrus orbiculatus*); and
- v. The following herbaceous plants: velvet leaf or indian mallow (*abutilon theophrasti*); garlic mustard (*alliarica petiolata*); spotted knapweed (*centaurea maculosa*); yellow nutsedge (*cyperus esculentus*); common and cut-leaved teasel (*dipsacus laciniatus* and *dipsacus sylvestris*); black nightshade (*solanum nigrum*); and cocklebur (*xanthium strumarium*).

c. Establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (i.e., lawns, playing field, meadows, pastures, croplands, woodlands, etc.) including:

1. Mowing schedules.
2. Weed control.
3. Planting schedules.
4. Clearing and clean-up.

d. Be incorporated in the easement described above.

e. Be a perpetual obligation of the owner of the protected conservancy area.

(e) *Process.*

- (1) *Concept plan.* For all developments, the planning commission shall take action on a concept development layout plan prior to the applicant filing for approval of a preliminary plat. The concept plan shall identify the following:

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- a. Primary conservation features including but not limited to wetlands, floodplains, drainage courses, steep slopes and specimen trees.
- b. Secondary conservation features including but not limited to woodlands, natural meadows, scenic features, passive and active recreational amenities and view sheds.
- c. Location of house sites.
- d. Street alignments and trails.

(2) Council Review.

- a. The common council shall review an approved concept development layout plan for a conservation subdivision, as described in section 58-234(e)(1)), upon the occurrence of and as follows:
 - 1. In the event of a written request from two aldermen or one alderman and the mayor, the concept development layout plan shall be referred to the common council and shall not be effective unless confirmed by the common council.
 - 2. In the event of a written protest against the concept development layout plan, duly signed and acknowledged by the owners of 51 percent or more of the parcels of land located in or whole or in part within 1,320 feet of the property line of the land included in such conservation subdivision, the development layout plan shall be referred to the common council and shall not become effective except by the favorable vote of six members of the common council. Each page of the protest shall describe the land that is the subject of the proposed conservation subdivision, a statement that the people signing the petition oppose the concept development layout plan and a statement describing the reasons for the opposition to the concept development layout plan. Any person signing a petition on behalf of an entity owner shall specify in the petition the name of the entity and the legal capacity on behalf of the entity in which he or she is signing the petition. The city shall conclusively determine which parcels are in or whole or in part within 1,320 feet of the land included in the conservation subdivision by utilizing the buffer or notification feature of the current version of the city's GIS software. In the case of a petition circulated by one or more individuals among multiple owners (as opposed to an individual acknowledgment by any singular owner), each circulator shall include an acknowledgment under penalty of perjury on the petition certifying that the circulator is an owner qualified to protest under this section; that the circulator personally

circulated the petition and personally obtained each of the signatures; that the circulator knows that the signers are also owners qualified to protest under this section and that the address of each owner is correctly included on the petition; that the circulator knows the owners signed the petition with full knowledge of its content; and, that the circulator knows each signer signed on the date stated opposite his or her name.

- b. Any request for confirmation under subsection a or any protest under subsection b must be filed with the clerk not later than 12:00 noon on the third Friday following the planning commission's approval of the concept development layout plan or any material change to the concept development layout plan. The common council shall take action on the request for confirmation or protest petition no later than the second common council meeting following the approval of the planning commission.
- c. If both a request for confirmation and a proper protest are timely filed, the common council shall proceed under the rules of the protest.
- d. In considering a request for confirmation or a protest, the common council may and should attempt to modify the development layout plan to mitigate legitimate concerns presented by the members of the common council requesting confirmation or the protesters rather than denying.

- (3) Easement and stewardship plan. For any application containing protected conservancy areas, including all conservation subdivisions, the easement and stewardship plan are required to be submitted with the preliminary plat and are subject to planning commission approval at the time of the preliminary plat.

Sec. 58-235. - R-1B single-family rural residential district.

The R-1B district is intended to provide for large lot single-family residential development primarily within the area designated on the land use plan map as "rural service area." The district regulations are designed to accommodate homes which will generally be served with private on-site waste facilities.

Sec. 58-236. - R-2 single-family rural residential district.

The R-2 district is intended to provide for large lot single-family residential development of a semi-rural nature in areas where public water or sewerage facilities are not reasonably available. This district shall generally serve as a transition between the urban and rural service area illustrated on the land use plan map. Additionally, this district is appropriate for development adjacent to rivers, streams, Lake Michigan, and other sensitive environmental areas.

Sec. 58-237. - R-2B single-family suburban residential district.

The R-2B district is intended to provide for large lot single-family residential development primarily within the area designated on the land use plan map as "urban service area." The district regulations are designed to reasonably accommodate large homes which may potentially be served by public sewerage facilities.

Sec. 58-238. - R-3 single-family suburban residential district.

The R-3 district is intended to provide for large lot single-family residential development primarily within the area designated on the land use plan map as "urban service area." The district regulations are designed to reasonably accommodate large homes which may potentially be served by public sewerage facilities.

Sec. 58-239. - R-4 single-family suburban residential district.

The R-4 district is intended to provide for medium sized lot single-family residential development within the area designated on the land use plan map as "urban service area." The district regulations are designed to accommodate moderately large homes in a manner which efficiently utilizes potential public water and sewerage facilities.

Sec. 58-240. - R-5 single-family suburban residential district.

The R-5 district is intended to provide for relatively small lot single-family residential development within the area designated on the land use plan map as "urban service area." The district regulations are designed to accommodate specialized housing needs characteristic of reduced lot and home size.

Sec. 58-241. - R-6 two-family and three to four unit multiple-family suburban residential district.

The R-6 district is intended to provide for high quality medium density residential development for two-family dwellings and multiple-family dwellings with no more than four units per structure within the areas designated on the land use plan map as "single-family attached." All uses are subject to planning commission approval of the building, site and operational plans.

Sec. 58-242. - RM multiple-family residential district.

The RM district is intended to provide for high quality, low density multiple-family development within the areas designated on the land use plan map as "multi-family." All uses are subject to planning commission approval of the building, site and operational plans.

Secs. 58-243—58-245. - Reserved.

Sec. 58-246. – Permitted uses in residential districts.

Table 58-246 sets forth the permitted uses for each residential zoning district. Permitted uses in any protected conservancy area in the R-1 district are set forth in section 58-234(d)(2).

[INSERT TABLE]

Sec. 58-247. – Permitted accessory uses in residential districts.

- (a) *Permitted accessory uses generally.* Table 58-247 sets forth the permitted accessory uses for each residential zoning district.

[INSERT TABLE]

- (b) *Garages and carports.*

- (1) No garage or carport shall be erected prior to the erection of the principal building to which it is accessory.
- (2) The following provisions apply to properties zoned R-1 through R-5:
 - a. Except as otherwise specifically provided below, no more than one principal garage, either attached or detached, shall be permitted on a lot.
 - b. If there is a residence without an attached garage, one principal detached garage not to exceed 800 square feet in area shall be permitted.
 - c. If a residence was constructed prior to year 2003 with an attached garage in which two full-sized personal automobiles cannot reasonably be stored side-by-side, one principal detached garage not to exceed 675 square feet in area shall be permitted, provided no such garage structure shall be sited in front of an existing residence or in such other location as shall unreasonably affect or adversely impact the beauty and general enjoyment of existing residences or adjoining properties.
 - d. Enclosed vehicular storage space for not more than one vehicle may be rented to persons not resident on the lot, such space being defined as an area not to exceed 300 square feet.

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(c) *Detached storage structures.*

In addition to any permissible garages, a single detached storage shall be permitted in the following zoning districts subject to the following conditions:

- (1) On any property zoned R-1 provided that no such detached storage structure shall exceed the lesser of 2,178 square feet or one percent of the area of the property; however, if the property is subject to an AO agricultural overlay, the property shall not be restricted in the number or size of detached storage structures.
- (2) On any property zoned R-1B through R-5 subject to the following conditions:
 - a. If a guesthouse is constructed as a conditional use, no detached storage structure is permitted.
 - b. A detached storage structure shall not exceed one percent of the lesser of (a) five acres or (b) the area of the property if the property is not divisible in the current zoning district or, if it is divisible, the zoning district's minimum lot size.

(d) *Parking requirements for the RM Zoning District.*

- (1) *Enclosed Parking.* Each dwelling unit shall be provided a minimum of the following number of enclosed parking spaces:
 - a. One-bedroom units: 1.75 parking spaces.
 - b. Two-bedroom units: 2.00 parking spaces.
 - c. Three-bedroom units: 2.00 parking spaces.
- (2) *Off-street parking ratio.* Off-street parking for guest parking shall be provided at the rate of one space for every two dwelling units, but no less than four spaces per development.

(e) *Home occupations.*

- (1) The home occupations shall be clearly incidental to the principal residential use.
- (2) The home occupation shall be carried on wholly within the principal residential dwelling or within a permitted accessory structure and only by residents occupying the premises and one additional person not a resident on the premises.
- (3) No article or service shall be sold or offered for sale on the premises except by telephone or electronically with products stored and any physical delivery occurring elsewhere.

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- (4) The home occupation shall not normally generate customer or client traffic to the residential premises.
- (5) No retail or wholesale business shall be conducted on the premises.
- (6) No sand, gravel, stone, topsoil or peat moss shall be removed from the premises for commercial purposes.
- (7) No materials, equipment or vehicles used in the home occupation shall be stored outside.
- (8) Any off-street parking area shall be maintained reasonably dustless and adequately screened from adjoining residential properties.
- (9) The home occupation shall not generate or result in offensive noise, vibration, smoke, dust, odors, heat, or glare if any of the foregoing creates a nuisance or is otherwise incompatible with the surrounding residential area.
- (10) In the R-6 zoning district, there shall be no signs for the home occupation. A sign for a home occupation in any other residential zoning district shall comply in all respects with the requirements in the sign code for home occupation signs.

Sec. 58-248. – Conditional uses in residential districts.

- (a) *Generally.* Table 58-248 sets forth the conditional uses for each residential zoning district. Specific conditions and requirements for each conditional use are set forth in the provisions following Table 58-248. These conditions and requirements are in addition to those set forth in, and imposed, under article II, division 3 and elsewhere in this Code.

[INSERT TABLE]

Exhibit A

(b) *Commercial outdoor recreational facilities.*

- (1) Such facilities are open to the public or available through membership.
- (2) Examples include, but are not limited to, athletic fields, sport courts, playgrounds, and golf courses.
- (3) Structures customary to such facilities may be approved; however, the primary activity shall be conducted outdoors.
- (4) Except for conservation subdivisions in the R-1 zoning district, these uses must be approved through a planned unit development.

(c) *Utility, transmission and distribution lines, poles, and other accessories.*

- (1) When a utility proposes a main inter-city transmission facility, the utility shall give notice to the planning commission of such intention and of the date of hearing before the public service commission and, before actual construction, shall file with the planning commission a map description of the route of transmission line.
- (2) Public and/or private utility installations less than three feet in height shall be subject only to city staff approval and may be allowed subject to staff-imposed conditions regarding, among other things, effective screening from public view with all-season vegetation.

(d) *Community living arrangements.*

- (1) No structure shall be greater than two stories.
- (2) Structures shall comply with the city's Architectural Guidelines for Residential Structures in effect at the time of approval.
- (3) The maximum floor area ratio shall be 20%.
- (4) Parking shall be located on the side or rear of the primary structure, shall be offset at least 30 feet from all property lines and shall be screened with all-season vegetation from adjoining one-family dwelling or two-family dwelling.
- (5) No signs shall be allowed.
- (6) The use shall be licensed to the extent required by state law, located as restricted by state law and subject to hearings before the common council to the extent allowed by state law.

Exhibit A

- (7) The planning commission, subject to all fair housing law requirements, may reject any application for a conditional use for a community living arrangement at its discretion.
- (e) *Accessory dwelling units.*
- (1) An accessory dwelling unit is an area, other than an area in a basement, attached to or contained within a primary dwelling unit with its own bathroom, kitchen and sleeping area. As used in this paragraph, a kitchen is an area with a sink, a refrigerator and a stove, range, oven or cooktop.
 - (2) The primary dwelling unit must be owner occupied at any time that a person other than the owner or a legal dependent of the owner occupies the accessory dwelling unit. A property shall be deemed to be owner occupied if an owner or in the case of an owner entity, the person who has voting control of the entity, is either registered to vote using that address or claims the property as the person's primary residence for the Wisconsin lottery and gaming credit.
 - (3) An accessory dwelling unit may only be occupied by a family member, blood relative, legal dependent, caretaker or paid servant of a resident of the primary dwelling unit.
 - (4) There can be no more than one accessory dwelling unit per one-family dwelling.
 - (5) The total living area of an accessory dwelling unit can be no larger than 40% of the total living area of the primary dwelling to which it is attached or contained. Total living area shall be measured from the outside of exterior walls (excluding cellars, basements, open porches, breezeways, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes).
 - (6) The accessory dwelling unit must have at least one common entrance with the primary dwelling unit.
 - (7) There shall not be separate direct entrances for each dwelling unit on the front of the building unless this prohibits handicapped access.
 - (8) An accessory dwelling unit may not have a separate postal address.
 - (9) An area in a basement that would qualify as an accessory dwelling unit if not in a basement shall be permitted without a conditional use grant provided there is no accessory dwelling unit on the property and provided that the city and the owner record an agreement that encumbers the property by which the owner covenants that no accessory dwelling unit may be constructed on the property and the use of such basement area shall be subject to the requirements of (2), (3), (6), (7) and (8).

Exhibit A

(f) *Guesthouses.*

- (1) A guesthouse is a detached structure with living quarters and is intended for the temporary stay of occasional guests.
- (2) A guesthouse may not contain a stove, oven, range or cooktop.
- (3) A guesthouse may not be rented or used as a separate dwelling.
- (4) A guesthouse may not be constructed unless the property contains a primary residence.
- (5) If a guesthouse is constructed, no detached storage structure is permitted unless the property is in the R-1 zoning district.
- (6) A guesthouse shall not exceed one percent of the lesser of (a) five acres or (b) the area of the property if the property is not divisible in the current zoning district or, if it is divisible, the zoning district's minimum lot size.
- (7) A guesthouse may not have a separate postal address.

(g) *Historically significant structures used as private clubs or private lodges.*

- (1) A structure is only historically significant if it is listed on the National Register of Historic Places or has been designated a local landmark by the Mequon Landmarks Commission.
- (2) No more than one vehicle may be temporarily parked in a driveway in front of the primary structure. All other exterior parking shall be located on the side or rear of the primary structure, shall be offset at least 30 feet from all property lines and shall be screened with all-season vegetation from any adjoining one-family dwelling or two-family dwelling.

(h) *Bed and breakfast establishments.*

Bed and breakfast establishments shall be licensed under, meet the requirements of and be operated in accordance with Wis. Stat. § 97.01 and Wis. Admin. Code § ATCP 73, as amended or renumbered from time to time, and all other applicable laws.

(i) *Landscape contracting businesses.*

- (1) The business shall occupy no more than 10 acres.
- (2) No outside storage of materials or equipment.

Exhibit A

- (3) The business and its primary operations must be at least 500 feet from any dwelling on any adjoining parcel.
- (4) No on-site sales of mulch or other related products.

Sec. 58-249. – Technical requirements of residential districts.

- (a) *Generally.* Table 58-249 sets forth the technical requirements for each residential zoning district.

[INSERT TABLE]

- (b) *Explanations.* As used in Table 28-248:

- (1) Minimum living area shall be measured from the outside of exterior walls (excluding cellars, basements, open porches, breezeways, garages and other spaces that are not used frequently or during extended periods for living, eating or sleeping purposes).
- (2) Minimum building setback shall be measured from the ultimate right-of-way line of each public street, road, or highway which abuts the subject property.
- (3) Minimum building offset shall be measured from each side and rear lot line other than a lot line subject to a minimum building setback.
- (4) Maximum lot coverage percentage shall be the percentage of a property covered by buildings and structures.

- (c) *Special maximum lot coverage standards.*

- (1) Maximum lot coverage percentage shall not apply to a residential planned unit development unless the common council determines otherwise in the ordinance that creates the planned unit development.
- (2) If a property is in the R-1 through R-3 zoning districts and the property is smaller than the minimum lot size for the zoning district in which it is located, the maximum lot coverage percentage shall be the percentage applicable to the zoning district with a minimum lot size smaller than, but closest in size to, the property.

Secs. 58-250—58-262. - Reserved.

Exhibit B**Sec. 58-8**

The following definitions shall be added to section 58-8 (the definitions section for the zoning code):

Attached means, when referencing a structure attached to a dwelling, that (a) the attached structure has interior access to the dwelling at or above grade, (b) a wall on the attached structure shares a wall on the primary dwelling, or is continually connected to a wall on the primary dwelling, for at least 30% of the shared or connected wall on the primary dwelling, but in any event for no less than six feet, (c) the attached structure and the primary dwelling have a common roof line or the attached structure has a connection between its roofline and the primary dwelling, and (d) there is a connection between the foundation of the attached structure and the primary dwelling. An attached structure shall be deemed to be part of the dwelling. This definition shall not modify the definition for the defined term *attached dwelling*. *Detached* means an adjoining structure or other structure on the property that does not meet the foregoing definition of attached and is not an attached dwelling.

Conservation subdivision means a residential development other than an estate lot design subdivision.

Estate lot design subdivision means a residential subdivision in which the minimum residential lot size is at least five acres.

Protected conservancy area means that portion of a development that is permanently set aside for the protection of sensitive natural features, farmland, scenic views and other unique features.

The following definitions already existing in section 58-8 shall be modified as follows (additions are underlined and deletions are stricken):

Dwelling, single-family, means a structure designed exclusively for use and occupancy by one family and that is not an attached dwelling.

Dwelling, two-family means a structure arranged or designed to provide dwelling units as attached dwellings for occupancy by two families living independently of each other.

Dwelling, multiple-family, means a structure arranged or designed as attached dwellings to be occupied by three or more families living independently of each other.

Lot coverage means that portion of the lot that is covered by buildings and structures.

The term “one-family” shall be replaced with “single-family” in the following locations of the code.

Section 58-301 – h1, k1, k2, m3

Section 58-302 - h1, k1, k2, m3

Section 58-303 -(B) Planned Residential Neighborhood a, b,

Exhibit B

The following sections of the code shall be modified as follows (additions are underlined and deletions are stricken):

Sec. 58-202. Establishment of districts.

In order to carry out the purpose and provisions of this chapter, the City of Mequon is hereby divided into the following districts:

R-1 single-family rural residential district five-acre minimum)

R-1B single-family rural residential district (2.5-acre minimum)

R-2 single-family rural residential district (two-acre minimum)

R-2B single-family suburban residential district (1.5-acre minimum)

R-3 single-family suburban residential district (one-acre minimum)

R-4 single-family suburban residential district ($\frac{3}{4}$ -acre minimum)

R-5 single-family suburban residential district ($\frac{1}{2}$ -acre minimum)

R-6 two-family and three to four unit multiple-family suburban residential district (20,000-square-foot minimum structure)

RM multiple-family residential district (low density: four to eight units/acre multiple-family dwellings)

Sec. 58-530(c)(4)

- (4) Feces shall be removed from yards and enclosures daily and stored in tightly covered metal containers that are setback at least 50 feet from the property line.

Sec. 58-532(f)(2)

- (2) No building housing producing animals shall be closer than 50 feet to any lot line except for chicken enclosures on residentially zoned properties, which are governed by the specific standards for chickens set forth above.

Sec. 58-639. - Dedications.

- (a) All facilities and improvements installed prior to the final approval of the plat shall be considered dedicated along with streets and other public areas upon the approval of the plat, certified survey map or condominium declaration. Facilities and improvements completed under bond or other financial guarantee after the approval of the plat shall be considered dedicated upon their approval and acceptance and release of the bond or other guarantee. The city may require one or more transfer documents.
- (b) In the case of a land division, subdivision or condominium in the R-1 zoning district of a development site of more than 25 acres (including two or more parcels that in the aggregate are greater than 25 acres) for a conservation subdivision for which approval is sought after the effective date of the ordinance from which

Exhibit B

this article is derived, and the approval for which shall be conditioned upon the dedication of public right of way, then for the purpose of determining lot size compliance and/or permissible lot yield, the area of land so dedicated shall not be subtracted from the total area of the resulting development site or parcels.

Exhibit C**Sec. 58-265. - OA agricultural overlay district.**

(a) *Purpose.* The OA agricultural overlay district is intended to provide for, maintain, preserve, and enhance agricultural lands. The purposes of the district are to:

- (1) Protect and encourage the continuation of existing farm operations.
- (2) Minimize conflicts between farm and non-farm uses.

(b) *Permitted uses.*

- (1) Any use by right in the underlying base district.
- (2) All uses commonly classified as agriculture, horticulture, or forestry, including crop and tree farming, truck farming, gardening, nursery operation, stock raising (not including raising of fur-bearing animals, or animal hospitals), dairy farming, and forestry operations, together with the operation of any machinery or vehicles incidental to the above uses.
- (3) Municipal utilities.
- (4) Barns, sheds and other similar agricultural structures, but not greenhouses or structures that will house domestic animals or wild animals, each as defined in section 58-516. Greenhouses are regulated by the provisions of the underlying zoning district. Structures housing domestic animals and wild animals are regulated by the provisions of division 11 of this chapter. If a structure permitted under this provision is more than 1,000 square feet, the design is subject to planning commission approval. Other district standards, such as lot coverage ratio, apply. The application processing fee will be waived. The common council has approved this waiver to minimize the burden to the city's farmers and to encourage agricultural pursuits.

(c) *Permitted accessory uses.*

- (1) Permitted accessory uses in the underlying base district.
- (2) Temporary roadside stands for display and sale of agricultural products grown or produced on the premises. Such uses shall be subject to planning commission approval and the following requirements:
 - a. Off-street parking for a minimum of four vehicles shall be provided.
 - b. No stand shall be permitted in a location where it would create a traffic hazard or nuisance. Driveways shall be located to minimize possible interference with normal flow of highway traffic.

Exhibit C

- c. No such stand shall be closer than 50 feet to the existing street line or closer than 20 feet to any other lot line.
- d. One sign, not exceeding 20 square feet in area, shall be set back at least ten feet from the road right-of-way.

(d) *Conditional uses.*

- (1) Conditional uses in the underlying base district.
 - (2) Commercial hatcheries.
 - (3) Commercial greenhouses and nurseries.
 - (4) Animal and animal-related uses specified in division 11 as conditional uses in the OA district.
 - (5) Parks, forest preserves, and recreational areas.
 - (6) Public and or private utility, transmission and distribution lines, poles, and other accessories provided that when the utility proposes a main inter-city transmission facility, the utilities shall give notice to the planning commission of such intention and of date of hearing before the public service commission, and before actual construction shall file with the planning commission a map description of the route of transmission line. Public and/or private utility installations less than three feet in height shall be subject only to City of Mequon staff approval and may be allowed subject to staff-imposed conditions of section 58-265 regarding, among other things, effective screening from public view with all season vegetation.
 - (7) Landscape contracting businesses.
 - (8) Commercial outdoor recreational facilities subject to the conditions set forth in section 58-248(b).
 - (9) Wineries.
- (e) *Lot size.* The minimum lot size shall have an area of not less than ten acres for uses in the OA district. The minimum lot size for property used only as residential shall be in accordance with the underlying base district.
- (f) *Building height.*
- (1) The height of any dwelling unit shall not exceed 42 feet.
 - (2) The height of other farm structures shall not exceed 60 feet.

Exhibit C

- (g) *Minimum average lot width.* The minimum average lot width shall be no less than 400 feet when land is used in accordance with the OA district. Average lot widths for other uses shall be in accordance with the underlying base district.
- (h) *Minimum building setback.* In accordance with the underlying base district.
- (i) *Minimum building offset.* Residential structures shall be in accordance with the underlying base district. Buildings or structures housing livestock shall not be erected closer than 50 feet to a side or rear lot line. Structures for the housing of farm equipment shall not be erected closer than 30 feet to the side or rear lot line.

Table 58-246

	R-1	R-1B	R-2	R-2B	R-3	R-4	R-5	R-6	RM
Single-family dwellings	X	X	X	X	X	X	X		
Two-family dwellings and multiple-family dwellings for no more than four families								X	
Multiple-family dwellings with no more than eight units per building									X
Community living arrangements for eight or fewer persons in accordance with Wis. Stat. § 62.23(7)(i)	X	X	X	X	X	X	X	X	X
Community living arrangements for more than eight but less than 16 residents in accordance with Wis. Stat. § 62.23(7)(i)									X
Animals and animal-related uses specified in division 11 as permitted uses in this zoning district	X	X	X	X	X	X	X	X	X
Long-term rental of a dwelling	X	X	X	X	X	X	X	X	X

Table 58-247

	Additional Regulations Below	R-1	R-1B	R-2	R-2B	R-3	R-4	R-5	R-6	RM
Private garages	X	X	X	X	X	X	X	X	X	X
Private carports	X	X	X	X	X	X	X	X		
Paved parking areas	X	X	X	X	X	X	X	X	X	X
Home occupations and professional offices	X	X	X	X	X	X	X	X	X	X
Detached storage structures	X	X	X	X	X	X	X	X	X	X
Family child care homes in accordance with Wis. Stat. §§ 66.1017 and 48.65		X	X	X	X	X	X	X	X	X
Private outdoor recreational facilities normally accessory to a residential use		X	X	X	X	X	X	X	X	X
Short-term rental of a dwelling in accordance with section 58-422		X	X	X	X	X	X	X		
Non-commercial greenhouses that do not exceed 150 square feet - such uses do not count against the total detached storage structures allowed		X								

Table 58-248

	R-1	R-1B	R-2	R-2B	R-3	R-4	R-5	R-6	RM
Commercial outdoor recreational facilities	X	X	X	X	X	X	X	X	
Public and or private utility, transmission and distribution lines, poles, and other accessories	X	X	X	X	X	X	X	X	X
Community living arrangements for more than eight but less than 16 residents in accordance with Wis. Stat. § 62.23(7)(i)	X	X	X	X	X	X	X	X	X
Community living arrangements for 16 or more persons in accordance with Wis. Stat. § 62.23(7)(i)	X	X	X	X	X	X	X	X	X
Accessory dwelling units	X	X	X	X	X	X			
Guesthouses	X	X	X	X	X				
Historically significant structures used as private clubs or private lodges	X	X	X	X	X				
Bed and breakfast establishments	X		X						
Landscape contracting businesses	X								

Table 58-249

	R-1									
	Estate Lot Design	Conservation	R-1B	R-2	R-2B	R-3	R-4	R-5	R-6	RM
Minimum Lot Size	5.0 acres (217,800 sq. ft.)	0.75 acres (32,670 sq. ft.)	2.5 acres (108,900 sq. ft.)	2.0 acres (87,120 sq. ft.)	1.5 acres (65,340 sq. ft.)	1.0 acre (43,560 sq. ft.)	0.75 acres (32,670 sq. ft.)	0.5 acres (21,780 sq. ft.)	1.0 acre (43,560 sq. ft.)	One-bedroom units, 6,000 square feet (i.e., 7.26 units per acre) Two-bedroom units, 7,000 square feet (i.e., 6.2 units per acre) Three-bedroom units, 10,000 square feet (i.e., 4.35 units per acre)
Density	N/A	one dwelling per five acres	N/A	N/A	N/A	N/A	N/A	N/A	Four units per acre	N/A
Minimum Living Area										
Single-family dwelling unit	1,800 sq. ft.	1,800 sq. ft.	1,600 sq. ft.	1,800 sq. ft.	1,400 sq. ft.	1,800 sq. ft.	1,600 sq. ft.	1,400 sq. ft.	N/A	N/A
One-bedroom units	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,000 sq. ft.	900 sq. ft.
Two-bedroom units	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,200 sq. ft.	1,100 sq. ft.
Three-bedroom units	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1,400 sq. ft.	1,300 sq. ft.
Maximum Building Height*										
Dwelling Height	42 ft.	42 ft.	42 ft.	42 ft.	42 ft.	42 ft.	42 ft.	42 ft.	42 ft.	42 ft.
Accessory Structures	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.
Minimum Average Lot Width and Minimum Average Lot Length	300 ft.	N/A	200 ft.	200 ft.	175 ft.	150 ft.	130 ft.	120 ft.	150 ft.	150 ft.
Minimum Building Setbacks										
Local Streets	100 ft.	See text	50 ft.	75 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 feet (planning commission may vary to no less than 25 feet)
Expressways - Freeways	100 ft.	See text	200 ft.	75 ft.	200 ft.	200 ft.	200 ft.	200 ft.	100 ft.	100 ft.
Primary Arterials	100 ft.	See text	100 ft.	75 ft.	100 ft.	100 ft.	100 ft.	100 ft.	100 ft.	100 ft.
Secondary Arterials	100 ft.	See text	80 ft.	75 ft.	80 ft.	80 ft.	80 ft.	80 ft.	80 ft.	80 ft.
Local Arterials	100 ft.	See text	70 ft.	75 ft.	70 ft.	70 ft.	70 ft.	70 ft.	70 ft.	70 ft.
Minimum Building Offset										
Generally	30 ft.	30 ft.	25 ft.	30 ft.	25 ft.	20 ft.	20 ft.	20 ft.	20 ft. (side); 35 ft. (rear)	15 ft.
Building or structures housing livestock	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	N/A	N/A	N/A
Maximum Lot Coverage Percentage	5%	10%	10%	10%	15%	15%	15%	20%	30%	30%

* See section 58-418(d)

Justin Schoenemann

From: Mark Gierl
Sent: Monday, May 17, 2021 8:27 AM
To: Justin Schoenemann; Brian Sajdak; mgierl@sbcglobal.net
Subject: Special Public Welfare Meeting;

Justin,

I notice someone named Dan was watching in on our most recent Public Welfare meeting.

The next morning, I called Dan Abendroth to see if it was him.

He said yes and offered the following solution to help keep Common Council oversight. He said that alderman Wirth actually wrote the following for a similar situation a few years back.

"Mark

Here is the language from chapter 58 regarding conditional use grants:

Confirmation. Conditional use grant approvals shall require common council confirmation upon written request from two aldermen or one alderman representative and the mayor. Such request shall be made within 14 days of the corresponding planning commission approval of the conditional use grant petition. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. d)

You can just substitute "conservation subdivision concept plan" approvals for "conditional use grant" approvals and add it to the new R-1 ordinance.

Dan"

This should solve the problem I brought up about the Planning Commission having no oversight.

Please include this in our packet for the upcoming meeting. As a committee we will take it up.

Brian,

As I understand it the ordinance for discussion covers just Conservation Subdivisions.

It would not affect any other rezoning and the protest petition for those would still be in effect. Correct?

Thank you,

Alderman Mark Gierl
 Committee Chair



11333 N. Cedarburg Road
Mequon, WI 53092-1930
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www.ci.mequon.wi.us

Office of Administration

TO: Public Welfare Committee
FROM: Justin Schoenemann, Assistant City Administrator
DATE: January 7, 2021
SUBJECT: Chapter 2: Article II – Common Council and Article IV – Officers and Employees Ordinance Updates

Background

Since the first quarter of 2020, the Public Welfare Committee has been engaged in a review of *Chapter II: Article II – Common Council*. The Chapter governs the Common Council, Mayor, all standing committees, and the City Administrator position. The project was temporarily put on hold due to the COVID-19 pandemic and the need for the Committee to pivot to other matters for a number of months. The Committee resumed its review of Chapter II this year and made significant headway in the last few months. At its most recent meeting in May, the Committee solidified all its amendments to the proposed Chapter II document, with one final update in blue for section 2-34(b). The amendment allows flexibility in providing special meeting notice via the method most likely to inform the Common Council instead of the notice always being delivered to the residents of the Alderman.

A copy of the current Chapter II is included as the last attachment with this agenda item for reference purposes.

Discussion

The Public Welfare Committee will most likely resume its discussion on Chapter II at its June meeting by reviewing the additional Mayoral and City Administrator duties as proposed in the attached memo with red track changes from Mayor Wirth. Since there are a number of proposed modifications, staff would suggest the Public Welfare Committee start the conversation by discussing the form of government in which they envision or would like the Common Council to consider for the City. Then dive into the proposed language with that scope in mind when reviewing the proposed amendments.

Attachments:

Proposed Chapter II - June 2021 (PDF)
Additional Chapter II Review Documents (PDF)

ARTICLE II. - COMMON COUNCIL

DIVISION 1: Mayor and Common Council.

Sec. 2-20. – Generally.

The common council shall consist of the mayor and eight aldermen. The common council shall be elected, and vacancies shall be filled, pursuant to section 2-63. The common council shall have the committees described in division 2. The common council shall hold meetings pursuant to division 3.

Sec. 2-21 – Mayor.

- (a) In addition to those powers and duties set forth in this code, the mayor shall have the powers and duties of a mayor set forth in the Wisconsin Statutes.
- (b) The mayor shall be the city's chief executive officer. The mayor shall take care that city ordinances and state laws are observed and enforced and that all city officers and employees discharge their duties.
- (c) The mayor shall from time to time give the common council such information and recommend such measures as the mayor may deem advantageous to the city.
- (d) When present, the mayor shall be a member of, and presiding officer at, all meetings of the common council, whether regular, special or organizational, and its committee of the whole and appropriations committee.
- (e) Except as otherwise limited by state law, the mayor shall have the power to veto all acts of the common council and all acts of any committee that could have been taken by the common council if not delegated by the common council or this code to such committee, including acts by the planning commission. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, whether signed as mayor or as the chair of the planning commission, or upon the mayor's failure to approve or disapprove such act within five days. If the mayor fails to approve or disapprove any act within five days, the clerk shall certify such failure on the relevant document. If the mayor vetoes any act, the mayor shall file his or her objections with the clerk, and the clerk shall present them to the common council at its next meeting. A two-thirds vote of all members of the common council shall make the act effective notwithstanding the objections of the mayor, except that in the case of an act by a committee, the common council may, upon majority vote, return the vetoed act to the committee who shall have the opportunity at its next meeting to overrule the veto by a two-thirds vote of all members of the committee.
- (f) The mayor shall be the head of the fire and police departments.

Sec. 2-22 – Acting mayor.

- (a) If the mayor is absent or unable to perform any duty, the president of the common council shall be the “acting mayor.” If both the mayor and the president are absent or unable to perform any duty, the following shall be the order of succession as “acting mayor”: the chair of the public welfare committee, the chair of the public works committee and the chair of the public safety committee.
- (b) The acting mayor shall not have power to approve an act of the common council which the mayor has vetoed or to veto any act approved at a meeting at which the mayor was the presiding officer.

DIVISION 2: Common Council Committees

Sec. 2-23. –Standing Committees.

The common council shall have the following four standing committees:

- (a) *Finance-personnel committee.*
 - (1) Except as otherwise specifically delegated by this code or state law, the finance-personnel committee shall consider licenses, vouchers for payment, collective bargaining contracts, employee wages and benefits, employee policies, ethics, financial policies, tax assessments, audits, investments, fees charged by the city, debt issuances and similar matters.
 - (2) Except for matters directed by the mayor to the committee of the whole or to another committee, matters coming before the common council from the following citizen committees shall first go to the finance-personnel committee to the extent that such matters require standing committee review:
 - a. Board of Review
 - b. Ethics Board
 - c. Planning Commission (development agreements, land acquisitions and similar matters that involve the city’s finances)
 - (3) All bills and other financial claims against the city shall be itemized and, upon receipt, shall be examined by the treasurer and paid pursuant to the city’s financial policies after verification by the city administrator or the relevant department head. However, no such item shall be paid prior to approval by the finance-personnel committee if it is subject to any dispute. The treasurer shall provide the itemization to the clerk, who shall in turn provide it to the finance-personnel committee for

examination and ratification at its next meeting. Any disputed item shall be particularly identified on or with the itemization, and the finance-personnel committee shall provide direction to the treasurer regarding payment. To the extent the finance-personnel committee has concerns regarding any items that have been paid, it may promulgate policies for future similar payments. The mayor may require any such policy to be approved by the common council before implementation.

(b) *Public safety committee.*

- (1) Except as otherwise specifically delegated by this code or state law, the public safety committee shall consider matters regarding police, fire, ambulance, traffic, boating, building safety and similar matters.
- (2) Except for matters directed by the mayor to the committee of the whole or to another committee, matters coming before the common council from the following citizen committees shall first go to the public safety committee to the extent that such matters require standing committee review:
 - a. Board of Police and Fire Commissioners
 - b. Milwaukee River Advisory Committee

(c) *Public welfare committee.*

- (1) Except as otherwise specifically delegated by this code or state law, the public welfare committee shall consider all matters not delegated to the other standing committees, including without limitation matters regarding the committees of the city, redistricting, voting, citywide surveys, economic development, planning, health, public assistance, recreation, nuisances.
- (2) Except for matters directed by the mayor to the committee of the whole or to another committee, matters coming before the common council from the following citizen committees shall first go to the public welfare committee to the extent that such matters require committee review:
 - a. Board of Appeals
 - b. Economic Development Board
 - c. Festivals Committee
 - d. Frank L. Weyenberg Library Board of Trustees
 - e. Hiram Schmitt Fund Advisory Board
 - f. Landmarks Commission
 - g. Planning Commission (all text amendments, that are not assigned to the finance-personnel committee or the public works committee)

(d) *Public works committee.*

- (1) Except as otherwise specifically delegated by this code or state law, the public works committee shall consider matters involving roads, municipal buildings, parking lot and grounds maintenance, sidewalks, public lighting, stormwater, engineering and similar matters.
- (2) Except for matters directed by the mayor to the committee of the whole or to another committee, matters coming before the common council from the following citizen committees shall first go to the public works committee to the extent that such matters require standing committee review:
 - a. Architectural Board
 - b. Joint Mequon-Thiensville Bike and Pedestrian Way Commission
 - c. Mequon Nature Preserve Board of Directors
 - d. Park and Open Space Board
 - e. Planning Commission (text amendments and other matters which are primarily related to architecture, parks, public works projects and policies or trees)
 - f. Tree Board

Sec. 2-24. – Appointments to standing committees.

At the organizational meeting, the president shall nominate three aldermen to each standing committee and the required aldermanic representatives and alternate aldermanic representatives under division IX of this chapter (including the planning commission). Subsequently, any alderman may make one or more additional nominations to the standing committees. After all nominations are made, the common council shall elect by majority vote three members to each standing committee. In the event of any second or subsequent tie vote, the mayor may vote to break the tie or call for another vote. Each alderman shall serve on at least one common council standing committee. Each member shall serve as appointed unless excused by a majority vote of the common council. The mayor shall be a non-voting, *ex officio* member of all standing committees.

Sec. 2-25. – Chairs of standing committees.

- (a) The members of each standing committee, other than the finance-personnel committee, shall select a chair from among themselves at the first committee meeting following the organizational meeting.
- (b) The mayor shall chair the finance-personnel committee on an *ex officio*, non-voting basis.
- (c) In the absence or upon recusal of a standing committee's chair, the member of the standing committee with the most years of service on the common council shall serve as chair.

- (d) The chair of a standing committee shall call meetings to order at the appointed hour. The chair shall preserve order and decorum, decide all questions of order and conduct the proceedings of the meeting in accordance with the parliamentary rules contained in Robert's Rules of Order Revised, unless otherwise provided by state law or this code. Any member shall have the right to appeal a decision of the chair. The appeal may be sustained by an affirmative vote of the members present, exclusive of the chair.

Sec. 2-26. – Vacancies.

- (a) If there is an aldermanic vacancy, the person filling the vacancy shall automatically fill the vacated member's membership in any standing committee.
- (b) In the event that two or more aldermanic vacancies leave any standing committee without sufficient members to reach a quorum, the president shall appoint interim members to the standing committee to allow the committee to conduct its business. The appointment of any such interim members shall be confirmed by the common council at its next meeting except that the lack of confirmation shall not invalidate any action taken by such interim members.
- (c) To the extent that the vacated member was the chair of a standing committee, the standing committee shall elect a new chair at the first meeting of the standing committee following the date the vacancy is filled.

Sec. 2-27. - Quorum of a standing committee.

A quorum for a standing committee shall consist of two voting members. A quorum shall be required to be present to transact business or to take any action on any agenda item on the meeting's agenda.

Sec. 2-28. - Action of a standing committee.

- (a) Unless otherwise required by law, an affirmative vote of two members of a standing committee shall constitute the action of the standing committee.
- (b) Except as specifically provided in this code, standing committees shall have no final decision-making or policy-making authority; instead, standing committees shall recommend resolutions, ordinances and policies to the common council.
- (c) Matters favorably recommended by a standing committee shall be submitted to the mayor to place on a common council agenda for consideration within two months from the standing committee's approval of a matter. The mayor may place any matter on the

common council agenda that has been considered but not recommended for approval by a standing committee.

- (d) With respect to a matter referred to the common council by the planning commission, if the applicable standing committee identified in sec. 2-23 fails to make a recommendation on such matter to the council within 60 days of the planning commission action, the mayor may place the same on an agenda for the committee of the whole.

Sec. 2-29. - Meetings, agenda, minutes and recommendations.

- (a) Each standing committee shall conduct its first meeting following the organizational meeting at a time and place scheduled by, and pursuant to an agenda established by, the staff liaison to the standing committee and shall include all agenda items specified by the standing committee at its last meeting preceding the organizational meeting.
- (b) A standing committee shall conduct all other meetings at scheduled times and places called by its chair or as determined by the standing committee at a prior meeting. The chair shall establish the agenda for each such meeting after consultation with the staff liaison for the standing committee.
- (c) Any member of a standing committee may request in writing, at least five business days prior to a meeting, that an item germane to the standing committee's purpose, duties or powers be placed on an agenda. If the chair fails to place such item on the agenda for a meeting, the proposing member may, at any meeting, move the standing committee to have the item placed on the next agenda.
- (d) Written notice of a meeting of a standing committee and the agenda for such meeting shall be delivered to each committee member and filed with the clerk at least 48 hours in advance of the meeting. The notice shall be in such form as will reasonably apprise the standing committee members, the public and the press of the date, time and subject matter that is intended for consideration and action at the meeting. The clerk will post such notices on the city hall bulletin board and, to the extent possible, the building at which the meeting will be held.
- (e) Minutes of the meetings and recommendations of a standing committee, after review and approval of the standing committee, shall be submitted to the common council. The minutes shall show the vote of each member upon each question. The minutes shall also show if a member is absent or fails to vote on any question. The city clerk shall retain all such minutes.
- (f) Members shall attend meetings of a standing committee in person. No member may appear at any meeting by telephone or other electronic means.

- (g) Any member of the common council may attend any meeting of any standing committee, including any closed session, as a non-voting, ex-officio member, and shall abide by all the rules and regulations of the meeting that pertain to the regular members of the standing committee.
- (h) The chair of any standing committee, or the standing committee by majority vote, may require any city officer to confer with it and supply information needed in connection with any matter pending before the standing committee.

Sec. 2-30 - Committee of the whole.

- (a) The committee of the whole shall consist of all members of the common council. The committee of the whole shall have the same quorum and voting requirements as meetings of the common council.
- (b) The committee of the whole shall be used for informal discussion among members of the common council.
- (c) The mayor may:
 - (1) Schedule a meeting of the committee of the whole. Such a meeting, when not part of a regular meeting of the common council, shall proceed under the rules in this code for a special meeting.
 - (2) In establishing the agenda for a regular or special meeting of the common council, schedule a meeting of a committee of the whole at any point during the meeting.
 - (3) Provided there is no objection by any alderman present, declare any portion of any meeting of the common council as a meeting of the committee of the whole.
- (d) The mayor, or the committee of the whole by majority vote, may terminate a meeting of the committee of the whole at any time.

Sec. 2-31. – Appropriations committee.

- (a) The appropriations committee shall consist of all members of the common council. The appropriations committee shall have the same quorum requirements as meetings of the common council.
- (b) The appropriations committee shall review and recommend the annual budget to the common council.

- (c) Meetings of the appropriations committee shall proceed under the rules in this code for a special meeting.
- (d) The appropriations committee and its procedures and duties are more specifically described in division 2 of article xi of this chapter.

Sec. 2-32. – Special committees.

Either the mayor by written order or the common council by motion or resolution may create special committees from time to time. The number of committee members, the purpose of the special committee and its duties shall be stated in the order, motion or resolution. Unless a termination date is specified in the order, motion or resolution creating a special committee, the mayor may terminate a special committee at any time if created by order or the common council may terminate such a committee if created by motion or resolution. The quorum of any special committee shall be 51% of the members of the special committee. All other rules in this code that apply to standing committees shall apply to special committees.

Sec. 2-33. - Referrals to committee.

- (a) No ordinance, resolution, communication or other matter, other than appointments, shall be acted upon by the common council unless such ordinance, resolution, communication or other matter shall have been referred to the common council or reported on by one of the following:
 - (1) An appropriate common council standing committee;
 - (2) The committee of the whole;
 - (3) The appropriations committee;
 - (4) Any special committee of common council members created for that purpose under section 2-32;
 - (5) The sewer utility district commission;
 - (6) The Mequon municipal water utility commission; or
 - (7) For an ordinance or resolution creating, amending or repealing a planned unit development, transferring development rights, amending the city's official zoning map, amending the city's land use plan, or addressing similar property-specific matters, the planning commission.

- (b) The common council may, by the affirmative vote of two-thirds of the aldermen present, suspend the rule established in subsection (a) and act on a matter that has not been appropriately referred to or reported on by a committee as specified in subsection (a).
- (c) Appointments to boards, commissions and committees under article IX, and appointments to standing committees and special committees of the common council, may be acted upon without having been referred to or reported on by a committee unless otherwise specifically required elsewhere in this code. However, the common council may refer any appointment to a committee by motion duly adopted.
- (d) Unless the rule established in subsection (a) is suspended for a matter, any ordinance, resolution, communication or other matter which has not been referred to the common council or reported on by a committee as specified in subsection (a) shall be read by number, abbreviated title, author and sponsor, if any, and referred to the appropriate committee by the mayor without motion or, if the mayor does not make such a referral, by the common council upon motion duly adopted.

DIVISION 3: Meetings.

Sec. 2-34. – Types of meetings and how scheduled.

- (a) *Regular meetings.* Regular meetings of the common council shall be held on the second Tuesday of each calendar month at 7:30 p.m. Any regular meeting falling upon a legal holiday or election day shall be held at the same time on the next day. The mayor may, with at least 14 days' prior notice to the clerk, who shall promptly notify all aldermen, move a regular meeting to the third Tuesday of the month at 7:30 p.m. if the mayor determines that there will be six or fewer aldermen at the meeting on the second Tuesday of the month or that the second Tuesday of the month conflicts with a significant national, civic or athletic event.
- (b) *Special meetings.* The mayor or any four aldermen may call a special meeting by providing written notice, including by electronic means, to the clerk of the date, time and purpose of the meeting. Except in an emergency, such notice shall be delivered to the clerk at least three business days prior to the proposed time for the special meeting. The clerk shall cause written notice of the special meeting to be delivered to each alderman personally or by leaving the notice at an alderman's residence providing notice to each alderman in a manner most likely to give each member notice of the meeting and shall send a copy by email to each alderman at his or her city email address. Notice shall be adequate if provided at least six hours before the meeting. The clerk shall cause an affidavit of service of such notice to be filed in the clerk's office prior to the time fixed for such special meeting. A special meeting may be held without such notice when all aldermen either are present in person or consent in writing to the holding of such meeting. Any such consent shall be filed with the clerk prior to the beginning of the meeting. An alderman shall be deemed to have waived any defect of notice if he or she attends the special meeting. In the absence of the clerk, a

filing with, and an action by, a deputy of the clerk shall satisfy the requirements of this section. The City Clerk or designee of the City Clerk shall acknowledge receipt of the special meetings request within 24 hours of receiving the notice.

- (c) *Organizational meeting.* The common council shall hold an organizational meeting on the third Tuesday in April.

Sec. 2-35. – Place; Quorum; Adjournment.

- (a) *Place of meetings.* All common council meetings, whether regular, special or organizational, and all committee of the whole, standing committee and utility board committee meetings, shall be held in city hall. Notwithstanding the foregoing:
 - (1) A meeting held jointly with one or more bodies that govern other political entities may be held outside of city hall provided that public notice is given at least seven days in advance of such meeting.
 - (2) All or part of a meeting may be held at another location if, in the mayor's opinion, such location might assist the common council in its deliberations.
 - (3) The common council may by majority vote at a prior meeting agree to hold a meeting at another location.
- (b) *Quorum.* No action shall be taken unless a quorum is present. A quorum shall consist of the six aldermen or, if there is one or more vacancies, two-thirds of all aldermen then holding office. The mayor or the majority of aldermen present may compel the attendance of absent members in order to obtain a quorum. Otherwise, the common council shall adjourn for failure to obtain a quorum. The mayor shall not be counted in determining whether a quorum is present. To the extent a regular meeting cannot be held due to the lack of a quorum, any meeting called to replace the missed meeting shall constitute a regular meeting.
- (c) *Adjournments.* The common council may, by a majority vote of the aldermen present, adjourn from time to time to a specific date and time.

Sec. 2-36. – Presiding Officer.

- (a) *Mayor.* The mayor shall, when present, be the presiding officer at all common council meetings, whether regular, special or organizational, and all committee of the whole meetings and appropriation committee meetings.
- (b) *Absence of Mayor.* In the absence of the mayor, the president shall preside over a meeting. In the absence of the mayor and the president, the following shall be the order of succession as presiding officer: the chair of the public welfare committee, the chair of the public works committee and the chair of the public safety committee.

- (c) *Conduct of Meeting.* The presiding officer shall call meetings to order at the appointed hour. The presiding officer shall preserve order and decorum, decide all questions of order and conduct the proceedings of the meeting in accordance with the parliamentary rules contained in Robert's Rules of Order Revised, unless otherwise provided by state law or by this code. Any member shall have the right of appeal from a decision of the presiding officer. The appeal may be sustained by a vote of the majority of the members present, exclusive of the presiding officer.
- (d) *Participation by Presiding Officer.* Whenever the presiding officer desires to speak upon any question, or to make any motion, he or she shall designate the alderman in the next position of succession to preside temporarily.

Sec. 2-37. - Order of business – regular meetings.

- (a) The public notice and the agenda for regular meetings of the common council shall reflect the following order of business unless, in establishing the agenda and prior to publication, the mayor opts to change , except order of business one through three, the order to accommodate significant public interest, visitors who will be participating in the meeting or for other good cause.
 - (1) Call to order. The presiding officer shall at the appointed hour call the members to order.
 - (2) Pledge of Allegiance.
 - (3) Roll call.
 - (4) Public hearings. This part of the meeting is reserved for those matters requiring a public hearing by this code or other applicable law. To the extent an ordinance has received a first reading at a prior meeting, the ordinance shall be acted upon immediately following its public hearing. Remarks of any individual shall be limited to five minutes.
 - (5) Personal appearances and public comment. This part of the meeting is reserved for comments regarding any matter not on the agenda. Remarks of any individual shall be limited to five minutes.
 - (6) Public officials' reports. The following may, at the mayor's option, be included at this time: reports by the mayor, proclamations by the mayor, reports by the city administrator, reports by any other city officer and reports by designated representatives of any city committee, board or commission.

- (7) Consent agenda items. Consent agenda items are items that do not include the expenditure of funds and that are, in the discretion of the mayor, routine or ministerial. Consent agenda items include without limitation the following items.
- a. Adoption of minutes of prior common council meetings;
 - b. Acceptance of minutes from standing committees and city boards, commissions and committees;
 - c. Acceptance of reports of common council and special meetings;
 - d. Adoption of specified ordinances and resolutions that have received unanimous committee recommendation; and
 - e. First readings of ordinances.

Except for resolutions and ordinances, the presiding officer need not list items on the consent agenda but, instead, may announce that the consent agenda includes various minutes and reports. The presiding officer shall announce, before any motion, the number and abbreviated description of each ordinance and resolution included in the consent agenda. A member of the common council may cause any item on the consent agenda to be separately discussed and voted by notifying the mayor, prior to the vote on the consent agenda, that he or she requires such separate consideration. A vote on the consent agenda does not approve any ordinance before the common council for a first reading except upon a motion to suspend the rules which is seconded and approved by two-thirds of the members present. Such a motion is not debatable and shall be decided without discussion.

- (8) Ordinances.
 - (9) Resolutions.
 - (10) Specified unfinished business from prior meetings.
 - (11) Specified new business. New business may include without limitation petitions, memorials, remonstrances and other communications not otherwise presented during the meeting.
 - (12) Adjourn.
- (b) The mayor may, in establishing the agenda, schedule extraordinary matters and meetings of a committee of the whole at any point during the meeting. Except for the foregoing, no business shall be considered out of the order established in subsection (a) except upon a

motion to suspend the rules which is seconded and approved by two-thirds of the members present. Such a motion is not debatable and shall be decided without discussion.

Sec. 2-38. - Order of business – special meetings.

- (a) The public notice and the agenda for special meetings of the common council shall reflect the following order of business.
 - (1) Call to order. The presiding officer shall at the appointed hour call the members to order.
 - (2) Pledge of Allegiance.
 - (3) Roll call.
 - (4) The matters or matters for which the meeting is called.
 - (5) Adjourn.

Sec. 2-39. - Order of business – organizational meeting.

- (a) The public notice and the agenda for the organizational meeting of the common council shall reflect the following order of business.
 - (1) Call to order. The presiding officer shall at the appointed hour call the members to order.
 - (2) Pledge of Allegiance.
 - (3) Roll call.
 - (4) Election results. The clerk shall report the results of the election of common council members.
 - (5) Recognition of outgoing members.
 - (6) Oath. Newly elected common council members shall take the oath of office.
 - (7) Election of President. The aldermen shall elect one of their members as president of the common council. Any alderman may nominate himself or herself or nominate another alderman. No second of any such nomination shall be required. The president shall be elected by the majority vote of the aldermen present.

- (8) Nominations and election of committee members. The nominations and elections of committee members shall be administered pursuant to 2-24.
- (9) Designation of Newspaper. The aldermen shall designate the official city newspaper for legal notices by majority vote of the aldermen present.
- (10) Mayoral and aldermanic appointments. The aldermen shall confirm or deny, by majority vote of the aldermen present, mayoral and aldermanic appointments to committees under division IX of this chapter.
- (11) Other. The common council may take up any other appropriately noticed business, including any matter that could be addressed at a regular meeting.
- (12) Adjourn.

Sec. 2-40. - Agendas.

- (a) The form and content of agendas for all common council meetings, whether regular, special or organizational, and all committee of the whole, appropriations committee and utility board committee meetings, shall be approved by the mayor prior to publication.
- (b) Not less than 72 hours prior to each regular meeting the clerk shall cause to be delivered to each alderman an agenda listing the specific matters which will be considered at the meeting. All reports of committees of the common council, ordinances, resolutions, communications, claims and similar matters to be considered by the common council shall be filed with the clerk not later than 12:00 noon on the Monday of the week preceding a regular common council meeting (or the preceding Friday in the event that the Monday of the week preceding a meeting is a recognized holiday). The mayor may approve the addition to the agenda of documents or matters filed after the above cut-off day or time.
- (c) Additional items shall be placed on a regular meeting agenda if requested in writing by two aldermen prior to noon on Wednesday preceding the meeting. Such request is subject to section 2-33, and the mayor or the common council shall direct the request to a committee if appropriate.

Sec. 2-41. - Procedures for proposed ordinances and resolutions.

Proposed ordinances and resolutions shall appear separately on the common council's agenda, and the agenda shall specify the number and title of each proposed ordinance and resolution and the status, as of publication, of committee consideration. No proposed ordinance or resolution shall be considered or discussed by the common council, and no action shall be taken on any proposed ordinance or resolution, unless the ordinance or resolution is presented to the

common council in writing. No action shall be taken on any proposed ordinance without it having had one reading at a previous meeting of the common council unless there has first been a motion to suspend the rules which is seconded and approved by two-thirds of the members present. Such a motion is not debatable and shall be decided without discussion.

Sec. 2-42. - Rules of procedure, reconsideration, resubmission.

The deliberations of the common council at any meeting whether regular, special or organizational, and all committee of the whole, appropriations committee and utility board committee meetings, shall be governed by the following rules:

- (a) Provided there is no objection by any alderman present, the presiding officer may at any time declare the common council a committee of the whole for informal discussion to discuss any matter before the common council. If there is an objection, the objection may be overruled by majority vote of the aldermen present.
- (b) Unless otherwise required for any group exercise, all aldermen shall remain in their allotted seats, and no conversation shall be indulged in, so that the common council may expeditiously proceed with the business before the meeting.
- (c) The parliamentary rules contained in Robert's Rules of Order Newly Revised shall govern deliberations of the common council unless otherwise specifically provided by state law or this code.
- (d) No alderman shall address the common council until he or she has been recognized by the presiding officer.
- (e) When two or more aldermen simultaneously seek recognition, the presiding officer shall name the member who is to speak first.
- (f) Except with respect to committee of the whole and appropriations committee meetings, no alderman shall speak more than twice for five minutes each time on any question without first obtaining permission from the common council. Notwithstanding the foregoing, the presiding officer may allow a time for questions by alderman of staff.
- (g) Only the presiding officer and aldermen shall address the common council except:
 - (1) The public during any public hearing.
 - (2) City staff when recognized by the presiding officer.
 - (3) Residents during the part of the meeting reserved for personal appearances and public comment.

- (4) With the permission of the presiding officer, residents of the city and other interested people as to matters which are being considered by the common council at the time the request to speak is made. Unless otherwise specified by the presiding officer, remarks shall be limited to five minutes.
- (5) Others with the unanimous consent of the common council.
- (h) Any person, including any alderman, addressing the common council shall direct his or her comments to the presiding officer, confine his or her remarks to the question under discussion and avoid all discussion of personalities. Notwithstanding the foregoing, the presiding officer may allow questions of staff on any item.
- (i) No motion shall be discussed or acted upon until it has been seconded unless the rules permit one alderman to initiate action. No motion shall be withdrawn without the consent of both the person making the motion and the person seconding it.
- (j) Any alderman may require the reading in full of any matter at any time it is before the common council.
- (k) With the consent of the presiding officer, questions may be asked prior to a motion and second on a matter. Otherwise, a matter shall not be discussed until a motion is made and seconded.
- (l) When a question is under discussion, no action shall be in order except to:
 - (1) Adjourn
 - (2) Recess
 - (3) Lay on the table
 - (4) Move the previous question
 - (5) Postpone to a certain day
 - (6) Refer to a committee
 - (7) Amend
 - (8) Postpone indefinitely

The foregoing motions shall have precedence in the order listed.

- (m) The presiding officer may put any question when discussion has ended or each alderman has discussed the question twice. Any alderman wishing to terminate the discussion may move the previous question, in which event the presiding officer shall announce the question as: "Shall the main question now be put?" If two-thirds of the aldermen present vote in the affirmative, the main question shall be taken without further discussion, its effect being to put an end to all discussion and to bring the common council to a direct vote, first upon any pending amendments and then upon the main question.
- (n) A motion to adjourn shall always be in order. A motion to adjourn, to recess, to lay on the table or to call the previous question is non-debatable and shall be decided without discussion.

Sec. 2-43. – Voting.

In addition to other specific rules regarding voting in this code, the following rules regarding voting shall apply.

- (a) *Aldermen.* Each alderman shall be a voting member of the common council, whether regular, special or organizational, the committee of the whole, the appropriations committee, the utility boards and each committee (standing, special or otherwise) of which he or she is a member.
- (b) *Mayor.* Except in the case of a tie, the mayor shall not vote at any meeting of the common council, whether regular, special or organizational, or at any meeting of the finance-personnel committee. The mayor shall be a voting member of the committee of the whole, the appropriations committee, the utility boards and any special committee of which he or she is a member.
- (c) *Presiding officer other than the mayor.* When someone other than the mayor is the presiding officer, the presiding officer may vote.
- (d) *Votes necessary for passage or approval.* Five affirmative votes, including the vote of the mayor in case of a tie, in favor of any proposed ordinance, resolution, motion, appointment or other matter shall be necessary for passage or approval unless (1) a larger number is required by state law, (2) a different number is specified by this code or (3) this code specifies that approval shall be by "majority vote of the alderman present," or some substantially similar phrase.
- (e) *Ties.*
 - (1) When the mayor votes in the case of a tie, his or her vote shall be counted in determining whether a sufficient number of members of the common council or the finance-personnel committee has voted favorably or unfavorably on any measure.

- (2) If one or more aldermen fails or is unable to vote, whether as a result of absence, abstention or vacancy, each non-voting member shall be deemed, for purposes of this subsection only, to have voted "no" on the question, and the minutes shall reflect such status as a "deemed no" vote. The mayor may break any tie resulting from such "deemed no" votes.
 - (3) Notwithstanding the foregoing, during the vote for president or to affirm the president's nominations to committees at the organizational meeting, the mayor shall only vote in the case of a tie if the common council has voted twice and, in each instance, the vote ended in a tie.
- (f) *Requirement to vote; abstention.*
- (1) Any person eligible to vote shall, when within the room in which a vote is to be taken at the time a question is put, give his or her vote unless it is his or her good faith belief that special circumstances compel him or her to abstain.
 - (2) An alderman or the mayor shall announce his or her intention to abstain as soon as he or she determines that he or she intends to do so and shall thereafter refrain from participating in discussion on the question and shall remove himself or herself from the chambers for the duration of the discussion and the vote on the matter. Upon notifying the common council of his or her intention to abstain, the abstaining official may, but shall not be compelled to, make a brief oral statement of his or her reason for abstaining.
- (g) *Roll call.* Any alderman may demand a roll call vote on any matter properly pending before the common council or any committee. All roll call votes shall be recorded specifying the vote of each named member in the minutes. Roll call votes shall be taken with respect to the following: adoption of any measure assessing or levying taxes, appropriating or disbursing money, or creating any liability or charge against the city of any fund of the city.
- (h) *Reconsideration.*
- (1) An alderman voting in the majority may move for reconsideration of a vote, but only at the meeting during which the vote was taken, at the next regular meeting or at a special meeting that precedes the next regular meeting. However, no action of the common council shall be subject to a motion to reconsider after material legal rights (other than those rights granted by the common council pursuant to the vote) or obligations have arisen resulting from or by virtue of the vote. If a motion to reconsider is timely made, any rights granted by such vote shall be suspended until final action by the common council on the motion to reconsider. The confirmation of the appointment of a city official shall not be subject to a motion to reconsider. A motion to reconsider that has been made and lost shall not be renewed.

- (2) No measure that has been introduced and lost by final action may be introduced again until the lapse of at least three months from the date of its consideration unless there has been a material change in the measure or an intervening event that changes the circumstances originally considered.

Sec. 2-44. - Clerk, duties.

The city clerk shall, in addition to the duties prescribed by state law, furnish the chairs of committees and other city officers with the resolutions and other matters that may be referred to them and to perform all other clerical duties as the common council may require.

Sec. 2-45. - Minutes of meetings.

With the agenda for each regular meeting of the common council, the city clerk shall, to the extent reasonably possible, supply to each alderman a typewritten copy of the proceedings of the previous meeting. By majority vote of the aldermen present, the common council may require the reading of the minutes at the ensuing meeting.

Sec. 2-46. - Suspension of rules.

Except to the extent mandated by state law, all or any part of this article may be temporarily suspended in connection with any matter under consideration by a motion to suspend the rules which is seconded and approved by two-thirds of the members present. Such a motion is not debatable and shall be decided without discussion.

Sec. 2-47. - Amendments.

The affirmative vote of six aldermen shall be required to amend all or any part of this article.

Secs. 2-48—2-60. - Reserved.



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Mayor

TO: Public Welfare Committee

FROM: John Wirth

DATE: February 9, 2020

SUBJECT: Changes to Article II

Since preparing the revisions in your packet, three possible additional changes have been brought to my attention. I present all of them for your consideration.

1. Notices for Special Meetings. See my email to Justin Schoenemann in the packet.
2. Economic Development Board. The draft before you provides that Economic Development Board issues should go to Public Welfare (see section 2-23(c)(2) on packet page 22). Kim Tollefson reminds me that all or almost Economic Development Board items that come to the Council have a significant financial component and have historically gone to Finance-Personnel. These include items like revolving loan fund applications. I suggest that you move Economic Development Board from Public Welfare to Finance-Personnel.
3. Administration. Ald. Mayr suggested to me that I prepare some language for the committee to consider regarding the mayor's role in the administration of the city. State statutes provide that the mayor is the chief executive; however, the statutes and our ordinances are vague as to what that means.

There are 27 cities in Wisconsin with populations between 16,000 and 40,000. Mequon belongs to that broad category. Beloit is an outlier in that it has a manager-council form of government with no mayor. Interestingly, of the other 26, exactly half have full time mayors and half (like Mequon) have part time mayors. The cities with full time mayors do not have administrators.

I definitely recommend against going to a full time mayor. Mequon is, and has been, served well by having a professional administrator handling the day-to-day administration of the city. However, in some cities with administrators, the mayor has the authority to check and balance the authority of the administrator. Those checks and balances take a variety of forms.

If the common council adopts the attached or similar changes, the common council would be the policy-making body (the legislative branch) and the mayor would oversee administration (the executive branch). The bureaucracy is within the executive branch. That is the

design of the federal and state government and of many municipalities. It works well when each group plays its role.

The city administrator would remain responsible for professional day-to-day administration; however, as part of the executive branch, he or she would be subject to the broad policies adopted by the common council and the more direct authority of the mayor. A chief executive should be involved with and bear responsibility for administration.

I do not believe that Ald. Mayr suggested this review because he is dissatisfied with the current city administrator, and I did not draft these changes because of any such dissatisfaction. In my opinion, Will Jones is doing a good job, and he and I have a good working relationship. I would expect that changes in operations would not be significant. However, the mayor should be more than a figurehead. These changes would be particularly important if a future city administrator turns out to ignore the will of elected officials.

The public elects officials to ensure good government. The mayor and council members get the blame if administration does things poorly. Yet, in those communities (like Mequon) that arguably have fully ceded all administrative responsibility to a city administrator, the mayor and council members have limited options in affecting administration. Accordingly, administration can be unresponsive.

These changes would allow the mayor to be directly involved in correcting recognized staff issues. For example, the common council in recent years have expressed concerns over inspections and the timeliness of municipal prosecutions. The mayor has no ability to make changes other than trying to influence staff. I have been working on those issues and am making progress; however, these changes would give me the actual authority to address these issues.

Considering my relationship with Will Jones and department heads, I can be effective without these changes. I believe I am. However, that could be much more difficult if someday in the future Will Jones leaves, and might be much more difficult for a future mayor.

These changes also protect and codify the policy-making authority of the common council. For example, they ensure that council members can be part of any hiring committee.

Some communities have taken this much farther. For example, in one city, the administrator has no authority over the public works or development departments. In some cities, the common council can remove the administrator by a simple majority vote. I am not suggesting that the changes should go that far.

I attach two sets of amendments. The first set has some additional language for Article II (the ordinances the committee is currently reviewing). If the committee agrees with these changes, then it should consider the other set of amendments (to the ordinance that creates the position of city administrator) at the next meeting.

Now is the time to review the balance between elected officials and professional staff rather than waiting until we have a new city administrator (or new mayor).

ARTICLE II. - COMMON COUNCIL

DIVISION 1: Mayor and Common Council.

Sec. 2-20. – Generally.

The common council shall consist of the mayor and eight aldermen. The common council shall be elected, and vacancies shall be filled, pursuant to section 2-63. The common council shall have the committees described in division 2. The common council shall hold meetings pursuant to division 3.

Sec. 2-21 – Mayor.

- (a) In addition to those powers and duties set forth in this code, the mayor shall have the powers and duties of a mayor set forth in the Wisconsin Statutes.
- (b) The mayor shall be the city's chief executive officer. The mayor shall take care that city ordinances and state laws are observed and enforced and that all city officers and employees discharge their duties.
- (c) The mayor shall from time to time give the common council such information and recommend such measures as the mayor may deem advantageous to the city.
- (d) When present, the mayor shall be a member of, and presiding officer at, all meetings of the common council, whether regular, special or organizational, and its committee of the whole and appropriations committee.
- (e) Except as otherwise limited by state law, the mayor shall have the power to veto all acts of the common council and all acts of any committee that could have been taken by the common council if not delegated by the common council or this code to such committee, including acts by the planning commission. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, whether signed as mayor or as the chair of the planning commission, or upon the mayor's failure to approve or disapprove such act within five days. If the mayor fails to approve or disapprove any act within five days, the clerk shall certify such failure on the relevant document. If the mayor vetoes any act, the mayor shall file his or her objections with the clerk, and the clerk shall present them to the common council at its next meeting. A two-thirds vote of all members of the common council shall make the act effective notwithstanding the objections of the mayor.
- (f) The mayor shall be the head of the fire and police departments.
- (g) Except to the extent otherwise required by law, all city employees other than the employees of the police department and the fire department shall be hired or appointed and supervised by the mayor pursuant to the city's personnel code and in consultation with the city administrator. The mayor may designate in writing that any city officer shall supervise any

other employee or group of employees. Subject to this code, to other applicable law and to the written policies established and approved by the common council, the mayor may establish such rules and issue such orders as are necessary from time to time, in the mayor's reasonable discretion, in fulfilling the mayor's supervisory duties. Such rules and orders shall be effective when the mayor files them with the office of the city clerk and shall thereafter be applicable to the city employees and administrative matters described in such rules or orders.

- (h) In order to promote the efficiency and responsiveness of the city government to matters of concern to the city's residents and to assist the mayor in the performance of the mayor's duties, the mayor shall have the immediate advice and assistance of the city administrator, assistant city administrator, chief of police, fire chief, city assessor, director of community development, director of public works/city engineer, director of parks and operations, director of finance/treasurer, city clerk and city attorney. The mayor shall chair regularly scheduled meetings of all or some of such department heads as determined by the mayor.
- (i) The mayor shall appoint, subject to confirmation by the common council, the personnel described in (h) other than the police chief and the fire chief. The mayor shall appoint and utilize a hiring committee when conducting the final round of interviews for each of these positions. The hiring committee shall advise the mayor in connection with such appointments. The hiring committee shall include the city administrator (except when that office is being filled) and, if required by the affirmative vote of a majority of the aldermen, one or more aldermen appointed by the majority of the aldermen. The personnel appointed pursuant to this paragraph shall have indefinite terms of office subject to removal pursuant to state law.

Sec. 2-22 – Acting mayor.

- (a) If the mayor is absent or unable to perform any duty, the president of the common council shall be the “acting mayor.” If both the mayor and the president are absent or unable to perform any duty, the following shall be the order of succession as “acting mayor”: the chair of the public welfare committee, the chair of the public works committee and the chair of the public safety committee.
- (b) The acting mayor shall not have power to approve an act of the common council which the mayor has vetoed or to veto any act approved at a meeting at which the mayor was the presiding officer.

DIVISION 2: Common Council Committees

Sec. 2-23. –Standing Committees.

The common council shall have the following four standing committees:

ORDINANCE ESTABLISHING CITY ADMINISTRATOR
Sec. 2-180, Mequon Code of Ordinances

This ordinance, and particularly part (c), authorizes the position of City Administrator and specifies the City Administrator's general powers and duties.

Sec. 2-180. - Department of administration.

- (a) *Creation and purpose.* In order that the various departments of the City of Mequon ~~may~~ operate as efficiently as possible under the city system ~~of operating~~ without a mayor employed full time, ~~and to better insure consistent harmonious action in respect to any activity common to ensure consistency and coordination when~~ two or more ~~of said~~ departments, ~~are involved in an action and in order that there may be a uniform application of policy, there is hereby created~~ to apply policies uniformly, the city shall have a department of administration ~~for the City of Mequon.~~
- (b) *Component departments.* The department of administration shall include every city department having an administrative function.
- ~~(c) — City administrator; terms of office, powers, and duties.~~ The city administrator shall be appointed by an affirmative vote of the majority of the members of the common council on recommendation of the mayor or finance personnel committee and/or search and screen committee. The city administrator shall serve for an indeterminate term of office, at the pleasure of the common council but subject to removal upon the vote of three-fourths of the members of the entire common council. The city administrator shall:
- ~~(1) — (c) City administrator.~~
- (1) Subject to the direction, approval and authority of the mayor and pursuant to any applicable written policies established and approved by the common council, the city administrator shall be the head of the department of administration and shall:
- a. Carry out all actions of the common council that require administrative implementation and carry out such other duties as may be duties assigned to the city administrator by this code, by the written policies established and approved by the common council from time to time, and by the mayor (subject to such written policies).
- ~~(2) — Direct, coordinate b. Coordinate~~ and expedite activities of all city departments, divisions and offices.
- ~~(3) — c.~~ Submit to the ~~common council~~ mayor any recommendations or suggestions to improve the administration of the city and to the common council any recommendations or suggestions to improve the policies, public safety, health, welfare and economy of the city.
- ~~(4) — d.~~ Develop and refine a system ~~whereby~~ by which the city's business is conducted in an efficient and dignified manner.

(5) — Supervise all personnel including department heads with the right to suspend any city employee, pending review by the personnel committee, or where state law vests the power of suspension in some other authority, to recommend suspension to that authority.

(6) — e. Be the financial advisor of the city and to that end shall:

a. — i. Oversee all departments as to budget performance and shall report regularly to the mayor and common council on same such performance;

b. — ii. After consultation with the city treasurer and other department heads, and the directors management of city departments, divisions, boards, bureaus, and commission other entities funded by the city, submit a proposed annual city budget to the city appropriations committee; pursuant to any direction provided by the appropriations committee;

c. — iii. Review and interpret all financial reports submitted to the common council;

d. — iv. Review and report to the common council any significant variation in actual versus budgeted expenditures;

e. — v. In cooperation with the engineering and planning departments, develop and formulate plans for permanent improvements and recommend such plans to the common council; and

f. — vi. Advise and recommend to the mayor and common council the adoption of various plans and programs of finance including available local, county, state, ~~or~~ and federal revenues sources.

(7) — f. Be the personnel officer of the city and to that end shall:

a. — i. Be responsible for uniform application and enforcement of city rules and policies;

b. — ~~Establish and maintain~~ ii. Ensure the establishment and maintenance of a central personnel file for all departments;

c. — iii. Review the various personnel rules and regulations and recommend any revisions to the common council, to the extent the rules and regulations are established by the common council, and otherwise to the mayor;

d. — iv. Review salaries and wages of all bargaining units and other non-staff positions in the city and make surveys and recommend to the finance-personnel committee appropriate action;

e. — v. Review, with the mayor, all salaries and wages of non-bargaining unit staff personnel and make surveys and recommend appropriate action to the mayor;

~~f.—vi.~~ Be responsible for collective bargaining negotiations and, with the finance-personnel committee, develop bargaining procedures and positions; ~~and~~

~~g.—vii.~~ Handle all grievances pursuant to the city's grievance policy; and

~~h.—viii.~~ Oversee all training of personnel.

~~(8) — In cooperation with the mayor and common and the departments of planning and public works, vigorously develop, implement and update the city's planning and development.~~

~~(9) — g.~~ Keep the common council fully informed ~~on~~about actions and trends of other levels of government, including state and federal funding, and ~~preparation~~e and ~~expediting of~~expedite applications for procurement of state and federal grants at the direction of ~~the~~mayor or common council.

~~(10) — File a monthly report with the h.~~ Report on the activities of his office to the common council ~~on the activity of his office~~ in such a manner as will inform the common council of actions concluded.

~~(Code 1957, § 2.17; Ord. No. 78-395, 8-1-1978) (2) For any period in which the city administrator shall be absent, on vacation or otherwise unable to perform his or her duties, the city administrator shall, in consultation with the mayor, appoint a department head as acting city administrator. The acting city administrator shall have no authority to supersede any approved policies or procedures established by the city administrator.~~

~~(3)~~ When there is a vacancy in the office of city administrator:

~~a.~~ The mayor shall act as "temporary city administrator," commencing immediately following the last day of the city administrator's employment by the city, and shall have all of the duties and authority assigned to the city administrator by this code. The mayor shall assume such duties and authority without additional compensation.

~~b.~~ The mayor, acting as temporary city administrator, shall work closely with the assistant city administrator, if any. The temporary city administrator may delegate duties and authority of the city administrator among the assistant city administrator and department heads in a manner the mayor reasonably deems to be in the best interests of the city; however, the mayor and the assistant city administrator shall properly supervise those to whom the temporary city administrator delegates such duties.

~~a-c.~~ The mayor's position as temporary city administrator shall automatically terminate upon the common council appointing a new city administrator and that appointee taking office.

ORDINANCE ESTABLISHING CITY ADMINISTRATOR
Sec. 2-180, Mequon Code of Ordinances

This ordinance, and particularly part (c), authorizes the position of City Administrator and specifies the City Administrator's general powers and duties.

Sec. 2-180. - Department of administration.

- (a) *Creation and purpose.* In order that the various departments of the City of Mequon operate as efficiently as possible under the city system without a mayor employed full time, to better ensure consistency and coordination when two or more departments are involved in an action and to apply policies uniformly, the city shall have a department of administration.
- (b) *Component departments.* The department of administration shall include every city department having an administrative function.
- (c) *City administrator.*
 - (1) Subject to the direction, approval and authority of the mayor and pursuant to any applicable written policies established and approved by the common council, the city administrator shall be the head of the department of administration and shall:
 - a. Carry out all duties assigned to the city administrator by this code, by the written policies established and approved by the common council from time to time and by the mayor (subject to such written policies).
 - b. Coordinate and expedite activities of all city departments, divisions and offices.
 - c. Submit to the mayor any recommendations or suggestions to improve the administration of the city and to the common council any recommendations or suggestions to improve the policies, public safety, health, welfare and economy of the city.
 - d. Develop and refine a system by which the city's business is conducted in an efficient and dignified manner.
 - e. Be the financial advisor of the city and to that end shall:
 - i. Oversee all departments as to budget performance and shall report regularly to the mayor and common council on such performance;
 - ii. After consultation with the city treasurer and other department heads, and the management of other entities funded by the city, submit a proposed annual city budget to the city appropriations committee pursuant to any direction provided by the appropriations committee;

- iii. Review and interpret all financial reports submitted to the common council;
 - iv. Review and report to the common council any significant variation in actual versus budgeted expenditures;
 - v. In cooperation with the engineering and planning departments, develop and formulate plans for permanent improvements and recommend such plans to the common council; and
 - vi. Advise and recommend to the mayor and common council the adoption of various plans and programs of finance including available local, county, state and federal revenues sources.
- f. Be the personnel officer of the city and to that end shall:
- i. Be responsible for uniform application and enforcement of city rules and policies;
 - ii. Ensure the establishment and maintenance of a central personnel file for all departments;
 - iii. Review the various personnel rules and regulations and recommend any revisions to the common council, to the extent the rules and regulations are established by the common council, and otherwise to the mayor;
 - iv. Review salaries and wages of all bargaining units and other non-staff positions in the city and make surveys and recommend to the finance-personnel committee appropriate action;
 - v. Review, with the mayor, all salaries and wages of non-bargaining unit staff personnel and make surveys and recommend appropriate action to the mayor;
 - vi. Be responsible for collective bargaining negotiations and, with the finance-personnel committee, develop bargaining procedures and positions;
 - vii. Handle all grievances pursuant to the city's grievance policy; and
 - viii. Oversee all training of personnel.
- g. Keep the common council fully informed about actions and trends of other levels of government, including state and federal funding, and prepare and expedite applications for procurement of state and federal grants at the direction of mayor or common council.
- h. Report on the activities of his office to the common council in such a manner as will inform the common council of actions concluded.
- (2) For any period in which the city administrator shall be absent, on vacation or otherwise unable to perform his or her duties, the city administrator shall, in consultation with the mayor, appoint a department head as acting city administrator.

The acting city administrator shall have no authority to supersede any approved policies or procedures established by the city administrator.

- (3) When there is a vacancy in the office of city administrator:
- a. The mayor shall act as “temporary city administrator,” commencing immediately following the last day of the city administrator’s employment by the city, and shall have all of the duties and authority assigned to the city administrator by this code. The mayor shall assume such duties and authority without additional compensation.
 - b. The mayor, acting as temporary city administrator, shall work closely with the assistant city administrator, if any. The temporary city administrator may delegate duties and authority of the city administrator among the assistant city administrator and department heads in a manner the mayor reasonably deems to be in the best interests of the city; however, the mayor and the assistant city administrator shall properly supervise those to whom the temporary city administrator delegates such duties.
 - c. The mayor’s position as temporary city administrator shall automatically terminate upon the common council appointing a new city administrator and that appointee taking office.

Current Ordinance

ARTICLE II. - COMMON COUNCIL^[2]

Footnotes:

--- (2) ---

State Law reference— Common council, Wis. Stats. § 62.11.

Sec. 2-19. - Meetings, adjournments, quorum.

- (a) *Regular meetings.* Regular meetings of the common council shall be held on the 2nd Tuesday of each calendar month, at the hour of 7:30 p.m. Any regular meeting falling upon a legal holiday or election day shall be held on the next following secular day at the same hour and place. All meetings of the common council shall be held in the city hall, including special and adjourned meetings.
- (b) *Special meetings.* Special meetings may be called by the mayor or any four aldermen upon written notice of the time and purpose thereof delivered to each personally or left at his usual place of abode at least six hours before the meeting. The clerk shall cause an affidavit of service of such notice to be filed in his office prior to the time fixed for such special meeting. A special meeting may be held without such notice when all aldermen are present in person, or consent in writing to the holding of such meeting. If written consent is obtained, it shall be filed with the clerk prior to the beginning of the meeting. Attendance by any alderman shall be deemed a waiver on his part of any defect of notice. Any special meeting attended by all aldermen shall be a regular meeting for the transaction of any business that may come before such meeting.
- (c) *Adjournments.* The council may, by a majority of vote of those present, but not less than three affirmative votes, adjourn from time to time to a specific date and hour.
- (d) *Quorum, what constitutes compelling attendance.* No action shall be taken unless a quorum is present, which shall consist of two-thirds of the aldermen of the council. A lesser number may compel the attendance of absent members or may adjourn. The mayor shall not be counted in determining whether a quorum is present at a meeting.

(Code 1957, § 1.01(4); Ord. No. 67-124, 9-5-1967; Ord. No. 76-380, 12-7-1976; Ord. No. 84-563, 9-18-1984)

State Law reference— Council meetings, Wis. Stats. § 62.11(2).

Sec. 2-20. - Agenda and order of business.

- (a) The public notice and the agenda for regular meetings of the common council shall reflect the following order of business before the common council.
 - (1) The presiding officer shall at the hour appointed call the members to order.
 - (2) Pledge of Allegiance.
 - (3) Roll call. No action shall be taken unless a quorum is present which shall consist of two-thirds of the aldermen of the council. A lesser number may compel the attendance of absent members or adjournment.
 - (4) Public hearings.
 - (5) Personal appearances and public comment.
 - (6) Receipt of reports of boards, commissions and city officers.
 - (7) Public officials' reports.
 - (8) Consent agenda for items considered routine, which shall include, but not necessarily be limited to the items listed below; provided however, that a member of the common council may specify any question, which shall then be separately debated and voted.
 - a. Adoption of common council minutes of the preceding meeting;

Current Ordinance

- b. Reports of common council and special meetings;
 - c. First readings of all ordinances which shall be listed by number and title reflecting the subject matter, and referral to committee of jurisdiction if necessary;
 - d. Adoption of specified ordinances and resolutions, which have received unanimous committee recommendation.
- (9) Ordinances which may be considered, debated and acted upon.
 - (10) Resolutions may be introduced and referred to committee, or considered and acted upon.
 - (11) Specified unfinished business from previous meetings.
 - (12) Presentation of petitions, memorials, remonstrances and communications.
 - (13) Specified miscellaneous (including new) business.
 - (14) Adjournment.
- (b) No business shall be considered out of the order established in subsection (a) of this section except by the concurrence of two-thirds of the members present, without debate.

(Code 1957, § 1.02; Ord. No. 76-374, 7-20-1976; Ord. No. 2010-1319, § I, 5-11-2010)

Sec. 2-21. - Mayor to preside.

If the mayor at the stated hour shall call the meeting to order. He shall preserve order and decorum, decided all questions of order and conduct the proceedings of the meeting in accordance with the parliamentary rules contained in Robert's Rules of Order revised, unless otherwise provided by Wisconsin Statute or by these rules. Any member shall have the right of appeal from a decision of the presiding officer. The appeal may be sustained by a majority of the members present, exclusive of the presiding officer.

(Code 1957, § 1.03)

Sec. 2-22. - President of council.

If the mayor is absent at the designated time of any meeting, the president of the council shall preside, and during the absence or inability of the mayor shall have the powers and duties of the mayor, excepting that he or she shall not have the power to approve an act of the council which the mayor has disapproved by filing an objection with the clerk. He or she shall, when so officiating, be styled "acting mayor." The president shall be selected by a majority vote of all members of the council at the annual meeting on the 3rd Tuesday of April.

(Code 1957, § 1.04; Ord. No. 2010-1311, § I, 4-13-2010)

Sec. 2-23. - Absence of presiding officer.

In the absence of both the mayor and the president of the council, the following shall be the order of succession as presiding officer: the chair of the committee on public welfare, the chair of the committee on public works, and the chair of the committee on public safety.

(Code 1957, § 1.05; Ord. No. 69-192, 11-18-1969; Ord. No. 2010-1311, § I, 4-13-2010)

Sec. 2-24. - Vacation of chair.

Whenever the presiding officer shall desire to speak upon any question, or to make any motion, he shall vacate the chair and designate the president of the council, if present, and if not, any alderman, to preside temporarily.

Current Ordinance

(Code 1957, § 1.06)

Sec. 2-25. - Committees.

- (a) The common council acting as a committee of the whole shall annually at the common council organizational meeting in April nominate and elect by a majority vote the following standing committees:
 - (1) Finance-personnel committee (including licenses);
 - (2) Public works committee (including streets, sewers, lighting, water, etc.);
 - (3) Public safety committee (including police, fire, traffic, boating, building regulations, etc.);
 - (4) Public welfare committee (including health, public assistance, recreation, nuisances, etc.).
- (b) Each committee shall consist of three aldermanic members, who shall select their chair from among them except the committee on finance-personnel, which shall be chaired by the mayor on an ex officio, non-voting basis. The mayor shall further be a non-voting, ex officio member of all other standing committees. Each member shall serve as appointed unless excused by a majority vote of the common council. All aldermen shall serve on at least one standing committee.
- (c) Special committees may be created from time to time either by the mayor or by motion or resolution. In any case, the number of committee members, the purpose of the committee and its duties shall be stated.
- (d) Any alderman may attend any regular or executive meeting of any subsidiary committee or commission of the council as a non-voting, ex-officio member, and shall abide by all the rules or regulations of the meetings as pertain to the regular members of the committee or commission.
- (e) Each committee shall at the next regular meeting submit written minutes to the common council after reviewing and approving such minutes, and such minutes shall be entered in the proceedings. Such report shall recommend a definite action by the council on each item; and be filed with the clerk prior to each meeting. Minority reports may be submitted.
- (f) Previous notice of each committee meeting shall be filed with the clerk by the chair and each meeting shall be open to the public. The clerk will post notice of such meetings on the city hall bulletin board.
- (g) Any committee may require any city officer to confer with it and supply information needed in connection with any matter pending before the committee.

(Code 1957, § 1.07; Ord. No. 96-896, 12-10-1996; Ord. No. 2010-1311, § I, 4-13-2010)

Sec. 2-26. - Referrals to committee.

- (a) No ordinance, resolution, communication or other matter, other than appointments as described below, shall be acted upon by the council unless such ordinance, resolution, communication or other matter shall have been referred to the council or reported on by one of the following:
 - (1) An appropriate standing committee;
 - (2) The committee of the whole;
 - (3) The appropriations committee;
 - (4) Any special committee of council members created for that purpose under section 2-25(c); or
 - (5) For ordinances repealing, creating or amending, planned unit developments or transferring development rights, amending the city's official zoning map, amending the city's land use plan, and resolutions, approving development agreements, final plats and similar property-specific matters, the planning commission.

Current Ordinance

- (b) The council may, by the affirmative vote of two-thirds (2/3) of the aldermen present, suspend the rule established in subsection (a) and act on a matter that has not been appropriately referred to or reported on by a committee as specified in subsection (a).
- (c) Appointments to boards and commissions may be acted upon without having been referred to or reported on by a committee unless otherwise specifically required elsewhere in these sections. However, the council may refer any appointment to a committee by motion duly adopted.
- (d) Unless the rule established in subsection (a) is suspended for a matter, any ordinance, resolution, communication or other matter which has not been referred to the council or reported on by a committee as specified in subsection (a) shall be read by number, title, author and sponsor, if any, and referred to the appropriate committee by the mayor without motion or, if the mayor does not make such a referral, by the council upon motion duly adopted. The clerk shall read and record each such reference by title and by noting the person(s) or body submitting, presenting or sponsoring the matter referred.
- (e) Any alderman may require the reading in full of any matter at any time it is before the council.

(Code 1957, § 1.08; Ord. No. 93-787, 8-3-1993; Ord. No. 2008-1246, § I, 8-12-2008)

Sec. 2-27. - Bills and claims.

All bills and other financial claims against the city shall be itemized and, upon receipt, shall be examined by the treasurer and referred by the clerk to the finance-personnel committee for examination and approval at its next meeting; provided, however, that payment of regular wages and salaries of officials and employees according to schedules adopted by the council shall be made by the treasurer prior to approval by the finance-personnel committee after verification by the city administrator or the relevant department head.

(Code 1957, § 1.09; Ord. No. 2008-1248, § I, 5-13-2008)

Sec. 2-28. - Committee reports.

- (a) An aye and no vote shall be taken on each committee report at the next regular council meeting following its submission, provided that nothing herein shall be construed to eliminate the requirement that separate council action be taken on any proposed ordinance or resolution reported out of committee. Any alderman may require a separate vote on any other matter reported out of committee. Action by the council upon a specific matter included in any committee report shall be deferred until its next regular meeting following the council meeting at which the report is received upon the request of any two aldermen.
- (b) Except as otherwise provided in this Code, the approval of a committee report in which the adoption of a matter is recommended shall comprise final action on such matter.

(Code 1957, § 1.10; Ord. No. 93-787, 8-3-1993)

Sec. 2-29. - Procedures for proposed ordinances and resolutions.

Proposed ordinances and resolutions shall appear separately on the council's agenda, and the agenda shall specify the number, title, author and sponsor, if any, of each proposed ordinance and resolution. No proposed ordinance or resolution shall be considered, debated or discussed by the council, and no action shall be taken on any proposed ordinance or resolution, unless the ordinance or resolution is presented to the council in writing. No proposed ordinance shall be considered, debated or discussed by the council, and no action shall be taken on any proposed ordinance, without it having had one reading at a previous meeting of the council, unless debate and discussion shall occur or action shall be taken on the proposed ordinance pursuant to a motion temporarily suspending the rules.

(Code 1957, § 1.11; Ord. No. 93-787, 8-3-1993; Ord. No. 2008-1247, § I, 5-13-2008)

Current Ordinance

Sec. 2-30. - Rules of procedure, reconsideration, resubmission.

(a) The deliberations of the council shall be conducted in the following manner:

- (1) Provided there is no objection by any alderman present, the mayor may declare the entire council a committee of the whole for informal discussion at any meeting or for any purpose, and shall ex officio be chairman of the same.
- (2) During the meetings of the council all aldermen shall remain in their allotted seats, and no conversation shall be indulged in, so that the council may expeditiously proceed with the business before the meeting.
- (3) The parliamentary rules contained in Robert's Rules of Order revised shall govern deliberations of the council unless otherwise specifically provided by Wisconsin Statute or these rules.
- (4) No alderman shall address the council until he has been recognized by the presiding officer. He shall thereupon address himself to the presiding officer and confine his remarks to the question under discussion and avoid all personalities.
- (5) When two or more aldermen simultaneously seek recognition, the presiding officer shall name the member who is to speak first.
- (6) No person other than the mayor and an alderman shall address the council, except with the unanimous consent of the council, except that citizens may address the council with the permission of the presiding officer as to matters which are being considered by the council at the time the request to speak is made.
- (7) No motion shall be discussed or acted upon until it has been seconded unless the rules permit one alderman to initiate action. No motion shall be withdrawn or amended without the consent of the person making the same and the person seconding it.
- (8) No alderman shall speak more than twice and not to exceed five minutes each time on any question without first obtaining permission from the council.
- (9) When a question is under discussion, no action shall be in order except to:
 - a. Adjourn
 - b. Recess
 - c. Lay on the table
 - d. Move the previous question
 - e. Postpone to a certain day
 - f. Refer to a committee
 - g. Amend
 - h. Postpone indefinitely

The foregoing motions shall have precedence in the order listed.

- (10) Any alderman wishing to terminate the debate may move the previous question, in which event the presiding officer shall announce the question as: "Shall the main question now be put?" If two-thirds of the aldermen present vote in the affirmative, the main question shall be taken without further debate, its effect being to put an end to all debate and to bring the council to a direct vote, first upon any pending amendments and then upon the main question.
- (11) Every alderman when within the bar of the council chamber at the time a question is put shall give his vote unless it is his good faith belief that special circumstances compel his abstention on the question. Such alderman shall announce his intention to abstain as soon as he shall determine that he intends to do so, and shall thereafter refrain from participation in debate on the question. Upon advising of his intention to abstain from voting, such alderman may, but shall not be compelled to, make a brief oral statement of the reason for his abstention.

Current Ordinance

- (12) Any alderman may demand a roll call aye and no vote on any matter properly pending a vote before the common council. All roll call votes shall be recorded specifying the vote of each named member in the journal of minutes. Roll call votes shall be taken with respect to the following: adoption of any measure assessing or levying taxes, appropriating or disbursing money, or creating any liability or charge against the city of any fund thereof and on all ordinances. No alderman may change his vote on any question after the result of a vote thereon has been announced.
- (13) The mayor shall not vote except in case of a tie. When the mayor does vote in the case of a tie, his vote shall be counted in determining whether a sufficient number of the council has voted favorably or unfavorably on any measure.
- (14) A majority vote of all the common council, including the vote of the mayor in case of a tie, in favor of any proposed ordinance, resolution, appointment, or other matter, shall be necessary for passage or approval unless a larger number is required by the Wisconsin Statutes or by specific reference in these codes of ordinances. Notwithstanding, in the case in which an abstention or absence of an aldermanic member of the common council results in a four to three aldermanic vote, the absent or abstaining member shall be deemed, for purposes of this subsection only, to have voted "no" on the question, and the minutes shall reflect such status as a "deemed" vote.
- (15) A motion to adjourn shall always be in order and a motion to adjourn, to recess, to lay on the table and a call for the previous question shall be decided without debate.
- (b) It shall be in order for any alderman voting in the majority to move for a reconsideration of the vote on a question at the meeting during which the vote was taken or at the next succeeding regular meeting, but not otherwise. However, no ordinance may be subject to a motion to reconsider once published and effective pursuant to the provisions of Wis. Stats. § 62.11(4)(a), nor may action of the council be subject to a motion to reconsider after such time as legal rights and obligation have arisen resulting from or by virtue of the action. The confirmation of the appointment of city officials shall not be subject to a motion to reconsider. A motion to reconsider being put and lost shall not be renewed.
- (c) Whenever any measure shall be introduced for the consideration of the council and failed of adoption and passage, such measure (unless substantially changed) shall not be introduced again until the lapse of at least three months from the date of its last preceding consideration.

(Code 1957, § 1.12; Ord. No. 95-864, 2-13-1996; Ord. No. 96-875, 5-14-1996; Ord. No. 97-916, 4-8-1997; Ord. No. 98-961, 12-8-1998; Ord. No. 2006-1194, § I, 11-14-2006)

Sec. 2-31. - Appropriations and charges.

All ordinances or resolutions appropriating money or creating any charge against the city other than the payment of claims for purchases or work previously authorized by the council shall only be acted upon by the council at the next regular meeting, provided that this provision may be suspended by affirmative action by two-thirds of all members of the council.

(Code 1957, § 1.13)

Sec. 2-32. - Clerk, duties.

It shall be the duty of the clerk of this council, in addition to the duties prescribed by the Wisconsin Statutes, to furnish the chairmen of committees and other city officers with the resolutions and other matters that may be referred to them, and to perform all such other clerical duties as may be required by this council.

(Code 1957, § 1.15)

Sec. 2-33. - Agenda.

Current Ordinance

- (a) Not less than 72 hours prior to each regular meeting the clerk shall cause to be delivered to each alderman an agenda listing the specific matters which will be considered at the meeting. All reports of the committees of the common council, ordinances, resolutions, communications, claims and similar matters to be considered by the common council shall be filed with the city clerk not later than 12:00 noon, on the Monday of the week preceding a regular common council meeting (or the preceding Friday in the event that the Monday of the week preceding a meeting of the common council is a recognized holiday). Documents or matters filed after the above cut-off date should be submitted to the mayor for his approval to be added to the agenda.
- (b) Additional items shall be placed on the agenda if requested in writing by two aldermen prior to noon on Wednesday preceding the meeting. Such request is subject to section 2-26, and the common council shall direct the request to a committee if appropriate.

(Code 1957, § 1.17; Ord. No. 76-374, 7-20-1976; Ord. No. 2016-1485, § I, 1-10-2017)

Sec. 2-34. - Minutes of meetings.

With the agenda for each regular meeting of the common council the city clerk shall supply to each alderman at their residence a type written copy of the proceedings of the previous meetings thereof. By majority action of those present the council may require the reading of the minutes at the ensuing meeting.

(Code 1957, § 1.18; Ord. No. 97-925, 10-14-1997)

Sec. 2-35. - Suspension of rules.

Except to the extent mandated by state law, this article or any part thereof may be temporarily suspended in connection with any matter under consideration by a recorded vote of a two-thirds majority of all aldermen.

(Code 1957, § 1.19; Ord. No. 67-118, 7-18-1967; Ord. No. 93-787, 8-3-1993)

Sec. 2-36. - Amendments.

The assent of two-thirds of all the aldermen shall be required to amend this article or any part thereof.

(Code 1957, § 1.20)

Secs. 2-37—2-60. - Reserved.



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Office of Administration

TO: Public Welfare Committee
FROM: Brian Sajdak, City Attorney
DATE: April 13, 2021
SUBJECT: An Ordinance Repealing and Recreating Section 62-8(b) (4) of the Mequon Municipal Code Relating to the Regulation of Political Messages

Background

Historically, First Amendment law has provided communities with reasonably broad authority to regulate speech, including campaign signs, provided that such regulations are content neutral. In other words, as long as a regulation did not regulate the content of the sign, the regulation would be upheld as long as the regulation was aimed at a substantial governmental interest. If the regulation is not content neutral, then the government must show a compelling interest and that the regulation is the least restrictive means of addressing that compelling interest. Most regulations do not meet this standard of review.

Recent case law has significantly changed the analysis related to whether a regulation is truly content neutral. One such case from the US District Court for the Eastern District of Wisconsin, is attached for your consideration. The bottom line in this case is that the simple classification of a sign as a “campaign sign” takes the regulation out of the realm of content neutral under First Amendment law - even if the regulation makes no other content determinations. With this shift, time-based regulations have been increasingly struck down by the Courts.

Based on this case law, staff have generally not enforced the temporal aspects of the City code by utilizing an education and voluntary compliance instead of threats of citations - an approach that has mostly worked. However, following the November presidential election, numerous complaints were received concerning signs for both candidates that remained well beyond the election as the challenges to the results wore on. While most complainants understood the position of the City, it nonetheless became clear that the code should be updated to remove the time-based restrictions to eliminate confusion.

Discussion

The proposed Ordinance does three primary things. First, it eliminates the time-based restrictions (e.g., limits signs to specified periods before and after elections) to address the concerns raised by the case law. Second, it reformats the section to make it consistent with other code provisions and also make it easier to read, although there are no material substance changes. Finally, in light of the broader applicability to all political message signs (campaign, social movements, referendums, etc) during the year, the ordinance adopts the “political message” language of the state statute versus the “campaign sign” the prior code utilized.

At the Committee's meeting in April, the members asked that the ordinance be revised to include language that would limit the number of total signs allowed. In order to accomplish this, sections c.7. and c.8. were added. Section c.7. limits signs in residential districts to not more than 4 feet in height and a total cumulative square footage of 12 sq. ft. This limitation would allow for four 18' x 24" signs, which is the typical sign found on residential properties. Section c.8. would allow for signs in non-residential districts up to six feet in height and a total square footage of 32 sq. ft. per commercial tenant, which would allow multiple smaller signs or a single 4' x 8' sign, which is the largest typical roadside sign utilized.

Fiscal Impact

None.

Recommendation

A motion to adopt An Ordinance Repealing and Recreating Section 62-8(b)(4) of the Mequon Municipal Code Relating to the Regulation of Political Messages

Attachments:

20210407_173710_643026-Sec._62_8.____Exemptions_ (DOCX)

Fiedorowicz v City of Pewaukee (PDF)

COMMON COUNCIL
OF THE
CITY OF MEQUON

An Ordinance Repealing and Recreating Section 62-8(b) (4) of the Mequon Municipal Code
Relating to the Regulation of Political Messages

A. The Common Council previously adopted section 62-8(b)(4) of the Mequon Municipal Code which regulates campaign signs within the City.

B. Recent case law, including a decision in Fiedorowicz v. City of Pewaukee by the U.S. District Court for the Eastern District of Wisconsin, substantially limits the City's ability to place time restrictions of campaign signs.

C. The Common Council finds that the regulation of the placement of signs so as to ensure the safety of pedestrians, traffic, and occupants of buildings remains a critical and necessary component of preserving the health, safety, and welfare of the community.

D. The Common Council wishes to update section 62-8(b)(4) to ensure that the regulation of political messages within the City extends only to preserving the safety of pedestrians, traffic, and occupants of buildings.

BASED UPON THE FOREGOING RECITALS, THE COMMON COUNCIL OF THE CITY OF MEQUON, OZAUKEE COUNTY, STATE OF WISCONSIN, DO ORDAIN AS FOLLOWS:

SECTION I

Section 62-8(b)(4) of the Mequon Municipal Code is repealed and recreated to read as follows:

(4) Communication of Political Messages.

a. The common council of the City of Mequon finds and declares the following legislative intent regarding the subject of political campaign signs:

1. Citizens possess important rights of free speech and association, the regulation of which may stem only from compelling governmental interests or significant governmental interests, as the case may be.

2. The public is possessed with the important right of safe and unobstructed travel over the public rights-of-way.

3. It is necessary as a matter of public policy that the buildings and grounds of public agencies maintain a strict appearance of political neutrality.

4. In the absence of regulation, there exists a substantial possibility of a proliferation of political messages in the city with the attendant traffic safety, litter, structural hazards, and loss of meaning of the message conveyed by said messages.

5. Section 12.04 of the Wisconsin Statutes authorizes the City to regulate political messages to ensure public safety.

6. A significant governmental interest therefor exists for a reasonable system of regulation of political messages in order to protect the rights and advance the concerns stated in this section, while being narrowly tailored, and affording ample alternative means to communicate the desired speech.

7. These narrowly tailored regulations are the least restrictive method of preserving the safety of the public.

b. Within this section, "political message" means a message intended for a political purpose or a message which pertains to an issue of public policy of possible concern to the electorate, but does not include a message intended solely for a commercial purpose.

c. No political message shall be placed or posted on any property within the City:

1. In any manner that adversely impacts pedestrian or traffic safety by blocking or obstructing any public right of way, private road, sidewalk, or trail. including the impairment of visibility or sightlines from or to.

2. In any manner than adversely impacts pedestrian or traffic safety by impairing the visibility or sightlines from or to any public right of way, private road, sidewalk, or trail.

3. In any manner that obstructs a window, door, fire escape, ventilation shaft or other area which is required by an applicable building or fire code to remain unobstructed.

4. On any public building, public structure, public right-of-way or grounds that are owned, operated or maintained by any public or governmental agency.

5. On private property without the consent of the owner or tenant of such property.

6. In any manner that may use or employ an electronic, mechanical or electro-mechanical message generator, or audio broadcast component.

7. On any property within a residential zoning district in a manner that exceeds four feet in height and/or a total of 12 square feet of cumulative size per property.

8. On any property in a non-residential zoning district in a manner that exceeds six feet in height and/or a total of 32 square feet of cumulative size per property, except that in the case of a multi-tenant commercial property the cumulative square feet limitation shall apply to each commercial tenant.

d. The Mequon Police Department and/or the Community Development Department shall be authorized to remove any political campaign signs that are found to be placed in the public right of way, or on other public property, in violation of the provisions of this section.

SECTION II

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION IV

This Ordinance shall become effective the day after its publication as provided by law.

Approved by: John Wirth, Mayor

Date Approved: June 8, 2021

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on June 8, 2021.

Caroline Fochs, City Clerk

Published: _____

Sec. 62-8. Exemptions.

- (4) *Political campaign signs.* The common council of the City of Mequon declares the following legislative intent regarding the subject of political campaign signs:
- a. Citizens possess important rights of free speech and association, the regulation of which may stem only from compelling governmental interests or significant governmental interests, as the case may be.
 - b. The public is possessed with the important right of safe and unobstructed travel over the public rights-of-way.
 - c. It is necessary as a matter of public policy that the buildings and grounds of public agencies maintain a strict appearance of political neutrality.
 - d. The substantial possibility exists of a proliferation of political campaign signs in the city with the attendant traffic safety, litter, structural hazards, and loss of meaning of the message conveyed by said signs in the absence of any regulation of such signs.
 - e. A significant governmental interest therefor exists for a reasonable system of regulation of political campaign signs in order to protect the rights and advance the concerns stated in this section, while being narrowly tailored, and affording ample alternative means to communicate the desired speech.
1. The provisions of Wis. Stats. § 12.04 are hereby adopted and incorporated by reference herein.
 2. *Size, shape and placement.* The gross surface area of a political campaign sign shall not exceed 11 square feet where its proposed or actual placement will impair visibility or site lines from and to public rights of way and private roads, so as to adversely impact on pedestrian or traffic safety.
 3. *Location(s).*
 - A. Political campaign signs shall not be posted on any public building, public structure, public right-of-way or grounds that are owned, operated or maintained by any public or governmental agency.
 - B. Political campaign signs located on private property may be placed by an owner or lessee, or with the consent of either. No such sign may obstruct a window, door, fire escape, ventilation shaft or other area which is required by an applicable building or fire code to remain unobstructed.
 4. *Special conditions.* The Mequon Police Department shall be authorized to remove any political campaign signs that are found to be placed in the public right of way, or on other public property, in violation of the provisions of this section.
 5. *Time limit.* Political campaign signs may be posted during the election campaign period, as that term is defined in Wis. Stats. § 12.04(12)(a), namely from the first day for circulation of nomination papers through the day of the election, except that the city shall not enforce removal of such signs until ten days after the election campaign period.
 6. *Prohibition of electronic/mechanical/audible signs.* No political campaign sign may use or employ an electronic, mechanical or electro-mechanical message generator, or audio broadcast component.

2004 WL 6338545

Only the Westlaw citation is currently available.
United States District Court,
E.D. Wisconsin.

Walter **FIEDOROWICZ**, Plaintiff,
v.
The CITY OF PEWAUKEE, Defendant.

No. 02-C-0830.

|
April 9, 2004.

Attorneys and Law Firms

Brady C. Williamson, James A. Friedman, Godfrey & Kahn SC, Madison, WI, Laurence J. Dupuis, Legal Action of Wisconsin Inc, Milwaukee, WI, for Plaintiff.

Raymond J. Pollen, Crivello Carlson SC, Milwaukee, WI, for Defendant.

DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANTS MOTION FOR SUMMARY JUDGMENT, DECLARING UNCONSTITUTIONAL THE ORDINANCES AT ISSUE, AND AWARDING PLAINTIFF ATTORNEY'S FEES

C.N. CLEVERT, JR., District Judge.

*1 Plaintiff, Walter **Fiedorowicz**, brought this action under 28 U.S.C. § 1983 asking the court to declare the City of Pewaukee, Wisconsin's Election Sign Ordinance § 17.702(c) and Temporary Sign Permit Process, §§ 17.703(b), 17.0713, and 17.0719 unconstitutional. **Fiedorowicz** and the City of Pewaukee (the City) have filed cross motions for summary judgment. For the reasons set forth below, the court will grant **Fiedorowicz's** summary judgment motion, deny the City of Pewaukee's summary judgment motion, declare the ordinances unconstitutional, and award **Fiedorowicz** his attorney's fees as the prevailing party pursuant to 42 U.S.C. § 1988.

Summary Judgment Standard

Summary judgment is proper when “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). That the parties have filed cross-motions for summary judgment does not affect this standard. See *I.A.E., inc. v. Shaver*, 74 F.3d 768, 774 (7th Cir.1996). Also, all inferences are construed in favor of the party against whom the motion is made in determining whether there is a genuine issue of material fact. *Id.* However, in this case the facts relevant to the pending motions are not in dispute.

Findings of Fact

Walter **Fiedorowicz** resides and votes in the City. (Aff.Fiedorowicz, ¶ 1) The City is a municipal entity organized and existing pursuant to Wisconsin Statutes. (Am. Complaint, ¶ 4; Answer and Affirmative Defenses to Am. Complaint, ¶ 4)

Chapter 17.0700 of the City's Municipal Code governs “SIGNS AND GRAPHICS.” (Aff.Peterson, Ex. E) Section 17.0701 states:

INTENT AND PURPOSE

The intent of this section is to provide for and regulate the location and safe construction of signs in the Town in a manner that will ensure that signs are compatible with surrounding land uses, and to express the identity of individual proprietors and the community as a whole. It shall be unlawful for any person, firm or corporation to locate, erect, move, reconstruct, extend, enlarge, convert, or structurally alter any sign without first complying with the requirements of this section.

(Aff.Peterson, Ex. E)

Section 17.0702 provides:

SIGNS PERMITTED IN INDIVIDUAL ZONING DISTRICTS WITHOUT A PERMIT

Certain signs are permitted as accessory uses in individual zoning districts *without a permit* as set forth in the individual district regulations. In addition, the following signs may also be *permitted without permit*:

...

c. *Election Campaign Signs* may be permitted in any district without a permit provided that permission shall

be obtained from the property owner, renter, or lessee, and provided that such sign shall not be erected more than 45 days prior to an election and shall be removed within seven (7) days following the election. Such signs in residential zoning districts shall not exceed four (4) square feet in sign area per sign nor more than a total of 20 square feet per individual property (ownership). Such signs in all other zoning districts shall not exceed four (4) square feet in sign area per sign nor more than a total of 32 square feet in sign area per individual property (ownership or lease).

*2 (Aff.Peterson, Ex. E)

Section 17.0703 provides:

SIGNS PERMITTED IN INDIVIDUAL-ZONING DISTRICTS WITH A PERMIT

Certain signs may be permitted in any specific zoning district after application and permit by the Building Inspector as follows:

...

b. *Temporary Signs or Banners* when authorized by the Building Inspector. For purposes of this provision a temporary sign is one which will be used for no more than thirty (30) days in a six (6) month period. Such signs shall not exceed thirty-two (32) square feet in sign area. (Aff.Peterson, Ex. E)

Section 17.0713 provides:

ADMINISTRATION

Applicants [sic] for permits shall be filed with the Town Building Inspector, who shall review the application for its completeness and accuracy and approve or deny the application within 45 days of receipt unless the time is extended by written agreement with the applicant. A sign permit shall become null and void if work authorized under the permit has not been completed within six (6) months from the date of issuance. Applicants [sic] shall be made on forms provided by the Building Inspector and shall contain or have attached thereto at least the following information:

a. *Name, Address, and Telephone Number* of the applicant, and location of building, structure, lot or property to which or upon which the sign is to be attached or erected.

b. *Name of Person. Firm. Corporation, or Association* erecting the sign.

c. *Written Consent* of the owner or leasee of the building, structure, or land to which or upon which the sign is to be affixed or erected.

d. *A Scale Drawing* of such sign indicating the dimensions, the materials to be used, the type of illumination, if any, and the method of construction and attachment.

e. *A Scale Site Drawing* indicating the location and position of such sign in relation to nearby buildings, structures, property boundaries, or signs.

f. *Information for type of information or message* to be displayed on the face(s) of the sign.

g. *Copies* of any other permit required and issued for said sign, including the written approval by the Electrical Inspector in the case of illuminated signs. The Building Inspector shall examine the plans and specifications, inspecting all wiring and connections to determine if the same complies with the Town Codes and Ordinances.

h. *Additional Information* such as photographs as may be required by the Building Inspector.

i. *Payment* of a fee as set forth herein. The Building Inspector may, if necessity requires, direct that the applicant for a sign permit meet with the Plan Commission to review the request and provide guidance in the issuance of the permit.

(Aff.Peterson, Ex. E.)

Section 17.0717 provides:

PERMIT FEES

a. *Application and Sign Erection Permit Fee.* Each application for a permit shall be accompanied by a minimum fee of \$25.00 plus thirty-five cents (\$0.35) for each square foot over ten (10) square feet on one (1) side to a maximum of \$200.00.

*3 (Aff.Peterson, Ex. E)

Section 17.0210 provides:

PRINCIPLES AND STANDARDS FOR THE AESTHETIC EVALUATION OF SITE AND BUILDING PROJECTS

a. *Introduction and Intent*

The process of private building and development in a community may be simple or complex depending upon the size of the project, the number of participants, the ease of communication among the various private and public parties involved, and the content and clarity of the public rule and regulations. While the community representatives can not usually directly affect either the project size or the number of project participants, they can have a direct affect on the content and clarity of rules and regulations as well as the communication, and indeed, interpretation of any such rules and regulations.

Like inhabitants of most developing communities, Pewaukee Town officials and citizens have legitimate concerns about both the future character of the community and the integrity of existing (and even historic) development. One such concern is in regard to land uses or the mix of land uses, both existing and planned. Another concern is the financial capability of development (developers) to provide the required and promised improvements and, the financial capability of the community to provide the necessary and requested services. A third major concern, importantly, is in regard to the visual impact or image of the community by people both living within or only traveling through the Town. The intent or purpose of this sub-section is to provide principles and standards for use by both the potential developer and Town officials in the preparation and review of site and building plans proposed within the Town with emphasis on and the primary objective of heightening the visual character of the sites and buildings proposed and, thereby, the entire community. It is understood that such visual enhancement is also expected to be maintained overtime and not be only and initial accomplishment to be forgotten.

b. *Site Planning and Design Principles*

Following is a list of principles which should be utilized by everyone concerned in any *Site Planning and Design Projects* in the Town of Pewaukee:

...

- (3) All elements and aspects of the site, both natural and man-made, are important to the aesthetic character of the site.

...

- (7) Site grading, landscaping, paving, fencing, lighting, signage, and other site enhancement are an integral part of any building and development project.

c. *Building, Design, Layout and Construction Principles*

Following is a list of principles which should be utilized by everyone concerned in any *Building Design, Layout and Construction* project in the Town of Pewaukee.

- (1) No side or facade of a building or structure is exempt from public view and, consequently, all sides or facades should be visually pleasing and architecturally and aesthetically compatible.
- (2) The shape, size, dimension, architectural style, facade material, texture and color, building landscaping, building signage, and, the setting of the building within its immediate environment are all elements of the building structure design addressed by the designer, both individually and in concert.

*4 ...

- (8) Building signage, that is signage which is or appears to be an integral part of the building facade design, needs to be carefully planned and the appropriate sign materials, sign lighting and color used so as not to detract from the architecture of the building or be disruptive.

d. *Site Planning and Design Standards*

...

(7) *STANDARD NO. SD-7*

Signage of uses and buildings on the site shall be limited by the Plan Commission in number, size and type so as not to detract from the visual attractiveness of the site or architecture, or be a distraction to the traveling public or the neighborhood in general.

e. *Building Design Standards*

Standards must be related to the various Principles which, in turn, are related to the overall Objective which, in this case, is to "Heighten the visual character of sites and buildings in the Town of Pewaukee." It should be noted that the visual aspects of building design are difficult to relate to quantitative standards,

and, therefore, many of the building design standards must be qualitative. Following are both quantitative and qualitative *standards related to the visual aspects of building construction* which will be used by the Plan Commission in the review of every site plan or development.

...

(5) *STANDARD NO. BD-5*

...

(b) Building landscaping, lighting and signage shall be presented as an integral part of the building design and shall not be so large or distinct as to detract from the architecture of the building.

(Aff.Peterson, Ex. E)

As a resident and voter, **Fiedorowicz** supports a referendum addressing consolidation of the City of Pewaukee and the Village of Pewaukee. (Aff.Fiedorowicz, ¶ 2) In support of his position, **Fiedorowicz** and others prepared signs stating: "Let us vote; 1 Pewaukee Committee." (Aff.Fiedorowicz, ¶¶ 3, 4) **Fiedorowicz** obtained permission from property owners to place signs on their property within the City. (Aff.Fiedorowicz, ¶ 5) Moreover, he sought permission from the City of Pewaukee to place signs on private property within the City more than 45 days before the Fall 2002 election. (Aff.Fiedorowicz, ¶ 6)

The City's Common Council denied **Fiedorowicz** permission to erect signs by a vote of three to two, with one abstention, at a meeting on May 6, 2002. (Aff. Peterson, Ex. C; Aff. **Fiedorowicz**, ¶ 7) During that meeting, Common Council members and the City Attorney stated that the election campaign sign ordinance, § 17.0702(c), applied to **Fiedorowicz's** request. (Aff.Peterson, Ex. C) Consequently, **Fiedorowicz** was not given permission to place signs on private property more than 45 days before the Fall 2002 election. (*Id.*)

In a letter to the City's Mayor, Jeffrey Nowak, dated July 11, 2002, **Fiedorowicz**, by counsel, asked the City to reconsider its decision denying him permission to place signs on private property in the City. (Aff.Peterson, Ex. D) However, the City did not respond. (Aff.Fiedorowicz, ¶ 8) Regardless, the City maintains that **Fiedorowicz** could have posted signage pursuant to the temporary signs or banners ordinance, § 17.0703(b).

Conclusions of Law

*5 The First Amendment, which is applicable to the States under the Fourteenth Amendment, prohibits States from enforcing laws "abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *U.S. Const amend. I*. This Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people ." *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957). Courts have held that communication by signs and posters is virtually pure speech. *Arlington County Republican Comm. v. Arlington County, Va.*, 983 F.2d 587, 593 (citing *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir.1976)).

Not all limitations on political speech are impermissible. For example, signs may be subject to municipal regulation because they pose distinctive problems that are subject to police powers. *City of Ladue v. Gilleo*, 512 U.S. 43, 48, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994). "Unlike oral speech, signs take up space and may obstruct view, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *Id.* "It is common ground that governments may regulate the physical characteristics of signs—just as they can, within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise." *Id.* (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989) and *Kovacs v. Cooper*, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949)). **Fiedorowicz** does not challenge the City of Pewaukee's ability to regulate the physical characteristics of signs. Rather, he launches a facial attack on the time limits or duration that a sign may be posted. (Plaintiffs Brief, p. 9, n.2).

Traditionally, courts examining an ordinance under the First Amendment first determine whether the ordinance is content-based or content-neutral. A content-based regulation, which restricts speech because of the ideas or messages expressed, is presumptively invalid and subject to strict scrutiny. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). Consequently, the government must demonstrate a compelling state interest and that the regulation is the least restrictive alternative. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989). Most content-based regulations do not

survive this exacting standard of review. *See, e.g., City of Ladue*, 512 U.S. at 43 (prohibiting yard signs in order to minimize visual clutter may be a substantial interest but it is not a compelling interest); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 97 S.Ct. 1614, 52 L.Ed.2d 155 (1977) (the city's interest in maintaining a stable, racially integrated neighborhood held insufficient to support a prohibition of residential "For Sale" signs); *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) (potential for libel of public official held insufficient to prevent publication in newspaper); *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (undifferentiated fear or apprehension of disturbance held insufficient to support regulation prohibiting anti-war armbands).

*6 On the other hand, a lesser standard is applied if the regulation on speech is deemed content-neutral. In such cases, the government need only show that it has a significant interest at stake, that the regulation is narrowly tailored to promote that interest, and that there are ample alternative means available to communicate the desired speech. *See Lee v. International Society for Krishna Consciousness, Inc.*, 505 U.S. 830, 112 S.Ct. 2709, 120 L.Ed.2d 669 (1992) (finding that flow of passengers into and out of the airport terminal was a substantial governmental interest); *Ward*, 491 U.S. at 781 (regulating noise levels at an outdoor concert was a substantial governmental interest); *Heffron v. International Society for Krishna Consciousness Inc.*, 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981) (finding that a rule requiring solicitation at a state fair be done from a booth was narrowly tailored because it focused on the incidental effects of providing exemptions).

Section 17.0701 of the City ordinance makes it unlawful to "locate, erect, move, reconstruct, extend, enlarge, convert, or structurally alter any sign" without first complying with the requirements of the section. The section includes restrictions based on the type of sign at issue. For example, bulletin boards for public, charitable or religious institutions require a permit but may be displayed indefinitely. § 17.0703(a). Real estate signs require a permit but may be displayed six months, unless extended by action of the Town Plan Commission. § 17.0704(c). **Fiedorowicz's** "Let us vote" signs fall within the election campaign sign ordinance, § 17.0702(c) or the temporary sign ordinance, § 17.0703(b). The election campaign sign ordinance allows signs conveying "election" or "campaign" messages to be posted without a permit 45 days before an election and seven days after

§ 17.0702(c). The temporary signs or banners ordinance provides that residents must file an application with the Town Building Inspector on a form that includes the "Information (or type of information or message)" to be displayed on the face(s) of the sign. § 17.0713(f). In addition, the applicants must pay a minimum fee of \$25 plus thirty-five cents for each square foot over ten square feet on one side of the proposed sign to a maximum of \$200. § 17.0717(a). The Building Inspector may require the applicant to meet with the Plan Commission to review the request and to provide guidance in the issuance of the permit. § 17.0713(i). If approved, the sign may be used no more than 30 days in a six month period. § 17.0703(b).

Most courts addressing the constitutionality of durational limitations similar to those in the City have proceeded under the traditional framework and found the limitations to be content-based. *Curry v. Prince George's County, Maryland*, 33 F.Supp.2d 447, 452 (D.Md.1999) (collecting cases). In *Curry*, the court held unconstitutional an ordinance prohibiting campaign signs more than 45 days before an election and 10 days after the election. In *Whitton v. City of Gladstone, Missouri*, 54 F.3d 1400 (8th Cir.1995), the court held unconstitutional an ordinance prohibiting campaign signs more than 30 days before an election and seven days after the election. The ordinance was content-based because the words on the sign defined whether the sign was subject to the durational limitations. *Id.*, at 1404. Similarly, in *Painesville Bldg. Dept. v. Dworken & Bernstein Co., L.P.A.*, 89 Ohio St.3d 564, 733 N.E.2d 1152 (Ohio 2000), the Ohio Supreme Court held unconstitutional an ordinance prohibiting campaign signs more than 17 days prior to an election and 48 hours after the election.

*7 According to the City, these cases are inapposite because they do not address adequately the United States Supreme Court's approach in *City of Ladue*, 512 U.S. at 43. *Ladue* banned political signs displayed from a private residence, but carved out exceptions for what *Ladue* deemed to be indispensable signs. *Id.* at 45. *Ladue* justified its ban because signs create "ugliness, visual blight and clutter" which "tarnish the natural beauty of the landscape as well as the residential and commercial architecture, impair property values, substantially impinge upon the privacy and special ambience of the community, and may cause safety and traffic hazards to motorists, pedestrians, and children." *Id.*, at 47 n. 6. In striking down the ordinance, the Supreme Court found it unnecessary to categorize a challenged political sign ordinance as content-based or content-neutral. This approach

troubled Justice O'Connor, who accused the Supreme Court of stepping away from its normal analytical structure and failing to determine whether the ordinance was content-based or content-neutral. *Id.* at 60.

This court is not persuaded by the City of Pewaukee's assertion that *City of Ladue* “heralds a new approach in First Amendment jurisprudence.” (Defendant's Brief in Opposition, p. 13). The Supreme Court acknowledged problems with the content discrimination rationale. For example, Ladue could remove theoretically the defects in its ordinance by repealing all exemptions to its ban. But in doing so, Ladue could still run afoul of the First Amendment by prohibiting too much speech. *Id.* at 51. Ultimately, the Ladue ordinance could not prevail under any level of scrutiny. Therefore, rather than engaging in the content discrimination question, the Supreme Court assumed, for the sake of deciding the case, the validity of Ladue's submission that the various exemptions were free of impermissible content or viewpoint discrimination. *Id.*

City of Ladue is instructive because of the similarities to the case at bar. Ladue argued, just as the City of Pewaukee argued in this case, that the ordinance was a mere regulation of the time, place, or manner of speech because residents remained free to convey their desired messages by other means, such as hand-held signs, letters, handbills, flyers, telephone calls, newspaper advertisements, bumper stickers, speeches and neighborhood or community meetings. *Id.*, at 56. Yet, the Supreme Court was not persuaded that there were adequate substitutes for the important medium of speech that Ladue closed off:

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the “speaker.” As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade. A sign advocating “Peace in the Gulf in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-year old child's bedroom window or the same message on a bumper sticker of a passing automobile. An espousal of the socialism may carry different implications when displayed on the ground of a stately mansion than when pasted on a factory wall or an ambulatory sandwich board.

*8 *Id.*, at 56. The Supreme Court noted that “Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute.” *Id.* at 57.

Though careful to note that they were not confronted with “mere regulations short of a ban,” the Supreme Court mentioned that “individual residents themselves have strong incentives to keep their own property values up and to prevent ‘visual clutter’ in their own yards and neighborhoods—incentives markedly different from those of persons who erect signs on others' land, in others' neighborhoods, or on public property.” *Id.* at 58. “Residents' self-interest diminishes the danger of the ‘unlimited’ proliferation of residential signs that concerns the City of Ladue.” *Id.*

Admittedly, Ladue implemented a near total ban on signs. However, the same rationale applies even if the City of Pewaukee grants a short grace period in which political signs may be displayed. The vast majority of the year, the City of Pewaukee has completely foreclosed “a venerable means of communication that is both unique and important.” *Id.* at 54. Moreover, under the *City of Ladue* analysis, the City of Pewaukee is not providing ample alternative channels for communication. The City of Pewaukee submits that “[b]esides posting temporary signs, door-to-door distributions, mass mailing or telephone campaigns, peaceful face-to-face communication, leafleting and picketing, and print, radio, and television are all effective alternative avenues of communication for Plaintiff.” *Defendant's brief at p. 16.* However, the Supreme Court rejected this argument because the means of communication cited by Ladue were not adequate substitutes for a sign displayed at one's own residence. *Id.* at 56.

Even if this court does not proceed under the *City of Ladue* analysis, the City of Pewaukee's durational limitations on signs are content-based. To comply with the requirements, the content of the sign must be considered to determine what section applies. The various sections of the ordinance value certain speech over others. A commercial real estate sign, church bulletin board, and political speech receive different treatment. If the sign advocates a cause or issue and falls outside of the 45 days prior to the election, the resident must file an application, pay a fee, and hope for the approval of the Building Inspector. The Inspector considers, in part, the type of speech being conveyed on the sign. If approved, the resident can voice his or her opinion, but only for 30 days in

a six-month period. Quintessentially, this is a content-based restriction on speech.

Another case from this district, *Deida v. City of Milwaukee and Scott McCallum*, 176 F.Supp.2d 859 (E.D.Wis.2001), proceeds under this traditional framework while acknowledging the impact of *City of Ladue*. In *Deida*, the court struck down a city ordinance that prohibited the placement of pamphlets on vehicles except for those pamphlets containing “educational material ... approved by the council on physical disabilities ... relating to the parking privileges of physically disabled persons.” *Id.* at 866. In concluding that the ordinance was content-based, the court reasoned as follows:

*9 Under the ordinance, an officer who observes someone placing a leaflet on a vehicle must examine the content of the leaflet in order to determine if the leafleter violated the ordinance. If the content of the leaflet relates to parking privileges of the disabled and has been approved by the Council, then the leafleter acted lawfully. If the content of the leaflet relates to any subject other than the parking rights of the disabled or if it has not been approved by the Council, the leafleter has violated the ordinance. Like the ordinance in *Mosley*, the regulation's operative distinction between lawful and unlawful is the message in the leaflet. The ordinance, therefore, restricts speech based on its content and is presumptively subject to strict scrutiny.

Id. Under strict scrutiny, the court found that Milwaukee's proffered interests in protecting private property, reducing litter and visual clutter and improving driver and pedestrian safety were not compelling. Aesthetic interests and traffic safety have been found substantial, *see, e.g., City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805–87, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), but not compelling, *see, e.g., Curry*, 33 F.Supp.2d at 452 (traffic safety and aesthetic interests not compelling); *Whitton*, 54 F.3d at 1409 (same); *City of Ladue*, 512 U.S. at 54 (reducing visual clutter not compelling).

In so holding, the *Deida* court rejected the “secondary effects” rationale that the City asserts in this case. The court noted that “outside the adult entertainment context neither the Supreme Court nor the Seventh Circuit has found a secondary-effects justification warrants applying lesser scrutiny to a facially content-based regulation.” *Id.* at 867 (citing *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir.2000)). The rationale for relaxed scrutiny is warranted where the “sexually explicit material is the source of social problems that the government wishes to address.” *Id.* However, in *Deida* and the case at

bar, the speech proscribed by the ordinance is not an alleged source of any social problem, and, “in fact, includes speech of the highest value.” *Id.*

The City has failed to justify the limitations on speech it has imposed as a compelling state interest, and has not crafted a remedy that is the least restrictive alternative. The justifications for the ordinances at issue—aesthetics, property values, safety, and space management—have not been determined to be compelling interests. *Deida*, 176 F.Supp.2d at 869; *Whitton*, 54 F.3d at 1408. Moreover, the City has not persuaded this court that the limitations are tailored to serve these objectives. Restrictions on the size and maintenance of signs adequately promote these interests, and there is nothing in this record which supports the durational limitations the City has placed on political signs versus other signs tolerated under the ordinance. The fee and permit requirements for the temporary signs and banners ordinance act only to increase the cost and the inconvenience of a favored means of communication.

*10 The temporary signs and banners ordinance faces an additional hurdle. It operates as an unconstitutional prior restraint of speech. A prior restraint is one in which a party must apply to a government body for a permit or license before it can engage in the protected activity. *S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 552–53, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975). Prior restraints are presumptively unconstitutional, *Freedman v. Maryland*, 380 U.S. 51, 56, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), because of the likelihood that they will be used as a method of censoring unfavorable speech, *Forsyth County, Ga. v. The Nationalist Movement*, 505 U.S. 123, 131–32, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992).

To be permissible, a prior restraint has to contain specific, detailed criteria upon which the licensing body must base its decision to grant or deny a permit. *Id.* at 132 (citations omitted). It is insufficient for the government body to claim that it uses set criteria; rather, those standards must be incorporated into the regulation or publicized by binding administrative or judicial construction. *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988).

Section 17.0713 requires that applicants provide the “Information (or type of information or message) to be displayed on the face(s) of the sign.” Knowing that content, the Building Inspector has 45 days to decide whether to

approve the application. Section 17.0210, “Principles and Standards for the Aesthetic Evaluation of Site and Building Projects,” enumerates “general standards” relating to the intent of the ordinance. Standard No. SD–7, addresses “signage of uses and buildings” and cites broad, aesthetic goals of not detracting from the visual attractiveness of the site or architecture, or distracting the traveling public or the neighborhood in general. These guidelines are not objective, narrow, and definite standards required by case law. *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150–51, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969). A building inspector who disagrees with the content of a proposed sign may deny the application, and there is no requirement that he or she provide reasons or otherwise reduce those reasons to writing absent a request. If a written decision is requested within ten days, there is no time frame for delivering that decision to the individual who requested it.

For the above reasons, the court will grant **Fiedorowicz's** motion for summary judgment. As the City did not respond to plaintiff's request for an award of attorney's fees pursuant to 42 U.S.C. § 1988, the court will grant that request and require **Fiedorowicz** to file documents supporting a reasonable fee award.

Now, therefore,

IT IS ORDERED that plaintiff's motion for summary judgment is granted.

IT IS FURTHER ORDERED that defendant's motion for summary judgment is denied.

IT IS FURTHER ORDERED that the City of Pewaukee's Election Campaign Sign Ordinance, § 17.0702(c), and the Temporary Sign Permit Process, §§ 17.0703(b), 17.0713 and 17.0717 are unconstitutional. The City of Pewaukee is permanently enjoined from applying these ordinances.

*11 IT IS FURTHER ORDERED that plaintiff's request for attorney's fees pursuant to 42 U.S.C. § 1988 is granted. Plaintiff shall submit a proposed order and supporting documents on or before April 30, 2004.

All Citations

Not Reported in F.Supp.2d, 2004 WL 6338545

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Attachment: Fiedorowicz v City of Pewaukee (6125 : Regulation of Political Messages)

TO: Public Welfare Committee
FROM: Kim Tollefson, Director of Community Development
DATE: June 8, 2021
SUBJECT: Amendment to Chapter 58, Zoning Code, Regulation of Lot Size for the Keeping of and Raising Chickens

Background

Alderwoman Kathleen Schneider is sponsoring a text amendment related to the keeping of and raising chickens. The City currently allows chickens subject to a permit and regulations associated with the number, lot size, enclosure location and size, setback requirements and maintenance. Currently, the minimum lot size for keeping and raising chickens is 1.5 acres (please see attached current regulations regarding chickens). The proposed, sponsored amendment is to reduce the minimum lot size to $\frac{3}{4}$ acre.

Analysis

Previously, chickens, as domesticated animals, were determined to be kept on lots of 1.5 acres in size or greater, up to 9.99 acres to maintain consistency with other animal regulations per the code and the community character and distinction between suburban and agriculture neighborhoods.

Under Chapter 58, Zoning Code, all of the residential zoning districts regulate animals including poultry and livestock, including chickens, horses, hogs, goats and other fur-bearing animals bases on lot size and addresses quantities. In addition, a Conditional Use grant can be applied for if quantities of animals exceed the regulations. Only chickens require an initial and annual permit.

Alderwoman Schneider has received several inquiries for the allowance of chickens on a lot size less than 1.5 acres and there are several surrounding communities that allow chickens on a lot size less than 1.5 acres. Those are as follows:

- City of Cedarburg: An annual permit is required and there is no minimum lot size
- Town of Port Washington: 25 chickens permitted on $\frac{3}{4}$ acre and an annual license is required for more than 5 chickens
- Village of Grafton: Four chickens are permitted regardless of lot size subject to an annual permit.
- City of Wauwatosa: Four chickens are permitted regardless of lot size subject to an annual permit.

Staff Summary

The attached chart presents the current and proposed table of regulations for chickens amending the minimum lot size to $\frac{3}{4}$ acres should the Public Welfare Committee wish to amend the ordinance. An ordinance will be prepared for Common Council at the July meeting pending this approval by Public Welfare.

Attachments:
Supplemental Information (PDF)

CURRENT REGULATIONS: 58-530

(b) **Chickens** *on residentially zoned properties.*

(1) Roosters are prohibited.

(2) All **chickens** on residentially zoned properties must always be kept in a secure enclosure that satisfies the requirements of [section 58-519](#).

(3) All enclosures shall be set back at least 50 feet from any property line and shall be located in the rear yard closer to the principle dwelling on the subject parcel than the neighboring lot lines.

(4) Enclosures shall not exceed 40 square feet and six feet in height.

(5) Food supplies shall be stored in rodent-proof containers, and food and water containers shall be kept clean.

(6) Feces shall be removed from yards and enclosures daily and stored in tightly covered metal containers that are setback at least 50 feet from the property line.

(7) Yards, enclosures, premises and animals shall be kept free of insect infestations, rodents and other vermin.

(8) No odor or noise nuisance shall be permitted.

(9) The owner shall, as a condition of keeping such poultry, obtain and maintain a permit as described in [section 58-533](#).

(10) No initial permit shall be issued unless the applicable homeowners association, if any, provides written consent to the owner keeping **chickens** in accordance with the foregoing standards. No such association consent shall be a condition of any subsequent annual permit.

CURRENT REGULATIONS TABLE 58-517

<i>Poultry</i>					
Chickens	1.5 acres (but less than 10 acres)	R-1 to R-4	4 for 1.5 acres and 1 more for each additional acre	Permitted	Chicken permit ✓
Poultry	10 acres	A-1, A- 2, OA	20 per acre	Permitted	None
Poultry	10 acres	A-1, A- 2, OA	More than allowed by right	Conditional	Conditional use permit

PROPOSED REGULATIONS TABLE 58-517

<i>Poultry</i>					
Chickens	1.5 acres (but less than 10 acres)	R-1 to R-4	4 for ~~4.5~~ - ³ / ₄ acres and 1 more for each additional acre	Permitted	Chicken permit ✓
Poultry	10 acres	A-1, A- 2, OA	20 per acre	Permitted	None
Poultry	10 acres	A-1, A- 2, OA	More than allowed by right	Conditional	Conditional use permit

Kimberly Tollefson

From: Kimberly Tollefson
Sent: Thursday, June 03, 2021 9:35 AM
To: Kimberly Tollefson
Subject: FW: For Public Welfare Committee

From: Kathleen Schneider <kschneider@ci.mequon.wi.us>
Sent: Monday, May 17, 2021 4:24 PM
To: Mark Gierl <mgierl@ci.mequon.wi.us>
Subject: For Public Welfare Committee

Hi Chairman Gierl,

I have heard from several people who want to raise chickens but have less than 1.5 acres. Port Washington has a 3/4 acre limit but allows 20 chickens. We allow four, which I think should continue to be the limit. Grafton, Cedarburg, Milwaukee, Wauwatosa don't have a specific lot limit; they just have rules about the placement of the coop, cleanliness etc.

I'd like to get this on the agenda for discussion. I'm wondering whether June would be too soon given our work load? Could you let me know if you think June or July would be better? Then I will let Kim know what the time frame would be for staff.

Thanks!
 Kathleen

Kathleen Schneider
 Alderwoman District Seven
 City of Mequon

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)

Kimberly Tollefson

From: Kathleen Schneider
Sent: Monday, May 17, 2021 4:27 PM
To: Kimberly Tollefson
Subject: Original chicken email

from 4/14

I've received several communications from residents wanting to raise chickens, but living on properties less than the required 1.5 acres.

Multiple surrounding communities do not have an acreage requirement, but rather, more specific rules on the placement and size of the coops etc. These communities often have a modest permitting fee. Cedarburg and Grafton both have an ordinance we can use as a reference. Even Wauwatosa, where lots sizes are relatively small, allows chickens. In that case, they passed an ordinance in 2013 with a one year sunset clause in case there were problems.

Please let me know how to proceed. I expect this needs to go to Public Welfare first.

Thanks so much for your help, 
Kathleen

Kathleen Schneider
Alderwoman District Seven
City of Mequon

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)

Kimberly Tollefson

From: Kathleen Schneider
Sent: Monday, May 17, 2021 4:17 PM
To: Kimberly Tollefson
Subject: Fw: Chickens

Kim,

Below are some of the people who are interested in raising chickens but currently unable.

Kathleen
 Kathleen Schneider
 Alderwoman District Seven
 City of Mequon

From: Heather LaBonte <hrlabonte@yahoo.com>
Sent: Tuesday, April 13, 2021 11:01 AM
To: Kathleen Schneider <kschneider@ci.mequon.wi.us>
Subject: Re: Chickens

ok, one more:

Leslie Iverson, East Mequon



Thanks so much! Yes!!!!

:-D

Heather

On Tuesday, April 13, 2021, 11:00:08 AM CDT, Heather LaBonte <hrlabonte@yahoo.com> wrote:

And another one:

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)

Kristina Butler, Gazebo Hills



Hi, that is so wonderful that she's willing to do that! I am just under an acre at .98 acres, so even a change to one acre wouldn't help me. I will take a look at the ordinances for surrounding areas. I believe Wauwatosa has no limit on lot size, just how many birds, otherwise nobody would be able to do it (they have very small lots there). Post Washington allows them too. I'll send you another message and let you know what I come up with.

Cedarburg doesn't have a limit on lot size. The only stipulation on lot is it has to be a single family home.

<https://www.ci.cedarburg.wi.us/sites/g/files/wyhlf4241/f/uploads/ord-2017-04-keeping-of-chickens.pdf>

In Port Washington, the lot size has to be 3/4 acre, but you can keep up to 25 chickens!

<https://www.co.ozaukee.wi.us/DocumentCenter/View/354/Chickens?bidId=>

Grafton doesn't have a limit on lot size either

<https://www.village.grafton.wi.us/ArchiveCenter/ViewFile/Item/2633>

Thank you!!

Heather

On Monday, April 12, 2021, 11:14:02 AM CDT, Heather LaBonte <hrlabonte@yahoo.com> wrote:

I reached out to a few people on that Nextdoor thread and here are the responses so far:

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)



laura ebert, Gazebo Hills

I would absolutely love a change in the ordinance. It is allowed in neighboring communities with much smaller properties. I have about 3/4 acres so I would like them to consider what other communities do like Milwaukee. Please keep me posted on this. It is one of my frustrations of living in Mequon. I have a garden and it would be wonderful to have chickens .

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)



Megan Kuehn, East Mequon

Wow!!! Thanks for the follow up
I'm in district 21. I'll have go
reach out to my alderman and
see what he says!



Tanith Korravai, Grace-
Mulberry

Oh thank you! Yes, I am. Feel
free to give her my name, though
I am in District 2.

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)

Thank you!!

Heather

Sent from Yahoo Mail on Android

On Sun, Apr 11, 2021 at 8:27 PM, Heather LaBonte
<hrlabonte@yahoo.com> wrote:

So sorry for the delay. Thank you so much for getting back to me!

There was a thread last year on Nextdoor about people in Mequon wanting chickens:
https://nextdoor.com/news_feed/?post=147466723

(Hoping that link works!) It would be wonderful if we could change the ordinance!!!

Heather

On Thu, Apr 8, 2021 at 11:19 AM, Kathleen Schneider
<kschneider@ci.mequon.wi.us> wrote:

Hi Heather,

Unfortunately, there is not a procedure to get a variance. I will say that the city does not go around looking for illegal chicken keepers. Usually, it would be in response to a complaint.

I note that Cedarburg, Grafton, and Milwaukee all have ordinances that require a permit for a modest fee and then very specific requirements, but no specific acreage.

Are you aware of other people who would like to raise chickens but are prohibited by virtue of Mequon Ordinances.? I'd be happy to look into making a change; either to one acre or to the style of ordinance that is used by neighboring communities.

Let me know,

Thanks,
Kathleen

Kathleen Schneider
Alderswoman District Seven
City of Mequon

From: Heather LaBonte <hrlabonte@yahoo.com>
Sent: Monday, April 5, 2021 9:05 AM
To: Kathleen Schneider <kschneider@ci.mequon.wi.us>
Subject: Re: Chickens

Hi Kathleen!

Thank you so much! Yes, they are totally fine with it!

So frustrating that you can have them in the city of Milwaukee and River Hills, but not here.

Heather

On Sunday, April 4, 2021, 10:58:16 AM CDT, Kathleen Schneider <kschneider@ci.mequon.wi.us> wrote:

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)

Hi Heather,

What a fitting inquiry to receive on Easter Sunday! I am not aware of an appeals process for animal ordinances, but I will check when city offices are open. Your property size is so very close to the required size.

Are your immediate neighbors supportive of your idea? The reason for the ordinances is to balance the rights of the homeowner to use their property as they wish and the rights of neighbors to enjoy their own yard without annoyances such as noise or odors.

I'll get back to you soon,

All the best,
Kathleen

Kathleen Schneider
Alderwoman District Seven
City of Mequon

From: Heather LaBonte <hrlabonte@yahoo.com>
Sent: Sunday, April 4, 2021 9:40 AM
To: Kathleen Schneider <kschneider@ci.mequon.wi.us>
Subject: Chickens

Hi!

I'm in your district and I would like to know how I can get a waiver so that we can have chickens. The current requirement is 1.5 acres and we have 1.43. We live at 1627 W Fiesta Lane and all of the properties around us are over an acre and pretty private.

Thank you!

Heather LaBonte

Sent from Yahoo Mail on Android

Attachment: Supplemental Information (6329 : Chickens Minimum Lot Size 2021)



11333 N. Cedarburg Road
Mequon, WI 53092-1930
Phone: 262-242-3100
Fax: 262-242-9655

www.ci.mequon.wi.us

Office of Administration

TO: Public Welfare Committee
FROM: Justin Schoenemann, Assistant City Administrator
DATE: June 1, 2021
SUBJECT: Work Calendar

Month Agenda Topics

May	• Micro-Breweries & Micro-Wineries Ordinance • Storage of Outdoor Power Equipment Ordinance • Subdivision Ordinance Amendments • Chapter II Review (Continued)
June	• Subdivision Ordinance Amendments (Continued) • Chapter II Review (Continued) • Political Signs Ordinance (Continued) • Chickens Ordinance
July	• Chapter II Review (Continued) • Chickens Ordinance (Continued)

Future Agenda Topics

• Adopt-A-Median Program • Community Outreach Initiatives • Home Program Review/Renewal • Begging & Soliciting Alms	• Architectural Board Review • Nuisance Ordinance Review • Logo Redesign/Branding • Redistricting (Summer)
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2021 Completed Items

• Bee City Designation • Bird City Designation • Hybrid Meeting Technology Update	• Review of Protest Petition Process • Electronic Meetings Post COVID-19 • Review of Protest Petition Process
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