



SPECIAL LEGISLATIVE/LICENSING COMMITTEE MEETING

**Monday, August 29, 2022, at 9:30 a.m.
Caledonia Village Hall – 5043 Chester Lane**

1. Call to Order
2. Review Proposed Municipal Code Title 16 Zoning and Referral to Planning Commission for Public Hearing
3. Adjournment

Dated August 26, 2022

Joslyn Hoeffert
Village Clerk

Only committee members are expected to attend. However, attendance by all Board members (including non-members of the committee) is permitted. If additional (non-committee) Board members attend, three or more Board members may be in attendance. Section 19.82(2), Wisconsin Statutes, states as follows:

If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purposes of exercising the responsibilities, authority, power or duties delegated to or vested in the body.

To the extent that three or more members of the Caledonia Village Board actually attend, this meeting may be rebuttably presumed to be a "meeting" within the meaning of Wisconsin's open meeting law. Nevertheless, only the committee's agenda will be discussed. Only committee members will vote. Board members who attend the committee meeting do so for the purpose of gathering information and possible discussion regarding the agenda. No votes or other action will be taken by the Village Board at this meeting.

Chapter 1 – Introduction

Chapter 2 – Administration Enforcement

Chapter 3 – Board Of Appeals

Chapter 4 – Required Plans and Design Guidelines

Chapter 5 – General Provisions

Chapter 6 – Zoning Districts

Chapter 7 – PUD

Chapter 8 – Nonconforming Uses Structures & Lots

Chapter 9 – Conditional Uses

Chapter 10 – Accessory Uses

Chapter 11 – Signs

Chapter 12 – Off Street Parking

Chapter 13 – Floodplain Regulations

Chapter 14 – Mobile Tower- New Title 16-14

Chapter 15 – Shoreline Zoning- New Title 16-15

Chapter 16 – Adult Establishment Uses

Chapter 17 – Change and Amendment

Chapter 18 – Definitions

TITLE 16

CHAPTER 1

Introduction; Authority and Adoption

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-1-1	Authority and Adoption		

SEC. 16-1-1 AUTHORITY AND ADOPTION

- (a) This Title is adopted under the authority granted to the Village of Caledonia by Sections §62.23, §62.231, §62.234 and §281.31 of the Wisconsin Statutes and amendments thereto and any other applicable laws or regulations.

- (1) **Title.** This Title shall be known as, referred to, or cited as, “ZONING CODE, VILLAGE OF CALEDONIA, WISCONSIN.”
- (2) **Intent and Purpose.** The intent and purpose of this Title is to promote the health, safety, morals, prosperity, aesthetics and general welfare of this Village and its residents. The additional sewer and water requirements, design standards, conditional use requirements and planned unit development requirements set forth in this Title are intended to ensure that residential, business, commercial, industrial, recreational and institutional developments are properly planned, designed, and located. They are also intended to ensure that buildings, site designs, environmental features and social and economic activities are compatible with the Village Comprehensive Plan, as amended from time-to-time, the surrounding area and the overall community.
- (3) **Abrogation/Greater Restriction.** It is not intended for this Title to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, codes, ordinances, rules, regulations, or permits previously adopted or issued pursuant to laws. However, where this Title imposes greater restrictions, the provisions of this Title shall govern.
- (4) **Interpretation.** In their interpretation and application, the provisions of this Title shall be held to be a minimum requirement and shall be liberally construed in favor of the Village and shall not be deemed a repeal of any other power granted by the Wisconsin Statutes.
- (5) **Severability.** Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

(6) **Repeal of Conflicting Provisions.**

- a. The former Title 16 “Zoning and Village Board of Appeals” of the Village of Caledonia, Wisconsin adopted on the 6th day of December 2005 and amendments thereto are hereby repealed and replaced.
- b. All other ordinances or parts of prior ordinance in conflict with the provisions of this Title are hereby repealed.

(7) **Disclaimers of Liability; Wetlands, Drainage Ways, And Soils.** The Village of Caledonia does not guarantee, warrant, or represent that only those areas delineated as wetlands or drainage ways from tests and / or mapping required by this Title will be subject to periodic inundation, nor does the Village of Caledonia guarantee, warrant, or represent that the soils shown to be unsuited for a given land use from tests and / or mapping required by this Title are the only unsuited soils within the jurisdiction of this Title. The Village hereby asserts that there is no liability on the part of the Village of Caledonia, Village Board, Plan Commission, its agents, contractors, and employees for flooding problems or structural damages that may occur as a result of reliance upon, and conformance with, this Title.

CHAPTER 2
Administration and Enforcement

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-2-1	Zoning Administrator Designated		
16-2-2	Building Permits & Occupancy Permits		
16-2-3	Official Zoning Map Established		
16-2-4	Appeals		
16-2-5	Refiling Following Denial, Withdrawal, or Deferral		
16-2-6	Enforcement & Penalties		
16-2-7	Fees		
16-2-8	Severability		

SEC. 16-2-1 ZONING ADMINISTRATOR DESIGNATED.

- (a) The Zoning Administrator is hereby designated as the administrative and enforcement officer for the provisions of Title 16. For such duties, they may be provided with the assistance of such additional persons as they may designate.
- (1) Term, Appointment, and Duties. The Zoning Administrator shall be appointed by the Village Administrator, subject to confirmation by the Village Board, and shall serve at the pleasure of the Village Board for an indefinite term. The Zoning Administrator shall have the following powers and duties:
- a. Advise applicants of the provisions of this Title; assist them in preparing permit applications and provide information in the event of an appeal, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
 - b. Promulgate policies and procedures as necessary to administer and enforce this Title.
 - c. Determine that all permit applications and their constituent plans, certificate of occupancy applications, sign permit applications and their constituent plans, and site plans comply with all the provisions of this Title.
 - d. Keep records of all official actions such as: All permits issued, inspections made, work approved, maintain documentation of certified lowest floor and regional flood elevations for floodplain development, and maintain records of water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
 - e. Investigate and enforce this Title, prepare reports and report violations of this Title to the Village Police Department and the Village Attorney for prosecution.

- f. In case of any finding of a violation of a provision of this Title, notify in writing, the actual violator where known, owner of the property on which the violation has taken place and the Village Board, indicating the nature of the violation and the action necessary to correct it. Following such notice, issue citations for violations of this Title.
 - g. Carry out such additional responsibilities as are hereinafter set forth by the provisions of this ordinance.
- (2) **Authority:** In the enforcement of said Title, the Zoning Administrator shall have the power and authority for the following:
 - a. At any reasonable time and for any proper purpose to enter upon any public or private premises as provided by law and make inspection thereof.
 - b. Upon reasonable cause or question as to proper compliance, to initiate revocation proceedings as provided by law any permit under this Title, and issue cease and desist orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this Title; or take any other action as directed by the Village Board to insure compliance with or to prevent violation of its provisions.
 - c. In the name of the Village and with authorization of the Village Board commence any legal proceedings necessary to enforce the provisions of this Title, including the collection of forfeitures provided for herein.

SEC. 16-2-2 BUILDING PERMITS AND OCCUPANCY PERMITS.

- (a) **Required.**
 - (1) No structure classified as a building, nor any swimming pool, shall be erected, structurally altered, or relocated within the Village until a building permit has been issued by the Building Inspector certifying that such building as proposed, would be in compliance with the provisions of this Title and with the Building Code of the Village.
 - (2) No vacant land shall be occupied or used except for agricultural purposes, and no building shall be hereafter erected, structurally altered, relocated, used or occupied until a Building Permit and/or Occupancy Permit have been issued certifying that any such building, use, or occupancy complies with the provisions of this Title. Like permits shall be obtained before any change is made in the type of use, before any legal non-conforming use is resumed, changed, extended, or granted conditional use status.
- (b) **Procedure.**
 - (1) **Applications.** Applications for Building and Occupancy Permits shall be filed with the Building Inspection Department. Said applications to be filed with the Village shall be filled out completely and all required data must be submitted with application in accordance with this Title and Title 15 of this Code of Ordinance.
 - (2) **Inspection.** After the notification of the completion of the erection, alteration or relocation of the building or of intent to commence a use, the Zoning Administrator and/or Building Inspector shall make an inspection of the premises and any building

thereon and if the building and the intended use thereof, and the proposed use of the premises comply with the requirements of this Code of Ordinances an Occupancy Permit shall be issued.

- (3) **Expiration.** Timelines for commencement of work and completion of work under a building permit shall be governed by Sec. 15-1-7 of this Code of Ordinances. An extension of the permit may be granted by the Zoning Administrator or designee for a like period of time upon request of the owner or applicant and submittal of the required fee prior to permit expiration.

- (4) **Noncompliance.** Any Building Permit issued in conflict with the provisions of this Title or Title 15 shall be null and void.

Minor revision. A minor revision to a Building Permit may be granted by the Building Inspector upon request of the owner or applicant and submittal of the required fee prior to permit expiration. The Zoning Administrator may determine if the amendment is minor or whether a new Building Permit will be required. The granting of a minor revision does not alter the date of permit expiration.

- (6) **Application.** In addition to information required under Title 15 Chapter 1, Applications for a Building Permit shall be made to the Building Inspection Department on forms furnished by the Village and shall include the following where applicable:

- a. Names and addresses of the applicant, owner of the site, architect, professional engineer and contractor.
- b. Description of the subject site by lot, block, and recorded subdivision or by metes and bounds, referenced to the U.S. Public Land Survey System; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
- c. Plat of survey prepared by a land surveyor registered in the state showing the location, property boundaries, dimensions, elevations, uses and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side, rear and shore yards; the location, yard grade (elevation) and use of abutting lands within forty (40) feet of the subject site; and the location of the highwater elevation. In addition, when the subject site contains floodlands, the permit application shall show the limits of the floodland, the lowest floor elevation (basement) of any proposed structure, the first floor elevation of the proposed structure, and the yard grade (elevation); and the first floor elevation and yard grade surrounding any abutting structure within forty (40) feet of the subject site.
- d. Proposed sewage disposal plan if municipal sewerage service is not available. This plan shall be approved by the county sanitarian who shall state in writing that satisfactory, adequate and safe sewage disposal is possible on the site as proposed by the plan in accordance with applicable local, county, and state regulations.
- e. Proposed water supply plan if municipal water service is not available. This plan shall be approved by the Village plumbing inspector of the Village in

which the property is located, who shall state in writing that an adequate and safe supply of water can be provided.

f. Additional information as may be required by the Village staff and officials.

(c) **Other Permit Site Restrictions.**

- (2) **Land Suitability.** No permit shall be issued and no land shall be used or structure erected where the land is held unsuitable for such use or structure by the Plan Commission by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics and general welfare of this county.
- (3) **Frontage; Width.** A minimum of thirty-three (33) feet of all lots shall abut upon a public street, or other means of access that was in existence prior to the original adoption of this Title and which has been approved by the Village. All lots shall also have a minimum width at the street yard setback line as prescribed for the particular zoning district in which the lot is located.
- (4) **Principal Structure.** All principal structures shall be located on a lot; and only one (1) principal structure shall be located, erected, or moved onto a lot unless more are allowed and regulated by conditional use permit or site plan review.
- (5) **Street Access.** No building permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width. No building permit shall be issued for a lot which abuts upon the termination of a non-through-public street unless such street has been or is to be provided with a permanent cul-de-sac or other type of permanent turnaround as determined by the Village Board in which such lot is located.
- (6) **Sanitary regulations.** Where public water supply systems are not available, private well construction shall be required to conform to ch. NR112, Wisconsin Administrative Code. Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall be governed by Chapter 19 of the Racine County Code of Ordinances adopted by Racine County pursuant to W.S.A., § 59.065. Holding tanks shall comply with the requirements of Title 4 Ch. 8. Widths and area of all lots not served by a public sanitary sewer system or other sewage disposal system approved by that state agency having jurisdiction over the approval or disapproval of such system shall be sufficient to permit the use of a private on-site wastewater treatment system (POWTS) designed in accordance with applicable state and county sanitary regulations but in no case shall be less than one hundred fifty (150) feet in width and forty thousand (40,000) square feet in area unless said lot width and area has been approved by Village Board through the land division or conditional use process. No private waste disposal systems or parts thereof shall be located, installed, moved, reconstructed, extended, enlarged, converted, substantially altered or their use changed without full compliance of Racine County codes. A Building Permit for a principal structure or an addition thereto may not be issued until evidence of such compliance is provided to the Zoning Administrator.

SEC. 16-2-3 OFFICIAL ZONING MAPS ESTABLISHED.

- (a) **Districts Mapped.** The Village of Caledonia is hereby divided into zoning districts as shown upon a map designated as the Zoning Map of the Village of Caledonia and made part of this Chapter and all the notations, references and other information shown thereon shall be as much a part of this Title as if the matters and information set forth by said map were all fully described herein.
- (b) **Zoning Map Changes.** The Zoning Map shall be kept current at all times and all amendments thereto shall be by ordinance adopted by a majority vote of the Village Board after a public hearing and review and recommendation by the Plan Commission.
- (c) **Determination Of Zoning District Boundaries.** District boundaries shall be determined by measurement from and as shown on the Zoning Map, and in case of any question as to the interpretation of such boundary lines the Plan Commission shall interpret the map according to the reasonable intent of this Title. Unless otherwise specifically indicated or dimensioned on the map, the district boundaries are normally lot lines; section, quarter section, or sixteenth section lines; or the center lines of streets, highways, railways or alleys.
- (d) **Additional Maps Adopted.** The following maps are hereby adopted and made part of this Title and are on file in the Village Hall:
 - 1. Floodplain zoning maps as per Chapter 13 of Title 16 of the Village of Caledonia Code as amended from time to time.
- (e) **Identification of Official Ordinance and Map.** The text of the zoning regulations and the corresponding zoning map shall be kept on file in the offices of the Village and any other copies thereof shall be purely informational and shall not have the status of law.

SEC. 16-2-4 APPEALS.

- (a) **Right to Appeal.** Any person aggrieved, or any officer, department, board or committee, commission of the Village affected by a decision of the Zoning Administrator, the Plan Commission or Village Board may appeal such decision to the Board of Appeals as hereinafter established, provided such appeal be taken within a reasonable time, as provided by Sec. 16-3-1 and the rules of said Board of Appeals, and provided such appeal falls within the jurisdiction as set forth under the powers of the Board of Appeals.
- (b) **Appeals Restricted.** This section shall not apply to decisions of the Village Board or Plan Commission relating to the following: Building, Site and Operation Plans; Signs of a temporary or permanent nature as part of a site plan review; Residential Accessory Structures; Conditional Use permit; and zoning district amendments. This Section shall apply only to those appeals of which the Board of Appeals has jurisdiction under. Sec. 16-3-1(b). In a case where a variance from the basic zoning regulations is sought, the Plan Commission and Village Board may file a recommendation with the Board of Appeals

outlining its opinion and findings as they relate to the issue(s) being appealed.

- (c) **Procedure.** Procedures for an appeal to the Board of Appeals are located in Section 16-3-2 of this Title.
- (d) **Further Appeal.** Any person or persons aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board committee or commission of the Village may appeal from a decision of the Board of Appeals within 30 days after the filing of the decision in the office of the Board of Appeals in the manner provided in Section §62.23(7)(e)10 of the Wisconsin Statutes and Section 16-3-2 of this Title.

SEC. 16-2-5 REFILING FOLLOWING DENIAL, WITHDRAWAL, OR DEFERRAL.

- (a) **Waiting Period.** Upon denial by the Village Board or Planning Commission of any application by a property owner or his/her authorized agent for a zoning district amendment, conditional use, site plan review, appeal or variance, no further application concerning any or all of the same property that is substantially the same as the application denied shall be made within twelve (12) months from the date of such denial.
- (b) **Re-notice of Public Hearing.** Whenever consideration of such an application is deferred or adjourned at the request of the property owner or authorized agent, after notice of any public hearing has been first published, the applicant shall bear the additional advertising and mailing costs.
- (c) **No Refund of Fee.** In no event shall there be any refund of fees in the case of a denial, deferral, or withdrawal.

SEC. 16-2-6 ENFORCEMENT & PENALTIES.

- (a) **Enforcing Officer.** The Zoning Administrator or their designee shall be the enforcing officer of this Title.
- (b) **Enforcement Procedures.**
 - (1) **Non-emergency matters.** In the case of violations of this Title that do not constitute an emergency or require immediate attention, the Zoning Administrator shall give notice of the nature of the violation to the property owner or to any applicant for any relevant permit in the manner hereafter stated, after which the persons receiving notice shall have 3 up to 30 days to correct the violation before further enforcement action shall be taken. Notice shall be given in person, by mail unless the document is returned, or by posting notice on the premises. Notices of violation shall state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.
 - (2) **Emergency matters.** In the case of violations of this chapter that constitute an emergency as a result of safety or public concerns or violations that will create increased problems or costs if not remedied immediately, the Village may use the

enforcement powers available under this chapter without prior notice, but the Zoning Administrator shall attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner and to applicants for any relevant permits.

(c) **Violations.**

- (1) It shall be unlawful to construct, develop or use any structure, or develop or use any land, water or air in violation of any of the provisions of this Title or order of the Village. In case of any violation the Village may institute appropriate legal action or proceedings to enjoin a violation of this Title, or seek abatement or removal. In addition, those actions commenced on behalf of the Village may seek a forfeiture or penalty as outlined herein.

(d) **Penalties.**

- (1) Any person who fails to comply with the provisions of this chapter, or any order of the zoning administrator issued in accordance with this chapter, or resists enforcement shall, upon conviction thereof, forfeit not less than three hundred seventy six dollars (\$376.00) nor more than one thousand dollars (\$1,000.00) and costs of prosecution for each violation, and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until payment thereof, but not exceeding six (6) months. Each day a violation exists or continues shall constitute a separate offense.

(e) **Declared Nuisances.** Any building erected, structurally altered, or placed on a lot, or any use carried on in violation of the provisions of this Title is hereby declared to be a nuisance per se, and the Village may apply to any Court of competent jurisdiction to retain or abate such nuisance.

(f) **Enforcement by Injunction.** Compliance with the provisions of this Title may also be enforced by injunction order upon petition by the Village to a Court of competent jurisdiction or one or more owners of real estate situated within an area affected by the regulations of this Title.

SEC. 16-2-7 FEES.

For the purpose of defraying the cost of inspection and administrative processing, the Village may charge fees as established from time to time by resolution of the Village Board.

SEC. 16-2-8 SEVERABILITY.

The several sections, subsections, and paragraphs of this Title are hereby declared to be severable. If any section, subsection, paragraph, or subparagraph of this Title shall be declared by a decision of a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this Title, or of the section of which the invalid portion or paragraph may be a part.

CHAPTER 3
Board of Appeals

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-3-1	Board of Appeals		

SEC. 16-3-1 BOARD OF APPEALS

- (a) **Establishment.** There is hereby established a Zoning Board of Appeals in the Village of Caledonia in accordance with Section §62.23(7)(e) of Wisconsin State Statutes for hearing appeals and applications, and granting variations and exceptions to the provisions of this Title in harmony with the purpose and intent of this Title.
- (b) **Jurisdiction; Powers of the Board.** The Board of Appeals shall have the following powers granted in Wis. Stat. § 62.23(7)(e)7:
- (1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Administrator under this Title except for requirements for municipal sewer and water pursuant to Section 16-5-6.
 - (2) To hear and decide applications for special exceptions from the terms of this Title except for requirements for municipal sewer and water pursuant to Section 16-5-6.
 - (3) To hear and decide all matters referred to it or upon which it is required to pass under this Title except for requirements for municipal sewer and water service pursuant to Section 16-5-6.
 - (4) To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.
 - (5) To hear and decide applications for interpretation of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation (this power does not include an application or decisions on the rezoning of real property).
 - (6) To permit, in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
 - (7) The Board of Appeals may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issue of a permit, except that the Board of Appeals shall not have authority over rezonings, conditional use permits or building, site plan or operations review.

(c) **Membership.**

- (1) **Composition.** The Zoning Board of Appeals shall consist of five (5) members appointed by the Village President and subject to confirmation by the Village Board per Sections §62.23(7)(e)2. Wisconsin Statutes.
- (2) **Terms; Compensation.** Terms of the members shall be staggered three (3) year periods except that of those appointed initially, one shall serve for one year, two for two years, and two for three years. There shall be no compensation received by the members for their service on the board.
- (3) **Officers.** The Board of Appeals shall choose its own chairperson, vice chairperson, and secretary. The Chair shall preside at all meetings of the Board, except that in the event of their absence or disability, the Vice-Chair shall preside. In the absence of both the Chair and the Vice-Chair, the longest standing Board Member shall preside.
- (4) **Alternate Members.** The President may appoint subject to confirmation by the Village Board, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the President shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board recuses them self or when a member is absent. The 2nd alternate shall so act only when the 1st alternate recuses them self or is absent or when more than one member of the board recuses themselves or is absent.
- (5) **Village Administration.** The Zoning Administrator, or their designee, shall attend all meetings of the Board of Appeals for providing information on the appeal and may present a position on the appeal as Zoning Administrator or on behalf of a body of the Village if so directed.
- (6) **Assistance from other Village Departments.** The Board of Appeals may call on other Village departments for assistance in the performance of its duties and it shall be the duty of such other departments to render such assistance to the Board as may be reasonably required.
- (7) **Official Oaths.** Official Oaths shall be taken by all members of the Board of Appeals according to Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointment.
- (8) **Vacancies.** Vacancies of the Board of Appeals shall be filled for the remaining term in the same manner as appointments for a full term.

(d) **Organization; Procedure.** The Board of Appeals conduct meetings as follows and adopt rules of procedure for its own government according to the provisions of this Section:

- (1) **Meetings.** Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. All meetings of the Board shall be open to the public.
- (2) **Minutes.** Minutes of the proceedings of the Board of Appeals and a record of all actions shall be kept by the Recording Secretary, showing the vote of each member upon every question, the reasons for the Board of Appeals' determination, and its findings of facts. These records shall be immediately filed in the office of the Board of Appeals and shall be a public record.

- (3) **Recording Secretary.** A Recording Secretary is provided by Village Administration to record minutes for the Board of Appeals. This position is not a Board appointed employee pursuant to Section §62.23(7)e.2. Wisconsin Statutes.
 - (4) **Quorum.** The presence of a majority of the board members or of board members and alternates shall constitute a quorum.
 - (5) **Assistance.** The Board of Appeals may request assistance from other Village officers, departments, commissions, the Village Attorney and other bodies of the Village.
 - (6) **Stay of Legal Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a Court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
 - (7) **Oaths.** The Chair, or Vice-Chair in their absence, of the Board of Appeals may administer oaths and compel the attendance of witnesses.
 - (8) **Rules of Procedure.** The Board may adopt such rules of procedure as it deems necessary for the conduct of its proceedings.
- (e) **Administrative Appeals; Application.**
- (1) **General Application Requirements.** Appeals from the decision of the Zoning Administrator and/or designee concerning the literal enforcement of this Title may be made by any person aggrieved, or by any officer, department, board, commission or committee of the Village. Such appeals shall be filed in the Village Hall within thirty (30) days after the date of written notice of the decision or order of the Zoning Administrator or Designee. Applications may be made by the owner or lessee of the structure, land, or water to be affected anytime and shall be filed with the Village Hall.
 - (2) **Application and Notice of Hearing.** An application for an appeals or variance shall be filed in writing at the Village Hall on forms provided by the Zoning Administrator. Before decisions on such petitions, the Board of Appeals shall hold a public hearing thereon pursuant to the requirements set forth in this Section. The application shall include the following:
 - a. Plat of survey prepared by a registered land surveyor showing all of the information required under Section [to be added] for a building permit, if applicable;
 - b. Additional information required by the Zoning Administrator;
 - c. Fee receipt from the Zoning Administrator for the fee required by the schedule of fees adopted by the Village Board and on file with the zoning administrator.

- d. The Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

(f) **Variances; Area and Use.**

- (1) **Purpose.** The Board of Appeals, after a public hearing, may determine and vary the regulations of this Title in harmony with their general purpose and intent, only in the specific instances hereinafter set forth, where the Board of Appeals makes findings of fact according to the standards hereinafter prescribed, and further finds that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations of this Title.

- (2) **Definitions.**

- a. "Area Variance" shall mean a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this Section.
- b. "Use Variance" shall mean an authorization by the Board of Appeals under this Section for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

- (3) **Burden of Proof.**

- a. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an Area Variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.
- b. A property owner bears the burden of proving that for a Use Variance, demonstrating that strict compliance with the Title would leave the property owner with no reasonable use of the property in the absence of a variance.
- c. In all circumstances, a property owner bears the burden of proving that the "unnecessary hardship" is based on conditions unique to the property, rather than considerations personal to the property owner, and that the "unnecessary hardship" was not created by the property owner.

- (4) **Requirements.**

- a. No variance to the provisions of this Title (except as otherwise provided) shall be granted by the Board of Appeals unless it finds that if the variance is granted it would not be contrary to the public interest; a literal enforcement of this Title provisions would result in practical difficulties or unnecessary hardship due to special conditions; the spirit of this Title is preserved; public safety and welfare are secured and substantial justice done; and a determination if the property owners has met the burden of proof in this Section. In reviewing the application and evidence relating to a variance the Board of Appeals shall consider the findings statements set forth in this Title.

- b. Variances and appeals related to any property in a Floodland District shall comply with Chapter 13 of Title 16.
- (5) **Authorized Variances.** Variances from the zoning regulations of this Title shall be the authority of the Board of Appeals only according to the standards established in this Section. This section shall not apply to decisions of the Plan Commission relating to the following: Building, Site and Operational Plans; Signs of a temporary or permanent nature; Residential Outbuildings; rezonings or Conditional Use requests.
- (g) **Public Hearings.**
 - (1) **General.** The Board of Appeals shall hold a public hearing upon each application within a reasonable time of the date of filing. Giving notice of the date, time, place of such hearing, and the matter to be presented at the hearing by publication in the Village of a Class 2 notice under Chapter 985 of the Wisconsin Statutes. Notice of the public hearing shall be given to the Zoning Administrator and mailed to all parties-in-interest at least ten (10) days before the hearing. Parties-in-interest shall be defined as the applicant, the clerk of any municipality within one hundred (100) feet of any lands included in the petition, the Wisconsin Department of Natural Resources, if applicable, and the owners of all lands included in the application and all lands lying within three hundred (300) feet of lands included in the petition. The Zoning Administrator shall set the date for the public hearing(s). At the hearing the applicant may appear in person, by agent, or by attorney.
 - (2) **Conduct of Public Hearing.** The Chair or Vice-Chair in their absence, of the Board of Appeals shall place all witnesses under oath. The Board of Appeals shall hear all relevant evidence presented for and against the application. The Chairman of the Board of Appeals may rule on exceptions to evidence and permit examination of witnesses.
- (h) **Findings.** The Board of Appeals shall grant no variance to the provisions of this Title unless it finds that the following facts and conditions exist when applicable and so indicates in the minutes of its proceedings.
 - (1) **Preservation of Intent.** No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall permit a use in any district that is not a stated permitted use, accessory use, or conditional use in that particular district.
 - (2) **Exceptional Circumstances.** There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this Zoning Code should be changed.
 - (3) **Economic Hardship and Self-Imposed Hardship Not Grounds for Variance.** No variance shall be granted solely based on economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of the variance.

- (4) **Preservation of Property Rights.** The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (5) **Absence of Detriment.** No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Title or the public interest.
- (i) **Decision.** The Board of Appeals shall render its decision in writing within thirty (30) days after the completion of the hearing thereon.
 - (1) **Required Vote.** The concurring vote of the majority of a quorum (A quorum being 3 or more members) of the Board of Appeals shall be necessary to make a decision, grant a variance, exception, or substitution.
 - (2) **Finding Of Fact.** Every Finding of Fact shall be signed by the Chair or Vice-Chair and attested to by the Board Secretary as evidence of the action of the Board. The original Finding of Fact letter shall be sent to the Applicant. Copies of each Finding of Fact letter shall be filed with the Board's record of the case at the Village Hall, the property file, and the Zoning Administrator, to the Wisconsin Department of Natural Resources, if applicable, by the Recording Secretary
 - (3) **Conditions.** Conditions may be placed upon any variance granted by the Board of Appeals.
 - (4) **Scope.** In exercising the above mentioned powers such Board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
 - (5) **Expiration of a Variance.** All work associated with an approved variance request must be commenced within twelve (12) months from the date of the variance approval, unless otherwise approved by the Zoning Board of Appeals. For the purpose of this code section, "commenced" means that permits have been applied for and obtained and onsite construction has started. Thereafter, the required timelines are established by issued permits.
 - (6) **WI DNR.** Final action on Floodland appeals and variance requests shall not be taken for thirty (30) days or until the Wisconsin Department of Natural Resources has made a recommendation, whichever comes first. All decisions shall be submitted to the local WI DNR office within ten (10) days after the decision.
- (j) **Finality of Decision; Resubmittal.** No appeal that has been dismissed or denied shall be considered again within one year except: on a motion to reconsider the vote made by a member voting with the majority within thirty (30) days of the date of the decision, or on a request for a re-hearing. All decisions and findings of the Board of Appeals on any application for a variance, after a public hearing, shall, in all instances be the final administrative decision and shall be subject to judicial review.

- (k) **Re-Hearing.** No request to grant a re-hearing shall be entertained unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. In all cases, the request for a re-hearing shall be in writing listing the reasons for the request, and shall be duly verified and accompanied by the necessary data and diagrams. The party requesting the re-hearing shall be notified to appear before the Board on a date to be set by the Board, of which the requestor shall be notified. If a motion to grant a re-hearing receives the affirmative votes of three or more members of the Board, the case shall be put on the calendar for a re-hearing. Re-hearings shall be subject to the same requirements as the original hearing.
- (l) **Review By Court Of Record.** Any person or persons aggrieved by any decision of the Board of Appeals may commence an action seeking the remedy available by certiorari in the Circuit Court of record and specifying the grounds of the illegality pursuant to Sec. 62.23(7)(e)(10), Wis. Stat. Such petition shall be presented to the court within thirty (30) days after the filing of the decision of the Board of Appeals at the Village Hall.

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CHAPTER 4 Required Plans and Design Guidelines

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-4-1	Required Plans		
16-4-2	Developers Deposit Required		
16-4-3	Developer Agreement Required		
16-4-4	Design Guidelines		

SEC. 16-4-1 REQUIRED PLANS.

- (a) **Purpose and Intent.** In order that the physical environment of the Village be developed in a way that will provide the maximum degree of aesthetic satisfaction through architectural and natural beauty and harmony and thereby provide most satisfyingly for the well-being and contentment of its inhabitants as well as for greater economic stability through preservation and enhancement of property values, it is deemed necessary to exercise regulation over the architectural appearance and construction of buildings erected, remodeled or in any way placed within the Village. Such regulations are herein known as Building, Site, and Operation ("BSO") Plans.

The Building Site and Operation Plan is not intended to impose a pattern of regimented conformity to any specific architectural style or taste established by the Village Board, the Plan Commission, or the existing residents of any area; but is intended solely to prevent any development which would substantially affect adversely the existing or potential beauty and character of the neighborhood, reduce its desirability, and depreciate surrounding property values.

- (b) **BSO Exemptions: Administrative Reviews.**

- (1) **Single Family And Two Family Uses.** Single-family or two-family residential development activity on unplatted lands, or associated with an approved final plat of a subdivision or certified survey map shall be exempt from Plan Commission Building Site and Operational Plan approval. All plans for single-family or two-family residential development activity shall be approved administratively unless developed as a planned unit development under this Title..
- (2) **Signs.** Where in the determination of the Zoning Administrator, a proposed change to an approved sign is deemed non-substantial, said changes may, in the sole determination of the Zoning Administrator, be exempted from Plan Commission Building Site and Operational Plan approval.

- (c) **Building Site And Operation Plan Required.**

- (1) **Purpose.** The purpose of this Section is to specify the requirements and procedures for the review and approval of site plan applications. The provisions of this Section are designed to ensure that all proposed land use and development activity complies with the requirements of this Title. Specifically, this Section

requires that the initiation of all development activity (including building permits, zoning certificates, occupancy permits for a change of use of an existing lot or structure where there is contemplated a site plan revision, clear cutting, grading or filling) require the approval of BSO Plans by the Village staff before the building, occupancy, and Building Permits will be issued.

(2) **Application Procedure.**

- a. **Initiation of Request for BSO Plan Approval.** Procedures for approval of a site plan shall be initiated by the owner(s) of the subject property, or their legally authorized representative(s).
- b. **Pre-Application Meeting.** The petitioner is strongly encouraged to first meet with the Zoning Administrator and other applicable Village Staff to discuss preliminary concepts and plans for the development. Guidance will be provided to the Petitioner on technical requirements and procedures, and a timetable for project review may be discussed.

(3) **Application Requirements.** Petitioner shall submit a complete BSO Plan application, accompanied by all fees and deposits, which from time-to-time may be adopted by resolution of the Village Board and in effect at the time of submittal. A complete application shall be comprised of all of the following (as applicable to particular development):

- a. Written Description of the intended use describing in reasonable detail the:
 1. Full name and contact information of the petitioner and / or agent, and property owner, if different;
 2. Full name and contact information of petitioner's engineers / surveyors / architects, and other design professionals used in BSO Plan preparation;
 3. Existing zoning district(s) and proposed zoning district(s) if different;
 4. Current land uses present on the subject property;
 5. Proposed land uses for the subject property
 6. Land use designation(s) as depicted on the adopted Comprehensive Plan;
 7. Description of existing environmental features;
 8. Projected number of residents, employees, and / or daily customers;
 9. Proposed amount of dwelling units, floor area, open space area, and landscape surface area, expressed in square feet and acreage to the nearest one-hundredth of an acre;
 10. Resulting site density, floor area ratios; open space ratios, and landscape surface area ratios;
 11. Operational considerations relating to hours of operation, projected normal and peak water usage, sanitary sewer or septic loadings,
 12. Traffic generation;
 13. Operational considerations relating to potential nuisance creation pertaining to the appropriate design of street access, traffic visibility, parking, loading, exterior storage, exterior lighting, vibration, noise, air pollution, odor, electromagnetic radiation, glare and heat, fire and

explosion, toxic or noxious materials, waste materials, drainage, and hazardous materials.

14. Exterior building and fencing materials;
15. Possible future expansion and related implications for (1) to (14), above, and;
16. Any other information pertinent to adequate understanding by the Plan Commission of the intended use and its relation to nearby properties.

b. Property Site Plan drawing which includes:

1. A title block which provides all contact information for the petitioner and / or agent, and property owner if different;
2. Full name and contact information of petitioner's engineers / surveyors / architects, and other design professionals used in BSO Plan preparation;
3. The date of the original plan and the latest date of revision to the plan;
4. A north arrow and a graphic scale. Said scale shall be in engineering scales, and shall not be smaller than one inch equals 100 feet unless otherwise allowed;
5. A legal description of the subject property;
6. All property lines and existing and proposed right-of-way lines with bearings and dimensions clearly labeled;
7. All existing and proposed easement lines and dimensions with a key provided and explained on the margins of the plan as to ownership and purpose;
8. All required building setback and offset lines;
9. All existing and proposed buildings, structures, and paved areas, including building entrances, walks, drives, decks, patios, fences, walls,
10. All existing and proposed utility and drainage systems, connections and fixtures;
11. All requirements of the Village Fire Code;
12. The location and dimension of all access points onto public streets including cross-section drawings of the entry throat;
13. The location and dimension of all on-site parking (and off-site parking provisions if they are to be employed), including a summary of the number of parking stalls provided versus required by this Code;
14. The location and dimension of all loading and service areas on the subject property and labels indicating the dimension of such areas;
15. The location of all outdoor storage and refuse disposal areas and the design of all screening devices;
16. The location, type, height, size and lighting of all signage on the subject property;
17. The location, height, design/type, illumination power and orientation of all exterior lighting on the subject property including photometric

plans. All lighting plans and specifications to meet the Village Adopted Design Manual per Section 16-4-4;

18. The location and type of any permanently protected green space areas. Open space shall be designed as an integral part of the site, and may not include those areas required for parking, loading or other impervious surfaces. This requirement does not pertain to redevelopment of sites which are unable to provide open space at the time of the adoption of this Title. In those cases, the open space may not be reduced beyond that which exists on the property at the time of adoption of this Title except as may be authorized by the Plan Commission;
19. The location of all environmental features including wetlands, floodplains, environmental corridors, steep slopes, forest areas or any other permanently protected natural resource area protected under Local, State or Federal regulations;
20. The location of existing and proposed drainage facilities; and
21. Building Heights

c. A Detailed Landscaping Plan of the subject property, at the same scale as the site plan showing:

1. The name and address of the property owner, the landscape architect or designer who prepared the plan.
2. The name of the proposed project.
3. The plan preparation date and the date of any revisions thereto.
4. A graphic scale and a north arrow.
5. A legal description of the property.
6. A plat of survey, or a sketch drawn to scale.
7. The location, caliper (size), and common name of all existing deciduous trees six (6) inches or larger in diameter at breast height (d.b.h.), all existing coniferous trees 10 feet or greater in height, and the boundaries of any existing woodlots.
8. Identification of all trees inventoried which are to be moved or destroyed.
9. The location of all proposed plantings.
10. A planting schedule showing all symbols intended to represent plantings, quantities of plant materials, and common and botanical names of plant materials, size and caliper of plant materials, root specifications, and special planting instructions.
11. Typical Sections and details of fences, tie walls, planting boxes, retaining walls, berms, and other landscape improvements.
12. Typical Sections of landscape islands and planter beds identifying materials to be used.
13. Details of planting beds and foundation plantings.
14. Delineation of sodded areas, seeded areas, and wilderness areas indicating square footage, materials to be used, and seed mixtures.

15. Where landscape or man-made materials are used to provide required screening or buffers from adjacent properties or public rights-of-way, a cross-section shall be provided drawn to a recognized engineering scale illustrating the prospective of the site from the neighboring property and property line elevation.
16. All other design elements found in the adopted Village Design Guideline Manual per Section 16-4-4.

- d. A Grading and Erosion Control Plan to be approved by the Village Engineer. Said plans are not subject to Plan Commission review but are required to be submitted concurrent with BSO Plan applications in order for the submittal to be complete.
- e. Elevation Drawings of proposed buildings or proposed remodeling of existing buildings showing finished exterior treatment, with adequate labels provided to clearly depict exterior materials, texture, scale, color and overall appearance.
- f. Color Renderings and Perspective Renderings. The Plan Commission reserves the right to require perspective renderings, but not in lieu of adequate drawings showing the actual intended appearance of the buildings.
- g. Photo Simulations and 3-D virtual visualizations of the proposed project and/or photos of similar structures may be voluntarily submitted and may be required by the Plan Commission, but not in lieu of adequate drawings showing the actual intended appearance of the buildings.
- h. A Plat of Survey shall be required for all projects. The survey shall be prepared by a Registered Land Surveyor and shall depict property lines, and existing and proposed buildings, structures, and paved areas.
- i. A Developers Deposit in an amount required by adopted policies of the Village Board may be required from time to time. The purpose of the Developers Deposit is to provide a surety to address all charges required to be paid by a petitioner under Section 16-4-2 of the Municipal Code. The requirement for submittal of a Developers Deposit for specific projects may be modified or waived by the zoning administrator.

(d) **Review by Plan Commission.**

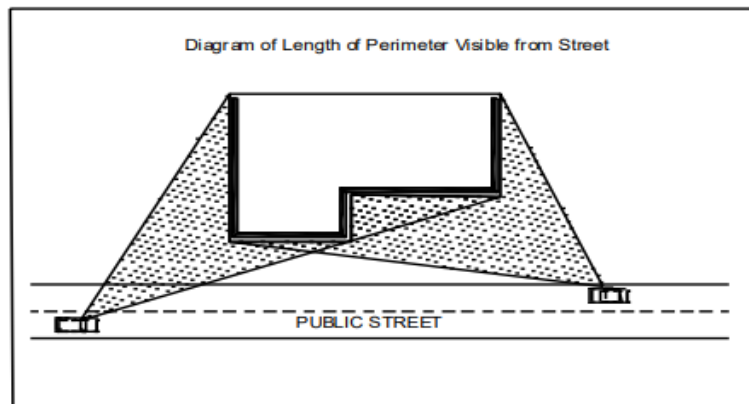
- (1) The Plan Commission, in its consideration of the submitted BSO Plan application, shall take into account the basic intent of this Title to ensure attractive, efficient, and appropriate development of land in the community, and to ensure particularly that every reasonable step has been taken to avoid depreciating effects on surrounding property and the natural environment. Beyond protection of the public health, safety and welfare, and morals, this Section shall enable the Plan Commission to consider factors related to community aesthetics, urban design, and architectural consistency within the community. The Plan Commission, in reviewing the application may require such additional measures and/or modifications to any or all elements of the site plan as described in the application submittal required per Section 16-4-1(c)2 as it deems necessary to accomplish this objective. If such additional measures and/or modifications are required, the Plan

Commission may withhold approval of the BSO Plan until a revision depicting such additional measures and / or modifications are submitted to the satisfaction of the Plan Commission, or may approve the application subject to the provision of a revised application reflecting the direction of the Plan Commission to the satisfaction of the Zoning Administrator or their designee. Such amended plans and conditions applicable to the proposed use shall be made a part of the official record, and development activity on the subject property may not proceed until the revised application has been approved pursuant to the procedures described herein.

- (2) In reviewing said application the Plan Commission shall make findings on each of the following criteria to determine whether the submitted BSO Plan shall be approved, approved with modification, or denied:
- a. The public health and safety is not endangered;
 - b. All standards of the Zoning Ordinance and other applicable Village, State and Federal regulations are met;
 - c. All standards of the adopted Village Design Guideline Manual (per Section 16-4-4) are met;
 - d. Adequate Public Facilities (sewer/water) are provided;
 - e. Adequate control of stormwater and erosion are addressed through submittals to be reviewed and approved by the Village Engineer per Municipal Code;
 - f. The disruption of existing topography, drainage patterns, and vegetative cover is minimized insofar as is practical;
 - g. Appropriate traffic control and parking are provided;
 - h. Appropriate landscaping and open space areas are provided;
 - i. The appearance of structures maintains a consistency of design, materials, colors, which comply with the general architectural guidelines adopted by the Village.
- (3) **Architectural Control.** In order that the physical environment of the Village is developed in a way that will provide the maximum degree of aesthetic satisfaction; through architectural and natural beauty, harmony with adjacent facilities, and thereby provide the most appealing development for the well-being, and contentment of its inhabitants. In addition, to promote greater economic stability through preservation and enhancement of property values, it is deemed necessary to exercise regulation over the architectural appearance and construction of buildings erected, remodeled, or in any way placed within the Village. Such regulations are not intended to impose a pattern of regimented conformity to any specific architectural style or taste established by the Plan Commission, review board, or the existing residents of any area; but is intended solely to prevent any development which would substantially adversely affect the existing or potential beauty and value to the community, the characteristics of the neighborhood—potentially reducing its desirability and depreciating surrounding property values.

To implement and design criteria for the purposes stated above, to promote Four Sided Architecture and Quality in Design Standards, the following standards are established:

- a. No building shall be permitted a design or exterior appearance which is unorthodox or has abnormal character in relation to the surrounding properties as to be unsightly or offensive to generally accepted tastes of the community and professional judgment of the Planning Commission.
- b. No building shall be permitted where any exterior surface is not constructed or faced with a finished material which is aesthetically compatible with the exterior surface of adjacent buildings and presents an attractive appearance to the public and to surrounding properties
 1. Acceptable exterior materials include split face concrete masonry, decorative block, 2-inch brick veneer, 2-inch stone veneer, cut stone panels, pre-cast concrete wall panels, and terra cotta. Proposals to use other materials shall require a $\frac{3}{4}$ majority approval from the Plan Commission.
 2. The façade of a multi-family residential building shall consist of acceptable exterior materials that covers at least sixty-five (65%) of the surface of the visible perimeter of the building from the street.
 3. The façade of a manufacturing, commercial, office, institutional or park building shall consist of acceptable exterior materials that covers at least seventy-five percent (75%) of the surface of the visible perimeter of the building from the street.



- c. All buildings and the proposed materials, shape, and colors should follow the adopted Village Design Guide per Section 16-4-4.
- (3) **Initiation of Land Development Activity.** Except with the written permission of the Zoning Administrator and the Building Inspector or their designees, absolutely no land use or development activity, shall occur on the subject property prior to the approval of the required BSO Plan or BSO Plan Amendment. Any such activity prior to such approval shall be a violation of this Chapter and shall be subject to all applicable enforcement mechanisms and penalties.
 - (4) **Compliance in Perpetuity.** Any BSO Plan granted through the authority of this Section shall be perpetually binding upon the development and all aspects of the approval given shall be followed. Further, BSO Plans referenced above, shall be

perpetually binding to the extent that:

- a. All buildings and structures shall be maintained in a tasteful, safe and appropriate manner as they were originally approved for.
- b. All landscaping shall be periodically groomed and/or replaced when necessary.
- c. All drives, parking and pedestrian areas shall be kept in a safe and passable condition. This includes the maintaining of the appropriate pavement markings and the refinishing of the asphalt or concrete when it should become deteriorated.
- d. All natural areas and environmental areas identified for protection shall be maintained in manner which preserves their aesthetic and natural function.
- e. All repairs and maintenance shall be executed in a timely manner.

(5) **Plan Commission Approval Follow Thru Inspection.** The Zoning Administrator or designee shall make a final inspection of all new buildings, building sites, additions and alterations of properties that have received Plan Commission approvals in order to assure all approvals from Planning Commission have been accomplished. The inspection shall be made at the same time final inspections are requested as part of building permits or, in the case building permits aren't required for the improvements, the inspection shall be made upon the developer notifying the Zoning Department that the improvements have been accomplished. If all approvals have been followed, a certificate of occupancy will be allowed. If further improvements are required, the certificate of occupancy will be withheld until such time the improvements are completed. A certificate of occupancy may be issued subject to certain items being completed within a given amount of time, however, if the items are not completed within the given timeframe, the certificate of occupancy can be revoked. Revocation of the certificate of occupancy requires all business use of the property to cease immediately until such time a new certificate of occupancy is given.

(6) **Modifications To Approved Plans.** Where modification to an approved BSO Plan is requested, the Zoning Administrator or designee is authorized, upon review of the proposal, to make a determination that the modification is either a non-substantial change or a substantial change to the approved BSO Plan. Where it is determined that the modification is non-substantial, the Zoning Administrator or designee may approve the modification. Where it is determined that the modification is a substantial change to the approved BSO Plan, said Plan shall be revised and review by the Plan Commission pursuant to the procedures of this Section above, so as to clearly and completely depict any and all proposed modifications to the previously approved BSO Plan, prior to the initiation of said modifications.

(7) **Expiration.** Plan commission approvals granted for building, site and operation plans in which the petitioner has not commenced construction activity or preparation of the land, or has not submitted a Certified Survey Map or Preliminary Plat within the past 12 months of the date of approval, said approval will expire and reapplication will be required. A reapplication shall be limited solely to reasonable

compliance with current design, locational, and operational requirements. A reapplication shall not involve the basic permissibility of the use where such use is permitted by right at the time of reapplication. The Plan Commission may grant one six-month extension if requested 30 days prior to the pending expiration date provided that the applicant demonstrates a valid cause.

SEC. 16-4-2 DEVELOPER'S DEPOSIT REQUIRED.

- (a) Any applicant submitting a development item that requires Village Board and/or Plan Commission review and approval processes may be required to submit a developer's deposit at the time of application along with any other required fees for the proposal. The amount of the developer's deposit is established by the Village Board and is dependent on the type and intensity of proposal being applied for. However, the Zoning Administrator reserves the right to request a smaller/larger deposit depending on the scope of the proposal. The developer's deposit will be used to reimburse the Village for the following activities during the duration of the development proposal:
 - (1) Processing, reviewing, revising, and approving conceptual, preliminary or final development plans, including meeting time, regardless of whether the developer attended or participated in the meeting;
 - (2) Processing, reviewing, revising, drafting and approving any agreements, easements, deed restrictions or other documents associated with the proposed use;
 - (3) Inspection and approval of construction and installation of all improvements provided for in the development, including but not limited to, consultation reasonably required to address issues and problems encountered during the course of design and construction of the development; and
 - (4) Costs of Village consultants including engineers, planners, attorneys, inspectors, ecologists, agents, sub-contractors and the Village's own employees. Such costs shall also include those for attendance at meetings. The cost for outside services shall be the direct cost incurred by the Village. The cost for Village employees' time shall be based upon the classification of the employee and the rates established by the Village Board, from time-to-time, for each such classification.
- (b) The Village shall apply such funds toward payment of the above costs. If at any time said deposit becomes insufficient to pay expenses incurred by the Village for the above costs, the Applicant shall deposit required additional amounts within fifteen (15) days of written demand by the Zoning Administrator or designee. Until the required funds are received, no additional work or review will be performed by the Village as to the plan under consideration. Within 60 days after any final action by the Village and execution of any documents by all parties, or upon abandonment of the plan, the Village shall furnish the Applicant with a statement of all such costs incurred by it with respect to such plan. Any excess funds shall be remitted to Applicant, and any costs in excess of such deposit shall be paid by the Applicant. Any interest earned on said deposit shall remain the property of the Village to partially offset administrative expenses associated with planning and development.

SEC. 16-4-4 DEVELOPMENT AGREEMENT REQUIRED.

- (a) An Applicant shall enter into a Development Agreement with the Village prior to any construction activity as part of a development project which may include grading/water/sewer/storm/road installations. The development agreement shall include the following terms and conditions:
- (1) Any necessary streets and appurtenances thereto, shall be constructed at the expense of the Applicant in accordance with the provisions of the Village's Code of Ordinances which are in effect at the time of such construction.
 - (2) Sanitary and water mains and laterals, and storm water drainage facilities, and any related off-site improvements shall be paid for, constructed and installed by Applicant as required by the Village and its Code of Ordinances at applicant's expense;
 - (3) Assignment of landscape maintenance responsibilities to the owner(s) of the property in accordance with the submitted landscape plan and the ability of the Village to conduct such work and charge all costs incurred by the Village as a special charge against the real estate upon owner's failure to maintain.
 - (4) A prohibition of any privately imposed limits on the type or reuse of the site buildings through conditions of sale or lease unless approved by the Village and except for approved restrictions related to condominium ownership;
 - (5) Applicant agreeing to reimburse the Village for all costs incurred by the Village for engineering, inspection, planning, legal and administrative expenses in:
 - a. Processing, reviewing, revising, and approving conceptual, preliminary or final development plans, including meeting time, regardless of whether the developer attended or participated in the meeting;
 - b. Processing, reviewing, revising, drafting and approving any agreements, easements, deed restrictions or other documents associated with the proposed use;
 - c. Inspection and approval of construction and installation of all improvements provided for in the development, including but not limited to, consultation reasonably required to address issues and problems encountered during the course of design and construction of the development; and
 - d. Such costs shall include the cost of Village consultants including engineers, attorneys, inspectors, planners, ecologists, agents, sub-contractors and the Village's own employees. Such costs shall also include those for attendance at meetings. The cost for outside services shall be the direct cost incurred by the Village. The cost for Village employees' time shall be based upon the classification of the employee and the rates established by the Village Board, from time to time, for each such classification.
 - (6) Applicant shall agree to indemnify and hold the Village and its agents harmless from and against claims related to the performance of work at or for the site;
 - (7) Applicant's principals shall be personally responsible for reimbursement of costs to the Village in the event the Applicant does not proceed with the actual installation as approved by the Village;
 - (8) Applicant shall be responsible for payment of the Village's costs, disbursements and attorney's fees in the event the Village brings legal action to enforce

compliance with this agreement and a final determination is made in favor of the Village;

- (9) The terms and conditions of the agreement shall extend to the heirs, administrators, successors in title and assigns of the applicant, including personal liability. However, Applicant may not assign its rights, duties and responsibilities under this Agreement to any other third party without first obtaining the prior written consent of the Village.
- (10) The Applicant shall convey all necessary easements to the Village;
- (11) As a condition precedent to the execution of the development agreement, the Applicant shall post a cash deposit or file a letter of credit with the Village guaranteeing compliance with the Village Ordinances and provisions of the Development Agreement. Such security shall be such amount as to cover 120% of the estimated costs of storm water drainage, lot grading, landscaping, and any street/water/sewer construction work as provided for under the Development Agreement. Such estimated costs shall be provided by the Applicant or his engineer and shall be subject to the approval of the Village; and
- (12) Other terms that the Village and Applicant shall deem appropriate.

SEC. 16-4-4 DESIGN GUIDELINES.

- (a) **Purpose.** The general purpose of design guidelines is to aide the Village Staff and Plan Commission in planning, design, and redesign of the built environment of the Village of Caledonia so as to enhance its visual character, and avoid monotony. These standards will also assist in fostering sound, functional, attractive and quality development. The provisions shall be liberally construed in favor of the Village and shall be considered as minimum standards.
- (b) **Required.** The adopted guidelines are applicable to all new and amended commercial, industrial, institutional, recreational and multi-family applications after adoption of this ordinance for all permitted uses in any zoning district in which they are allowed, any conditional use, or as part of a planned unit development. Design, placement and orientation of buildings shall facilitate appropriate land use integration and appropriate vehicular and pedestrian flow to adjoining areas and neighborhoods, and shall forward community character objectives as described in the Village's adopted Comprehensive Plan, as amended from time-to-time. When a property is within a design guide overlay district certain restrictions can apply regarding the development and redevelopment of the property subject to Plan Commission approvals.
- (c) **Design Guidelines Manual.** The applicant shall follow the Design Guidelines Manual, as published and revised by the Village from time-to-time for all permitted Business, Commercial, Industrial, Recreational, multi-family and Institutional uses, all conditional uses and all planned unit developments. These guidelines are available from the Village Hall. Among other features, these guidelines address the standards such as all subject to Plan Commission approval and discretion. Where zoning ordinances in this Title are found that are related to topics in the adopted Design Guide Manual the adopted ordinances shall supersede the Design Manual.

CHAPTER 5 General Provisions

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-5-1	Uses Regulated		
16-5-2	Building Location		
16-5-3	Building Height		
16-5-4	Building Size		
16-5-5	Lot Area and Width		
16-5-6	Sewer and Water Service Required		
16-5-7	Site Restrictions		

SEC. 16-5-1 USES REGULATED.

(a) Uses Restricted.

- (1) No structure or land shall be used and no structure shall be hereafter erected, structurally altered, or relocated except for a use as permitted and in compliance with the regulations hereinafter established for the district in which it is located.

(b) Uses Classified.

- (1) For the purpose of this Title all uses shall be classified according to the following categories:
 - a. Permitted Uses by Right: Principal uses the permissibility of which is a predetermined right anywhere in the district which located subject only to the regulations established governing such use.
 - b. Permitted Accessory Uses: Uses incidental, customary to, and commonly associated with a permitted principal use.
 - c. Permitted Uses by Conditional Use Permit: Uses, the nature, character, or circumstances of which are so unique, or so dependent upon the specific contemporary conditions, that predetermination of permissibility by right, or the detailing of the specific standards, regulations, or conditions necessary or appropriate to such permissibility are not practical; but which may be permitted in the districts where listed subject to certain conditions and requirements as hereinafter specified.

(c) Unclassified Uses.

- (1) Any use not specifically listed as a permitted use shall be considered to be prohibited except as may be otherwise specifically provided hereinafter. In case of questions as to the classification of a use, the question shall be submitted to the Plan Commission for determination.

SEC. 16-5-2 BUILDING LOCATION.

(a) Location Restricted.

- (1) No building or structure shall be hereafter erected, structurally altered or relocated on a lot except in conformity with the following locational regulations as hereinafter specified for the district in which it is located.

(b) **Setbacks.**

- (1) All lot area requirements are measured exclusive of any highway right-of-way and all street yard setbacks are measured from the outer limit of the highway right-of-way or private road easement.
- (2) Building projections into street yards: Additions in the street yard of existing structures shall not project beyond the average of the existing street yards on the abutting lots or parcels.
- (3) Street yard setback increase: The street yard must be increased in any residential or business district to the average of the existing street yards of the abutting structures on each side. In no case may the street yard be decreased to less than the district minimum setback. Only principal structures on abutting lots within one hundred (100) straight-line feet of the proposed structure may be used for averaging. Any existing uncovered and/or unenclosed portion of a principal structure, such as deck or covered porch, can only be used for averaging with a similar uncovered and/or unenclosed portion of a proposed structure. If an abutting lot is vacant or the existing principal structure is greater than one hundred (100) feet from the proposed structure, the minimum required setback for the district may be used when said abutting lot is a substandard lot. This requirement can be waived if written approval is granted by adjacent property owners.
- (4) Pergolas and otherwise uncovered decks, stairs, landings and fire escapes may project into any yard, but not to exceed six (6) feet and not closer than three (3) feet to any lot line and no closer than ten (10) feet from any street right-of-way.
- (5) Architectural projections, such as chimneys, flues, sills, eaves, belt courses, ornaments, decorative projections, lighting fixtures, balconies, and bay/bow windows, may project into any required yard; but such projection shall not exceed two (2) feet and bay/bow windows must be less than or equal to eight (8) feet wide.
- (6) The only structures permitted within such setback area shall be necessary highway and traffic signs, public utility lines and poles, walls and fences, as regulated by this Code, rural mailboxes, signs as permitted under the individual district regulations, or as permitted by this Code, structures other than buildings as regulated by this Code.
- (7) Maintenance and Use of Setback and Offset Areas: Any such required setback or offset area shall be landscaped and kept clean and free from the accumulation of debris or refuse, and shall not be used for storage or display of equipment, products, vehicles, or any other material except as may be specifically otherwise permitted under this ordinance.

(c) **ADA Accommodations.**

- (1) The Zoning Administrator shall be authorized to review and issue a Building Permit to allow a nonconforming building addition projection, such as a wheelchair ramp, that is needed to allow the minimum required reasonable accommodation that is necessary to allow ingress/egress by a handicapped or disabled person to the following:
 - a. A residential structure utilized by such person that lives on the property or such person employed in a home occupation on the property. Any such addition shall be removed within thirty (30) days from the time that the

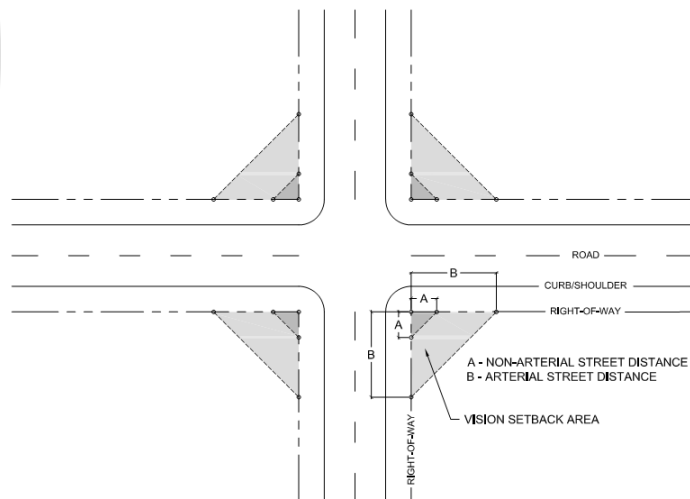
structure is no longer serving the aforementioned handicapped or disabled person.

- b. A commercial facility or any other structure that provides public accommodations.
- c. Any such projection should be designed to be at least three (3) feet from any lot line and have a minimal intrusion into a floodplain, wetland, environmental corridor, or required shore yard setback.

(d) **Vision Setbacks.**

- (1) Vision setbacks at the intersections of public streets exist and no obstructions, such as structures, parking or vegetation, shall be permitted in any zoning district above the height of two and one half (2½) feet. Vision setback areas are hereby established as follows:

- a. The triangular space formed by any two (2) existing or proposed intersecting street right-of-way lines and a line joining points on such lines located a minimum fifteen (15) feet from their intersection.
- b. In the case of arterial streets intersecting with another arterial street, or railways, the corner cutoff distances shall increase to fifty (50) feet.



SEC. 16-5-3 BUILDING HEIGHT.

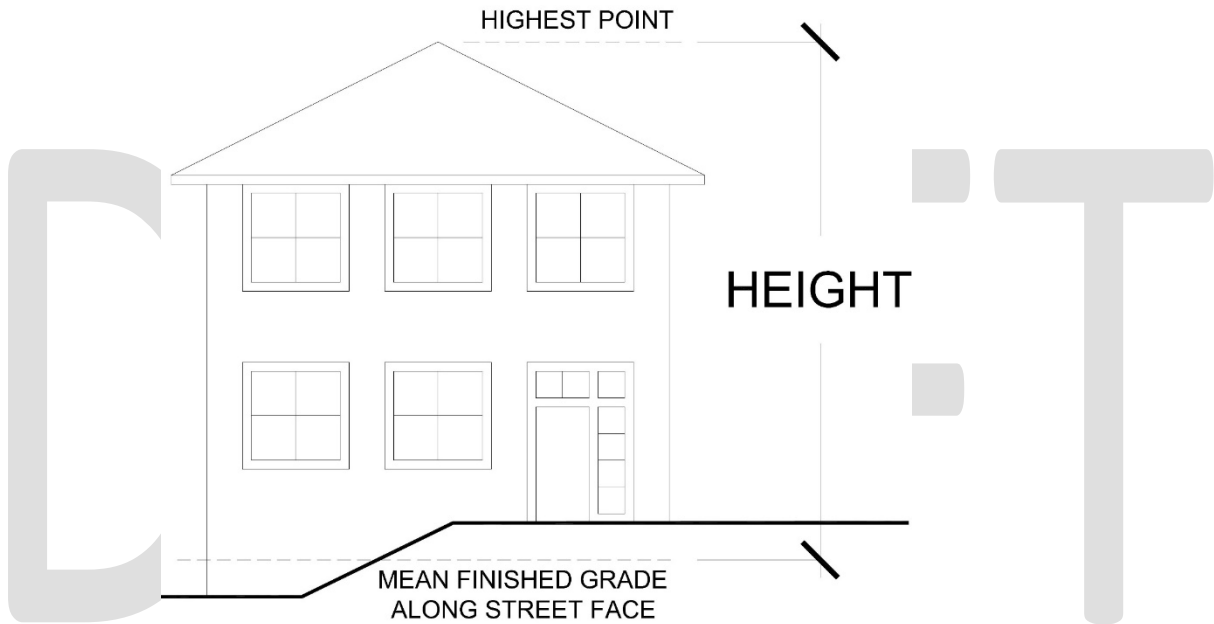
(a) **Maximum Height Restricted.**

- (1) In any district, no building or structure shall be hereafter erected or structurally altered to a height in excess of that hereinafter specified by the regulations for that district, except as may be modified by this Code.
- (2) **Exceptions.** The following shall be exempt from the height regulations of all districts:
 - a. Architectural projections, such as spires, belfries, parapet walls, cupolas, domes, flues and chimneys.

- b. Special structures, such as elevator penthouses, gas tanks, grain elevators, radio and television receiving antennas, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations and smoke stacks.
- c. Essential services, utilities, water towers, electric power and communication transmission lines.

(3) **How Measured.**

The height of any other structure shall be defined as the total height of the structure measured with a line from the mean finished lot grade along the street yard face of the structure to the highest point of a roof.



SEC. 16-5-4 BUILDING SIZE.

- (a) **Residence Area Requirements - Single Family.** No building permit shall be issued for the construction of a single-family residence shall have an area of less than the following:
 - (1) If constructed with a basement:
 - a. Nine hundred (900) square feet for a two (2) bedroom home.
 - b. One thousand (1,000) square feet for a three (3) bedroom home.
 - c. One thousand two hundred (1,200) square feet for a four (4) bedroom home.
 - (2) If constructed without a basement:
 - a. One thousand (1,000) square feet for a two (2) bedroom home.
 - b. One thousand one hundred (1,100) square feet for a three (3) bedroom home.
 - c. One thousand three hundred (1,300) square feet for a four (4) bedroom home.
- (b) **Residence Area Requirements -- Two Story.** Two (2) story residences and residences with expandable second floors shall have a minimum of eight hundred (800) square feet on

the first floor. The building area shall be computed on the basis of the outside dimensions of the building on each floor, but exclusive of nonliving areas, such as garages, breezeways, porches, attics and basements or any portions with less than five (5) feet of head room.

SEC. 16-5-5 LOT AREA AND WIDTH.

(a) **Minimums Required.**

No building shall be erected on a lot of less area or of minimum average width less than hereinafter specified by the regulations of the district in which such building is located, except where said lot is an existing lot of record which was previously divided.

(b) **Lot Area; How Measured.**

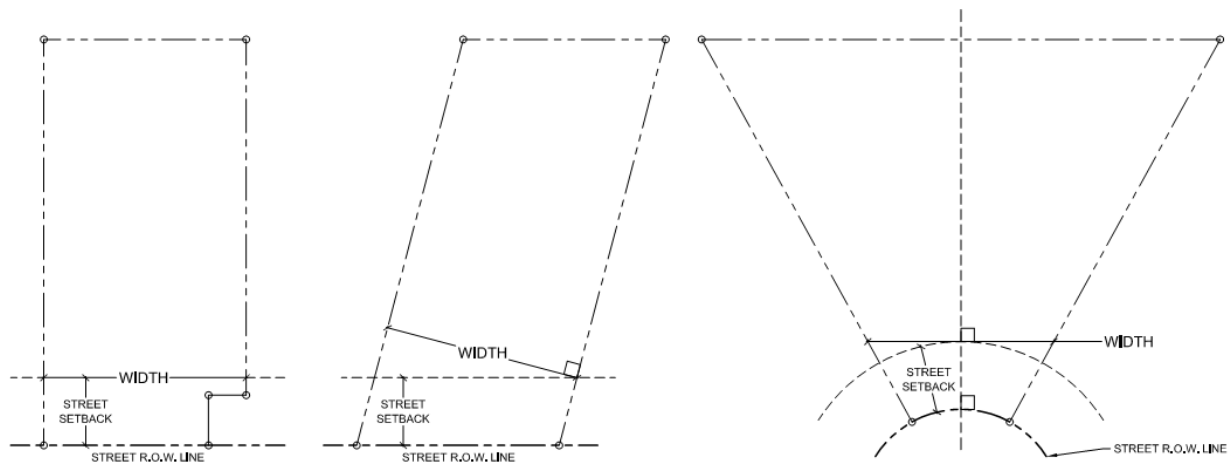
All lot area requirements are measured exclusive of any highway right-of-way and all street yard setbacks are measured from the outer limit of the highway right-of-way or private road easement.

(c) **Width; How Measured.**

Lot width shall mean the width of a parcel of land measured at the rear of the specified street yard. On all parcels where parallel side lot lines are not perpendicular to the street right-of-way line, such lot width shall be determined by measuring along a line which is perpendicular to the side lot lines and begins at a point on the side lot line that is at the specified street yard setback distance. For parcels with non-parallel side lot lines, lot width shall be measured at the street yard setback distance along a line that is perpendicular to a line which begins at the center of the lot at a point on the street right-of-way line and is perpendicular to such right-of-way line or perpendicular to the tangent at such point in the case of a curved right-of-way.

(d) **Reduction.**

No lot area shall be reduced by any means so as to create a lot of less than the required size or so that the existing offsets, setbacks, open space or lot area would be reduced below that required by the regulations for the district in which such lot is located.



SEC. 16-5-6 SEWER AND WATER SERVICE REQUIRED.

(a) **Definitions.**

- (1) **District.** Caledonia Sewer Utility District No. 1, and/or Caledonia Water Utility District No. 1.
- (2) **Urban Service Area.** The boundaries of the Sanitary Sewer Service Area for the City of Racine and Environs as set forth by the Southeast Wisconsin Regional Planning Commission in the most recent edition of Community Assistance Planning Report No. 147, and approved or requested amendments thereto,
- (b) **Municipal Sewer and Water Service Required.** All new buildings for proposed uses within the District's Urban Service Area shall be served by sewer and water facilities owned and operated by the District.
- (c) **Modifications or Waivers.** Any request for modification or waiver of the above provisions shall be made and considered in accordance with Section 14-3-1(k) of the Village's Code of Ordinances. In considering a modification or waiver request, the Plan Commission and Village Board shall also consider the criteria set forth by Resolution of the Village Board.

SEC. 16-5-7 SITE RESTRICTIONS.

- (a) Parcels of land abutting more restrictive district boundaries shall provide side and rear yards not less than those required in the more restrictive abutting district. The street yards on the less restrictive district shall be modified for a distance of not more than 60 feet from the district boundary line so as to equal the average of the street yards required in both districts.
- (b) A buffer yard shall be created and maintained around all business and manufacturing districts which abut upon residential districts and which are adjacent to freeways and limited access arterial streets and highways which abut upon residential districts. The Plan Commission may also require a buffer yard around business and industrial districts abutting park and institutional districts. Buffer yards shall be a minimum of 20 feet in width; shall be in addition to the required street yards, side yards, and rear yards; and shall screen business or manufacturing uses from adjoining lands in such a manner that:
 - (1) If the buffer yard is composed entirely of plant materials, it shall be of sufficient initial depth and height and of such varieties as to provide adequate visual screening within no more than two years and during all seasons of the year.
 - (2) Where architectural walls or fences are used, sufficient landscaping shall be used in conjunction with such wall or fence to create an attractive view from the residential side, and all walls and fences shall be maintained in a structurally sound and attractive condition. Any wall or fence shall be not less than four (4) feet nor more than six (6) feet in height.
 - (3) All landscaping shall be maintained by the owner or operator to the satisfaction of the Zoning Administrator or a designee.

(4) Where the land adjacent to the buffer yard is a parking lot, the buffer yard shall be sufficiently opaque to prevent the penetration of headlight glare. Overhead lighting installed in or adjacent to a buffer yard shall not throw any rays onto adjacent residential properties.

(5) No signs shall be permitted on or in any part of the buffer yard.

DRAFT

CHAPTER 6
Zoning Districts Established

[Back to Table of](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-6-1	Zoning Districts Established		
16-6-2	A-1 Agricultural District		
16-6-3	R-1 Country Estate District		
16-6-4	R-2 Single Family Residential District		
16-6-5	R-3 Single Family Residential District		
16-6-6	R-4 Single Family Residential District		
16-6-7	R-5 Single Family Residential District		
16-6-8	Rd-1 Two-Family Residential District		
16-6-9	RM-1 Multi-Family Residential District		
16-6-10	B-1 Neighborhood Business District		
16-6-11	B-2 Community Business District		
16-6-12	B-3 Highway Business District		
16-6-13			
16-6-14	M-1 Light Manufacturing and Office District		
16-6-15	M-2 General Manufacturing District		
16-6-16	M-3 Heavy Manufacturing District		
16-6-17	M-4 Quarrying District		
16-6-18	I-1 Institutional District		
16-6-19	P-1 Park District		
16-6-20	C-1 Resource Conservation District		
16-6-21	SSO Structural Setback Overlay District		
16-6-22	NSO Non-Structural Setback Overlay District		
16-6-23	SWO Shoreland-Wetland Overlay District		
16-6-24	APO Airport Protection Overlay District		

16-6-1 Zoning Districts Established

- (a) GENERAL: The Regulations of the various Sections of this Code are made specifically applicable to each individual district as hereinafter set forth in the Individual District sections of this Code.
- (b) Format of District Regulations and Summary
- (1) Basic Districts: All property in the Village has been placed on the basic districts created for the purpose of establishing the general pattern of intended land use consistent with the General Plan for Comprehensive Development.
 - (2) Overlay Districts: Overlay of "floating" districts are also established which provide for the possibility of superimposing upon a basic district certain additional permissive uses and regulatory standards applicable thereto without disturbing the underlying basic district regulations. The basic intent is similar to that upon which conditional use grants are premised and in effect represent the granting of specifically defined special use rights in specifically defined areas.
 - (3) Planned Unit Development Districts: The Planned Unit Development District is intended to allow for greater freedom, imagination, and flexibility in the development of land while ensuring substantial compliance to the intent of the normal district regulations of this ordinance. These districts consist of subdivisions, commercial, industrial, and mixed use land uses.
 - (4) Organization of District Regulations: For convenience and readability the uses as permitted in each district and the supplementary regulations thereto are presented in a summary tabular form consisting of the following:
 - a. A statement of intent interpreting the intended purpose of the specific district classification.
 - b. The specific numeric requirements of the provisions of this Code made applicable to the district. In case of an Overlay district the requirements listed apply to the uses permitted by virtue of the overlay and do not alter the application of the underlying district regulations to the use permitted therein.
 - c. A list of permitted, accessory, and conditional uses with a reference to related provisions of the Ordinance.
- (c) BASE DISTRICTS
- (1) Agricultural District
 - a. A-1 Agricultural District
 - (2) Single-Family Residential Districts
 - a. R-1 Country Estate District
 - b. R-2 Single Family Residential District
 - c. R-3 Single Family Residential District
 - d. R-4 Single Family Residential District
 - e. R-5 Single Family Residential District
 - (3) Multi-Family Residential Districts
 - a. Rd-1 Two-Family Residential District
 - b. RM-1 Multi-Family Residential District
 - (4) Commercial Districts
 - a. B-1 Neighborhood Business District
 - b. B-2 Community Business District
 - c. B-3 Highway Business District
 - (5) Business Park District
 - a. BP-1 Business Park District
 - (6) Industrial Districts

- a. M-1 Light Manufacturing and Office District
 - b. M-2 General Manufacturing District
 - c. M-3 Heavy Manufacturing District
 - d. M-4 Quarrying District
- (7) Institutional & Park Districts
 - a. I-1 Institutional District
 - b. P-1 Park District
- (8) Conservation District
 - a. C-1 Resource Conservation District
- (d) **OVERLAY DISTRICTS**
 - (1) The following overlay districts are created:
 - a. SSO Structural Setback Overlay District
 - b. NSO Non-Structural Setback Overlay District
 - c. SWO Shoreland-Wetland Overlay District
 - d. APO Airport Protection Overlay District
- (e) **PLANNED UNIT DEVELOPMENT DISTRICTS**
 - (1) New Planned Development Districts are created as they are approved by the Village and are notated as "PUD-" Planned Unit Developments along with the corresponding number in which they were approved (ex. PUD-1).
- (f) **DISTRICT BOUNDARIES**
 - (1) Boundaries of the districts, except for the floodplain districts, structural and nonstructural districts, are hereby established as shown on a series of maps entitled "Zoning Maps, Village of Caledonia, Wisconsin," dated to correspond with their adoption by the Village, as amended, which accompany and are a part of this chapter. Unless otherwise noted on the zoning map, such boundaries shall be construed to follow: corporate limits; U.S. Public Land Survey Lines; lot or property lines; centerlines of street, highways, alleys, easements, and railroad rights-of-way or such lines extended. Where a C-1 resource conservation district is delineated on the zoning district map in a linear form along a perennial or intermittent watercourse, the district boundaries shall be construed to be the following unless otherwise noted on the zoning district map:
 - a. One hundred (100) feet from the ordinary high-water mark of perennial streams.
 - b. Fifty (50) feet from the ordinary high-water mark of intermittent streams.

16-6-2 A-1 Agricultural District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for agricultural and related uses in rural areas where non-farm residential development is not of significant proportions presently nor anticipated or to be encouraged. Residential development in this district is permitted at densities not to exceed 0.2 dwelling units per net acre.

- (b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
150	5 Acres*	35'***	75'	25'	25'

* If sewered, lot size can be 40,000 SF for one family dwelling lot & 80,000 SF for two family dwelling lot if created for farm owner family

* Unless reduced by Lot Averaging per Title 14 of Caledonia Codes

** Agricultural structures, such as barns, silos and windmills, shall not exceed in height twice their distance from the nearest lot line.

(c) PERMITTED USES BY RIGHT

- (1) General farm practices such as dairying, forestry; grazing, livestock, apiary, and crops.
- (2) One single or one two-family dwelling, whether or not such dwellings are associated with farm operations. The principal structure shall be the residential structure intended to service the parcel on which such residence is located.
- (3) Undeveloped natural resource and open space areas.
- (4) Land within a federal or state agricultural land conservation payment program.
- (5) Livestock and farm animals per Title 7-1-13(3).
- (6) Solar Energy Farm Facility

(a) PERMITTED ACCESSORY USES

- (1) A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.
- (2) An activity or business operation that is an integral part of or incidental to, an agricultural use.
- (3) Any other use that the *Department of Agriculture, Trade and Consumer Protection* (DATCP), by rule, identifies as an agricultural use.
- (4) A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in paragraph (1) or (3), that employs no more than four (4) full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.
- (5) Accessory structures may be permitted in the agricultural district prior to the presence of the principal structure provided that the parcel on which the accessory structure will be located is ten (10) contiguous acres in size or larger, the accessory structure is intended for an agricultural use, the proposed accessory structure meets the setback requirements needed for a principal structure in that district, and the accessory structure is at least one hundred (100) feet from any existing residence on abutting parcels.
- (6) Not more than one (1) roadside stand on anyone (1) farm not exceeding 200 square feet in area for the sale of farm products produced on the premises shall be permitted as an accessory use.

(e) PERMITTED USES BY CONDITIONAL USE PERMIT

- (1) Private Utility Installations (Principal structures not less than 100' from residential district lot line)
- (2) Animal Hospitals (Lot area 3+ Acres and Principal Structures not less than 100' from a residential district)
- (3) Commercial Egg Production
- (4) Pea vineries, creameries and condenseries
- (5) Commercial Raising of Animals such as dogs, foxes, goats, mink, pigs, and rabbits (must meet W.S.A. § 91.01(1))
- (6) Commercial Grain and Seed Operations
- (7) Sod Farms
- (8) Airstrips
- (9) Storage, parking, and maintenance of vehicles and equipment (600' from residential districts along with screening approved by the Plan Commission)
- (10) Colleges; universities; hospitals; sanitariums; religious, charitable, penal and correctional institutions; cemeteries and crematories provided all principal structures and uses are not less than fifty (50) feet from any lot line.

- (11) Bed and Breakfast
- (12) Non-farm residences
- (13) Itinerant agricultural laborer's quarters not for rent
- (14) Barn Meeting /Reception Events

16-6-3 R-1 Country Estate District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for high quality detached single family residential development of a semi-rural nature on a large lot, low density basis in areas not intended to be served by municipal sewer facilities. Residential development in this district is permitted at densities not to exceed 0.33 dwelling units per net acre.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
200*	3 Acres*	35'	75'	75'	30'

* Unless reduced by Lot Averaging per Title 14 of Caledonia Codes

(c) **PERMITTED USES BY RIGHT**

- (1) One single-family dwelling.
- (2) Licensed Community Living Arrangements (serving 8 or fewer persons).

(d) **PERMITTED ACCESSORY USES**

- (1) Private accessory structures subject to Section 16-10-4.
- (2) Home Occupations per Section 16-10-2.
- (3) Livestock and farm animals per Title 7-1-13(3).
- (4) Renewable energy structures.
- (5) Buildings housing animals shall be located not closer than fifty (50) feet from any lot line.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) Private Utility Installations provided all principal structures and uses are not less than fifty (50) feet from any residential district lot line.
- (2) Governmental and cultural uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums
- (3) Stables, nurseries, orchards, riding trails
- (4) Public and parochial and private elementary and secondary schools and churches.
- (5) Licensed Community Living Arrangements (serving more than 8 persons, but no more than twenty (20) persons).

- (f) The sum total of the floor area on all floors of the principal and all accessory buildings shall not exceed twenty (20) percent of the lot area.

16-6-4 R-2 Single Family Residential District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for high quality detached single family residential development of a suburban character on a moderately large lot, moderately low-density basis in areas intended or not intended to be served by municipal sewer facilities. Residential development in this district is permitted at densities not to exceed 1.1 dwelling units per net acre.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
150	40,000 SF	35'	50'	50'	15'

(c) PERMITTED USES BY RIGHT

- (1) One Single-family dwelling.
- (2) Licensed Community Living Arrangements (serving 8 or fewer persons).

(d) PERMITTED ACCESSORY USES

- (1) Private accessory structures subject to Section 16-10-4.
- (2) Home Occupations per Section 16-10-2.
- (3) Renewable energy structures.

(e) PERMITTED USES BY CONDITIONAL USE PERMIT

- (1) All Private Utility Installations provided all principal structures and uses are not less than fifty (50) feet from any residential district lot line.
- (2) Governmental and cultural uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums
- (3) Public and parochial and private elementary and secondary schools and churches.
- (4) Licensed Community Living Arrangements (serving more than eight (8) persons, but no more than twenty (20) persons).

- (f) The sum total of the floor area on all floors of the principal and all accessory buildings shall not exceed twenty (20) percent of the lot area.

16-6-5 R-3 Single Family Residential District

- (a) STATEMENT OF INTENT: This district is intended to provide for a moderately high quality detached single family residential development of a suburban character, but of slightly higher density and permitting smaller lots than the R-2 District and intended to be served by municipal sewer facilities. Residential development in this district is permitted at densities not to exceed 2.2 dwelling units per net acre.

(b) BASIC REGULATIONS

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
100	20,000 SF	35'	30'	30'	10'

(c) PERMITTED USES BY RIGHT

- (1) One Single-family dwelling.
- (2) Licensed Community Living Arrangements (serving 8 or fewer persons).

(d) PERMITTED ACCESSORY USES

- (1) All Accessory Uses per the R-2 District.

(e) PERMITTED USES BY CONDITIONAL USE PERMIT

- (1) All Conditional Uses per the R-2 District.

- (f) The sum total of the floor area on all floors of the principal and all accessory buildings shall not exceed thirty (30) percent of the lot area.

16-6-6 R-4 Single Family Residential District

- (a) STATEMENT OF INTENT: This district is intended to provide for a moderately high quality detached single family residential development of a suburban character, but of slightly higher density and permitting smaller lots than the R-3 District and intended to be served by municipal sewer facilities. Residential development in this district is permitted at densities not to exceed 3.0 dwelling units per net acre.

- (b) BASIC REGULATIONS

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
90	14,520 SF	35'	30'	30'	10'

- (c) PERMITTED USES BY RIGHT

- (1) One Single-family dwelling.
(2) Licensed Community Living Arrangements (serving 8 or fewer persons).

- (d) PERMITTED ACCESSORY USES

- (1) All Accessory Uses per the R-2 District.

- (e) PERMITTED USES BY CONDITIONAL USE PERMIT

- (1) All Conditional Uses per the R-2 District.

- (f) The sum total of the floor area on all floors of the principal and all accessory buildings shall not exceed forty (40) percent of the lot area.

16-6-7 R-5 Single Family Residential District

- (a) STATEMENT OF INTENT: This district is intended to provide for a moderately high quality detached single family residential development of a suburban character, but of slightly higher density and permitting smaller lots than the R-4 District and intended to be served by municipal sewer facilities. Residential development in this district is permitted at densities not to exceed 4.0 dwelling units per net acre.

- (b) BASIC REGULATIONS

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
75	10,890 SF	35'	25'	25'	10'

- (c) PERMITTED USES BY RIGHT

- (1) One Single-family dwelling.
(2) Licensed Community Living Arrangements (serving 8 or fewer persons).

- (d) PERMITTED ACCESSORY USES

- (1) All Accessory Uses per the R-2 District.

- (e) PERMITTED USES BY CONDITIONAL USE PERMIT

- (1) All Conditional Uses per the R-2 District.
- (f) The sum total of the floor area on all floors of the principal and all accessory buildings shall not exceed fifty (50) percent of the lot area.

16-6-8 Rd-1 Two-Family Residential District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for residential development for 2 family dwellings but of slightly higher density and permitting smaller lots than the RM-1 District. This district shall be found where such development would be compatible with surrounding uses, the density would not create service problems, and in areas served by municipal sewer. Residential development in this district is permitted at densities not to exceed 6.0 dwelling units per net acre.

- (b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
100	14,520 SF	35'	30'	30'	10'

- (c) **PERMITTED USES BY RIGHT**

- (1) One Two-family dwelling.
- (2) Licensed Community Living Arrangements (serving 8 or fewer persons).

- (d) **PERMITTED ACCESSORY USES**

- (1) All Accessory Uses per the R-2 District.

- (e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) All Conditional Uses per the R-2
- (2) Rest homes, nursing homes, homes for the aged, clinics and children's nurseries provided all principal structures and uses are not less than fifty (50) feet from any lot line.
- (3) Licensed commercial day care centers.

16-6-9 RM-1 Multi-Family Residential District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for multi-family residential development not to exceed eight (8) dwelling units per structure on a single lot in areas served by municipal sewer.

- (b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
120	16,000 SF*	35'	35'	50'	20'

* Lot Area is shown as the minimum for the district regardless of the amount of units proposed in a structure.

The lot area minimum is further defined depending on the proposed units per the following:

- 2,000 SF of lot area required per efficiency unit
- 2,500 SF of lot area required per 1-bedroom unit
- 3,000 SF of lot area required per 2- or more bedroom units

- (c) **PERMITTED USES BY RIGHT**

- (1) Two-family dwellings
- (2) Multiple-family dwellings up to eight (8) units per structure.

- (3) Licensed Community Living Arrangements (serving fifteen (15) or fewer persons).
- (d) **PERMITTED ACCESSORY USES**
 - (1) All Accessory Uses per the R-2 District.
- (e) **PERMITTED USES BY CONDITIONAL USE PERMIT**
 - (1) All Conditional Uses per the R-2.
 - (2) Multiple-family dwellings with greater than eight (8) units per structure.
 - (3) Rest homes, nursing homes, homes for the aged, clinics and children's nurseries provided all principal structures and uses are not less than fifty (50) feet from any lot line.
 - (4) Mobile Home Parks (Restrictions in Conditional Use permit portion of this ordinance)
 - (5) Licensed Community Living Arrangements (serving sixteen (16) or more persons).

16-6-10 B-1 Neighborhood Business District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for individual or small groups of retail and customer service establishments serving primarily the convenience of a local neighborhood and the character, appearance and operation of which are compatible with the character of the surrounding area. Outdoor display or storage of product and merchandise are prohibited.

- (b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
75	15,000 SF	35'	25'	25'*	10'*

*Side and rear setbacks shall not be less than thirty (30) feet to a residential, institutional, or park district line, and subject to landscaped buffer requirements in Section 16-5-7.

- (c) **PERMITTED USES BY RIGHT**
 - (1) Retail establishments selling and storing product and merchandise
 - (2) Professional Offices
 - (3) Restaurants
 - (4) Financial Institutions
 - (5) Churches
 - (6) Personal Service Establishments
 - (7) State Licensed Massage Therapy
 - (8) State Licensed Tattoo Piercing Studio
- (d) **PERMITTED ACCESSORY USES**
 - (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
 - (2) Off-street parking and loading areas in conjunction with the operation of the business.
 - (3) Renewable energy structures attached to principal structure.
- (e) **PERMITTED USES BY CONDITIONAL USE PERMIT**
 - (1) Residential quarters may be permitted as a conditional use provided that such quarters are clearly accessory to the principal use on the property and occupy fifty (50) percent or less of the total floor space of the structure in which they are located.
 - (2) Licensed commercial day care centers.

- (3) Pet Grooming
- (4) Governmental and cultural uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums.
- (5) Private Utility Installations provided all principal structures and uses are not less than fifty (50) feet from any residential district lot line.

(f) **BUILDING AREA**

- (1) The maximum building floor area shall be 5,000 square feet
- (2) The sum total of the floor area on all floors of the principal building and all accessory buildings shall not exceed forty (40) percent of the lot area.

16-6-11 B-2 Community Business District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for the orderly and attractive grouping at appropriate locations of retail stores, shops, offices and service establishments serving the daily needs of the surrounding local community area that offer a wider range of retail products and services that are provided in the B-1 District.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
75	20,000 SF	35'	25'	25'*	10'*

*Side and rear setbacks shall not be less than thirty (30) feet to a residential, institutional, or park district line, and subject to landscaped buffer requirements in Section 16-5-7.

(c) **PERMITTED USES BY RIGHT**

- (1) All uses permitted by right in the B-1 District
- (2) Liquor Stores
- (3) Personal Service Establishments
- (4) Trade and Variety Stores

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
- (2) Off-street parking and loading areas in conjunction with the operation of the business.
- (3) Renewable energy structures attached to principal structure

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) All conditional uses as found in the B-1 District.
- (2) Funeral Homes (provided all principal structures and uses are not less than twenty-five (25) feet from any lot line)
- (3) Drive-in establishments for food and beverage

(f) **BUILDING AREA**

- (1) The sum total of the floor area on all floors of the principal building and all accessory buildings shall not exceed forty (40) percent of the lot area.

16-6-12 B-3 Highway Business District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for the orderly and attractive grouping at appropriate locations of commercial activities of a more general retail and wholesale

nature, and of the office and service facilities serving a larger community trade area. The size and location of such districts shall be based upon relationship of the community need and economy.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
200	40,000 SF	45'	40'	40'	10'

*Side and rear setbacks shall not be less than thirty (30) feet to a residential, institutional, or park district line, and subject to landscaped buffer requirements in Section 16-5-7.

(c) **PERMITTED USES BY RIGHT**

- (1) All uses permitted by right in the B-2 District
- (2) Animal Hospitals (Lot area 3+ Acres and Principal Structures not less than 100' from a
- (3) Building Material & Product Sales
- (4) Taxidermy

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
- (2) Off-street parking and loading areas in conjunction with the operation of the business.
- (3) Renewable energy structures.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) All conditional uses as found in the B-2 District.
- (2) Landscape Contractors and Yards
- (3) Clubs, Fraternities, and Lodges
- (4) Commercial Recreation Facilities
- (5) Public passenger transportation terminals (not less than 100' from residential district boundary)
- (6) Vehicle, boat sales, service, washing, gas, and repair stations, garages, taxi stands and public parking lots (provided all gas pumps are not less than thirty (30) feet from any side or rear lot line and twenty-five (25) feet from any existing or proposed street line).
- (7) Drive-In Theatres (provided that a planting screen at least twenty-five (25) feet wide is created along any side abutting a residential district and no access is permitted to or within one thousand (1,000) feet of an arterial street)
- (8) Motels and Hotels
- (9) Self-service storage facilities (mini-warehouses) and yards (The maximum lot coverage by structures for a self-service storage facility shall not exceed fifty (50) percent, and such facility shall not exceed fifteen (15) feet in height and shall meet the setbacks for the district in which it is located)
- (10) Microbreweries, wineries, distilleries.

- (f) The sum total of the floor area on all floors of the principal building and all accessory buildings shall not exceed forty (40) percent of the lot area.

16-6-13 M-1 Light Industrial and Office District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for the orderly and attractive grouping in appropriately landscaped grounds of a mix of low-impact (of a limited nature and size) manufacturing, industrial, wholesaling, limited warehousing, research and development, engineering, and testing related service facilities and uses which occur within enclosed buildings,

and which, on the basis of actual physical and operational characteristics, would not be detrimental to the surrounding area or to the community as a whole by reason of noise, dust, smoke, odor, traffic, physical appearance or other similar factor; and to establish such regulatory controls as will reasonably insure compatibility with the surrounding area in this respect.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Access. Building Height	Street Setback	Rear Setback	Side Setback
150	43,560 SF	50'	30'	25'	25'*	15'*

*Side and rear setbacks shall not be less than thirty (30) feet to a residential, institutional, or park district line, and subject to landscaped buffer requirements in Section 16-5-7.

(c) **PERMITTED USES BY RIGHT**

- (1) General and Professional Offices
- (2) Schools
- (3) Tool and Dye
- (4) Commercial Greenhouses
- (5) Warehousing
- (6) Light Manufacturing
- (7) Laboratories (research and product development, engineering and testing)

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
- (2) Off-street parking and loading areas in conjunction with the operation of the business.
- (3) Renewable energy structures attached to principal structure.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) Public passenger transportation terminals ((not less than 100' from residential district boundary), such as heliports, bus and rail depots, except airports, airstrips and landing fields (not less than 100' from residential and on 20 acres+).
- (2) Commercial service facilities such as restaurants and fueling stations
- (3) Governmental and cultural uses, such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds and museums.
- (4) Private Utility Installations provided all principal structures and uses are not less than fifty (50) feet from any residential district lot line.
- (5) Self-Service Storage Facilities (mini-warehouses)
- (6) Micro-breweries, distilleries, and wineries

(f) **BUILDING AREA**

- (1) The sum total of the floor area on all floors of the principal building and all accessory buildings shall not exceed sixty (60) percent of the lot area.

16-6-14 M-2 General Industrial District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for the same type of manufacturing and industrial development as in the M-2 District, but in those areas where the relationship to surrounding land use would create fewer problems of compatibility and would not necessitate as stringent regulatory controls.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
200 feet	43,560 SF	50'	40'	25'*	20'*

*Side and rear setbacks shall not be less than thirty (30) feet to a residential, institutional, or park district line, and subject to landscaped buffer requirements in Section 16-5-7.

(c) **PERMITTED USES BY RIGHT**

- (1) All M-1 permitted uses.
- (2) Manufacturing & Packaging Facilities
- (3) Food Product Facilities
- (4) Wholesalers & Distributors

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
- (2) Off-street parking and loading areas in conjunction with the operation of the business.
- (3) Renewable energy structures attached to principal structure.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) All M-1 conditional uses.
- (2) Airports and landing fields (not less than 100' from residential and on 20 acres+).
- (3) Self-storage facilities and yards (The maximum lot coverage by structures for a self-service storage facility shall not exceed fifty (50) percent, and such facility shall not exceed fifteen (15) feet in height and shall meet the setbacks for the district in which it is located)
- (4) Recycling drop-off sites
- (5) Animal Hospitals (Lot area 3+ Acres and Principal Structures not less than 100' from a residential district)

(f) **BUILDING AREA**

- (1) The sum total of the floor area on all floors of the principal building and all accessory buildings shall not exceed eighty (80) percent of the lot area.

16-6-15 M-3 Heavy Manufacturing District

- (a) **STATEMENT OF INTENT:** This district is intended to provide for the same type of manufacturing and industrial development as in the M-2 District, but in those areas where the relationship to surrounding land use may create problems of compatibility and may necessitate as stringent regulatory controls.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
200 feet	1 acre	60'	40'	30'*	25'*

*Side and rear setbacks shall not be less than thirty (30) feet to a residential, institutional, or park district line, and subject to landscaped buffer requirements in Section 16-5-7.

(c) **PERMITTED USES BY RIGHT**

- (1) All M-2 permitted uses.
- (2) Adult establishment uses per Chapter 16 of this Ordinance.

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
- (2) Off-street parking and loading areas in conjunction with the operation of the business.
- (3) Renewable energy structures attached to principal structure.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) All M-2 conditional uses.
- (2) Adult establishment uses per Section 16 of this ordinance.
- (3) Sanitary landfills and their related accessory uses
- (4) The following subject to being at least six hundred (600) feet from residential and park and institutional districts:
 - a. Manufacturing of abrasive materials
 - b. Storage and/or manufacturing of explosives and flammables
 - c. Beverage Bottling

(f) **BUILDING AREA**

- (1) The sum total of the floor area on all floors of the principal building and all accessory buildings shall not exceed sixty (60) percent of the lot area.

16-6-16 M-4 Quarrying District

- (a) **STATEMENT OF INTENT:** This district is intended to provide an environment capable of addressing the unique concerns associated with extractive operations.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Extractive Setbacks	Misc. Setbacks
As Necessary*	As Necessary*	45'	0'-200'*	100'**

*Lot width and size is as necessary to comply with all district regulations subject to Plan Commission approval.

**All excavations shall be at least 200' from a right-of-way or property line; 200-foot excavation setback can be reduced to 0' if approved by Plan Commission if a common lot line is shared with another mineral extraction operation.

***All accessory uses such as offices, other structures, parking areas, and stockpiles shall be at least 100' from any right-of-way line or property line.

(c) **PERMITTED USES BY RIGHT**

- (1) Mineral extraction operations and concrete and concrete products manufacturing (The manufacture of concrete and concrete products, including concrete and asphalt batch plants, may occur on a parcel only during the duration of the on-site mineral extraction activity).
- (2) Nonmetallic mining and associated extractive operations pursuant to Chapter NR135 Wisconsin Administrative Code and subject to Title 7 Chapter 11 of Caledonia codes.

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of the business subject to Plan Commission approvals.
- (2) Renewable energy structures attached to principal structure.

(e) PERMITTED USES BY CONDITIONAL USE PERMIT

(1) All M-3 District Conditional Uses

a.

16-6-17 I-1 Institutional District

(a) STATEMENT OF INTENT: This district is intended to specifically define areas where churches, schools, libraries, and other uses of a public or institutional nature shall be permitted subject to such regulatory standards as will ensure compatibility with the surrounding uses an area.

(b) BASIC REGULATIONS

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
100	20,000 SF	50’*	40	40	40

*Public or semipublic facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries, governmental offices and stations, may be erected to a height of sixty (60) feet, provided all required yards are increased not less than one (1) foot for each foot the structure exceeds the district's maximum height requirement.

(c) PERMITTED USES BY RIGHT

- (1) Public and Private Institutional Uses
- (2) Schools
- (3) Health Facilities
- (4) Churches

(d) PERMITTED ACCESSORY USES

- (1) Uses incidental with the operation of a principal or conditional use subject to Plan Commission approvals.

(e) PERMITTED USES BY CONDITIONAL USE PERMIT

- (1) Airports and Landing Fields (not less than 100’ from residential and on 20 acres+)
- (2) Recycling Drop-Off Sites (see conditional use grant section for restrictions)
- (3) Licensed Commercial Day Care Centers
- (4) Cemeteries

16-6-18 P-1 Parkland & Recreational District

(a) STATEMENT OF INTENT: This district is intended to provide areas where outdoor recreational needs of the citizens can be met. This district is intended to specifically define areas where park and recreation uses of a public or private nature shall be permitted subject to such regulatory standards as will insure compatibility with the surrounding uses of an area.

(b) BASIC REGULATIONS

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
100	15,000 SF	35’	50’	50’	50’

(c) PERMITTED USES BY RIGHT

- (1) Parkland Recreation Uses

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of a principal or conditional use subject to Plan Commission approvals.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) The following private recreational uses: assembly structures, golf facilities, campgrounds, swimming pools athletic fields, lodges, archery and firearm ranges, zoological and botanical gardens.
- (2) Recreational based motorized off-road vehicle trails.

16-6-19 C-1 Resource Conservation District

- (a) **STATEMENT OF INTENT:** This district is intended to provide areas where open space and limited outdoor recreational needs of the citizens can be met. This district is intended to specifically define areas where conservation uses of a public or private nature shall be permitted subject to such regulatory standards as will ensure compatibility with the surrounding uses an area.

(b) **BASIC REGULATIONS**

Lot Width	Lot Area	Building Height	Street Setback	Rear Setback	Side Setback
As Necessary*	As Necessary*	As Allowed**	As Allowed**	As Allowed**	As Allowed**

*Lot width and size is as necessary to comply with all district regulations subject to Plan Commission approval.

**Structures are not permitted unless accessory to a principal or conditional use as approved by the Planning Commission

(c) **PERMITTED USES BY RIGHT**

- (1) Public and private passive recreation and open space uses including fishing; flood overflow and floodwater storage; hunting; pedestrian and equestrian trails; preservation of scenic, historic and scientific areas; public fish hatcheries, soil and water conservation practices; sustained yield forestry; stream bank and lakeshore protection; water retention ponds; and wildlife areas.

(d) **PERMITTED ACCESSORY USES**

- (1) Uses incidental with the operation of a principal or conditional use subject to Plan Commission approvals.

(e) **PERMITTED USES BY CONDITIONAL USE PERMIT**

- (1) The following Public and private passive recreation and open space uses including Boating, game farms, grazing, orchards, shooting preserves, swimming, truck farming, utilities, water measurement and water control facilities, and wild crop harvesting (These above uses shall not involve drainage; dumping; filling; tilling; mineral, soil, or peat removal; or any other use that would substantially disturb or impair the natural fauna, flora, watercourses, water regimen or topography).

16-6-20 SSO Structural Setback Overlay District PEG to provide actual definition and difference of SSO and NSO in their minds so Pete knows how/when to permit moving forward

- (a) **STATEMENT OF INTENT:** The SSO structural overlay district is intended to be used to protect people and property from shore erosion damage in Lake Michigan shoreland areas which are

recommended to be protected by properly designed, constructed and maintained shore protection structures.

Compliance with the structural setback distances set forth is assumed to provide reasonable protection from further bluff recession if the shore protection structures are properly designed, constructed, and maintained. However, even proper protection structures meeting all of the required criteria may fail during major storm events or other natural occurrences. These regulations do not guarantee or warrant that development in compliance with its terms will be protected from all erosion damage. Reliance on these regulations shall not create liability on the part of the board of trustees, its agencies or employees for any erosion damages that may occur as a result of reliance upon, and conformance with, this chapter.

- (b) APPLICATION: The SSO structural overlay district applies to those Lake Michigan shoreline areas which are located south of the northern one-half of Township 4 North, Range 23 East, Section 8, in the Village of Caledonia and Mt. Pleasant. In addition, the SSO district applies to the northernmost one thousand three hundred (1,300) feet of Lake Michigan shoreline in Section 6 of the Village of Caledonia, Township 4 North, Range 23 East, which is covered by fly ash deposits. All new development within this overlay district shall be adequately protected by properly designed, constructed, and maintained shore protection structures or measures. Such structural protection structures or measures shall meet the criteria established in Recommendations of the Racine County Technical Subcommittee on Shoreland Development Standards to the Racine County Land Use Committee, 1982.
- (c) BOUNDARIES: Boundaries of the structural and nonstructural setback overlay districts shall be determined as follows. The boundaries of the SSO structural setback overlay district shall be determined through the use of the following equation establishing a setback distance from the existing Lake Michigan bluff edge:
 - (1) SSO structural setback overlay district distance = Horizontal distance required to achieve one on two and one-half stable bluff slope + Minimum facility setback distance.
- (d) STABLE SLOPE:
 - (1) In delineating the SSO structural setback overlay district, the required recession or regrading of the bluff needed to form a stable slope, plus a minimum facility setback distance, shall be computed. The provision of the stable slope provides protection against further major bluff recession, as long as the shore protective structures are effective. This stable slope distance is measured from the existing bluff edge. The minimum facility setback distance is then measured from the edge of the regraded bluff needed to form a stable slope. The minimum facility setback distance provides a safety factor against possible failure of the protective structures during extreme storm events or other natural occurrences and provides a buffer area which helps protect the regraded bluff edge from excessive surface water runoff and from the potential bluff instability which could be caused by the additional weight of buildings being placed close to the bluff edge. In addition, the minimum facility setback distance provides an area which may be effectively utilized to facilitate surface water and subsurface water drainage and control.
 - (2) The distance required to achieve a one (1) on two and one-half (2 1/2) stable slope is set forth in Table 12, page 65, of SEWRPC Community Assistance Planning Report No. 86, A Lake Michigan Coastal Erosion Management Study for Racine County, Wisconsin, and shall be used to determine the stable slope distance. Minimum facility setback distances measured from the edge of the net stable slope distance shall one hundred (100) feet for all structures. The minimum setback distance may be reduced for public utilities, public recreational facilities, and single family residential units in areas of existing facility

development to be at least the average distance from the edge of the net stable slope distance to adjacent principal structures located on abutting parcels (excluding public right-of-ways and easements), although the minimum setback distance shall not be less than fifty (50) feet from the edge of the net stable slope distance. If an abutting parcel is vacant, a setback of one hundred (100) feet will be assumed for purposes of averaging.

- (f) **STRUCTURES PROHIBITED:** New, permanent residential, institutional, commercial, industrial and agricultural structures designed for human habitation, or the confinement of animals are prohibited in the SSO structural setback overlay district.
- (g) **PERMITTED USES BY RIGHT**
 - (1) Surface and subsurface water drainage and control; general farming activities, not including the erection of structures; open space; outdoor recreation; yard; storage of portable equipment and supplies; accessory buildings such as storage sheds; and minor structures such as driveways, sidewalks, patios and fences.
- (h) **PERMITTED ACCESSORY USES**
 - (1) Uses incidental with the operation of a principal or conditional use.
- (i) **PERMITTED USES BY CONDITIONAL USE PERMIT**
 - (1) Tree cutting and shrubbery clearing, land disturbance and earth movements, and shore protection structures.

16-6-21 NSO Non-Structural Setback Overlay District

- (a) **STATEMENT OF INTENT:** The NSO nonstructural setback overlay district is intended to be used to protect people and property from shore erosion damage in Lake Michigan shoreland areas which are not protected by properly designed, constructed, and maintained shore protection structures.

The nonstructural setback distance provisions for the Lake Michigan shoreland are considered the minimum reasonable requirements necessary to reduce bluff recession damages to facilities for an anticipated fifty-year hazard period. These requirements are based upon engineering, geological, and other scientific studies and principles. Higher rates of erosion may occur. Erosion rates may be increased by natural causes such as major storms or high lake levels or by manmade causes such as construction activities.

- (b) **APPLICATION:** The NSO nonstructural setback overlay district applies to those Lake Michigan shoreline areas which are located north of the southern one-half of Township 4 North, Range 23 East, Section 8, Village of Caledonia, except for the northernmost one thousand three hundred (1,300) feet of Lake Michigan shoreline in Section 6 of the Village of Caledonia, which is covered by fly ash deposits.
- (c) **BOUNDARIES:** Boundaries of the structural and nonstructural setback overlay districts shall be determined as follows. The boundaries of the NSO nonstructural setback overlay district shall be determined through the use of the following equation establishing a setback distance from the existing Lake Michigan bluff edge:
 - (1) $\text{NSO nonstructural setback overlay district distance} = \text{Horizontal distance required to achieve one on two and one-half stable bluff slope} + (\text{Average annual bluff recession rate} \times 50 \text{ years}) + \text{Minimum facility setback distance.}$
- (d) **STABLE SLOPE:**

- (1) In delineating the NSO nonstructural setback overlay district, the expected bluff recession over a fifty-year period, plus the required recession, or re-grading the bluff needed to form a stable slope, plus a minimum facility setback distance from the regraded bluff edge, shall be computed. The NSO district thus includes those Lake Michigan shoreland areas which, based on historical bluff recession rates, are expected to be lost due to bluff recession, and the formation of a stable slope, over a fifty-year period, plus a minimum facility setback distance.
 - (2) The distance required to achieve a one (1) on two and one-half (2½) stable slope is set forth in Table 12, page 65, of SEWRPC Community Assistance Planning Report No. 86, A Lake Michigan Coastal Erosion Management Study for Racine County, Wisconsin, and shall be used to determine the stable slope distance. Minimum facility setback distances measured from the edge of the net stable slope distance shall be as follows:
 - a. Two hundred (200) feet for all structures except public utilities; public recreational facilities and single-family residential units.
 - b. One hundred (100) feet for public utilities, public recreational facilities, and single-family residential units. The minimum setback distance shall be reduced in areas of existing facility development to the average distance from the regraded bluff edge to adjacent structures within one hundred (100) feet of the structure, although the minimum setback distance shall not be less than fifty (50) feet from the edge of the net stable slope distance.
- (e) MODIFICATIONS:
- (1) The calculated NSO nonstructural setback overlay district distance may be modified upon submittal by an applicant or property owner of acceptable engineering analyses which indicate that the actual bluff recession rate is different than as set forth in SEWRPC Community Assistance Planning Report No. 86, that the required distance for a stable slope is different, or that the height of the bluff is different than the height presented in the report.
- (f) STRUCTURES PROHIBITED: New, permanent residential, institutional, commercial, industrial and agricultural structures designed for human habitation, or the confinement of animals are prohibited in the NSO nonstructural setback overlay district.
- (g) PERMITTED USES BY RIGHT
- (1) General farming activities, not including the erection of structures; open space, outdoor recreation; yard; storage of portable equipment and supplies; accessory buildings such as storage sheds; and minor structures such as driveways, sidewalks, patios and fences.
- (h) PERMITTED ACCESSORY USES
- (1) Uses incidental with the operation of a principal or conditional use.
- (i) PERMITTED USES BY CONDITIONAL USE PERMIT
- (1) Tree cutting and shrubbery clearing, land disturbance and earth movements, shore protection structures, and the placement of structures or buildings which may be relocated at a cost not to exceed 30 percent of the equalized value of the structure.

16-6-22 SWO Shoreland Wetland Overlay District

- (a) The restrictions of the Shoreland Wetland Overlay District are outlined in Section 15 of this ordinance.

16-6-23 APO Airport Protection Overlay District

- (a) The airport protection overlay district is intended to maintain the existing utility of any airport in the county and prevent further encroachment or obstruction of the airspace necessary for safe landing, takeoff and maneuvering of aircraft. It is intended to protect any airport that is open for use by the general public. It is hereby declared that obstructions to the airspace required for the safe landing, takeoff and maneuvering of aircraft and that land uses which interfere with the safe operation of aircraft, have the potential for endangering lives and the property of users of the county airports and of those who occupy land in their vicinity.
- (b) It is therefore determined that the public safety and general welfare require the prohibition of hazardous land use and obstructions to the airspace necessary for safe air operations. So far as is practical, the provisions of this division regarding airport protection have been structured and modeled in accordance with Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace. The initial airport covered by the APO district is the Racine Commercial Airport, which has been designated by the federal aviation administration as an official reliever airport for General Mitchell Field and O'Hare International Airport in the category of general aviation.
- (c) Prohibited Uses
- (1) No use may be made of any lands within the airport protection overlay district which will result in or cause any of the following:
- (1) Interference with navigational signals or radio communications between airport and aircraft.
 - (2) Make it difficult for pilots to distinguish between airport lights and others by maintaining lights which resemble airport marker or navigational lights or aids.
 - (3) Result in causing glare in the eyes of pilots using the airport.
 - (4) Impair visibility from aircraft using the airport.
 - (5) Create bird strike hazards by creating bodies of water which attracts birds; or
 - (6) Otherwise interfere with the landing, takeoff or maneuvering of aircraft using or intending to use the airport.
- (2) Use of any land in the airport protection overlay district for solid waste disposal is prohibited."
- (3) This section shall not be construed as prohibiting the tilling of soil in normal farming operations or the use of land for retention of stormwater for short periods not to exceed forty-eight (48) hours.
- (d) Protected Surfaces
- The following surfaces in the Airport Overlay District shall be protected:
- (1) Primary surface. A surface whose elevation at any point is the same as the elevation at the nearest point on a runway and whose horizontal projection is bounded as follows: Begin at a point on the Section line between Section 31, Township 4 North, Range 23 East and Section 6, Township 3 North, Range 23 East which is located S88°07'45"W 35.56 feet from the southeast corner of said Section 31; run thence S35°25'36"W 329.76 feet; thence N54°34'24"W 1,000.00 feet; thence N35°25'36"E 1,899.83 feet; thence N48°11'17"W 1,791.55 feet; thence N41°48'43"E 500.00 feet; thence S48°11'17"E 1,735.00 feet; thence N35°25'36"E 3,067.76 feet; thence S54°34'24"E 1,000.00 feet; thence S35°25'36"W 3,176.66 feet; thence S48°11'17"E 1,667.09 feet; thence S41°48'43"W 500.00 feet; thence N48°11'17"W 1,611.14 feet; thence S35°25'36"W 1,458.16 feet to the point of beginning.

- (2) Approach Surface No. 04. Commence at a point on the Section line between Section 31, Township 4 North, Range 23 East and Section 6, Township 3 North, Range 23 East, located S88°07'45"W 35.56 feet from the Southeast corner of said Section 31; run thence S35°25'36"W 329.76 feet to the point beginning of this description at elevation 667.20; run thence S26°53'45"W 5,157.06 feet to a point at elevation 817.20; thence S26°53'45"W 4,954.82 feet to a point at elevation 817.20; thence N54°34'24"W 4,000.00 feet to a point at elevation 817.20; thence N43°57'27"E 4,954.82 feet to a point at elevation 817.20; continue thence N43°57'27"E 4,954.82 feet to a point at elevation 817.20; continue thence N43°57'27"E 5,157.06 feet to a point at elevation 667.20; thence S54°34'24"E 1,000 feet to the point of beginning.
- (3) Approach Surface No. 14. Commence at a point on the East line of Section 31, Township 4 North, Range 23 East, located N01°21'46"W 1,953.40 feet from the Southeast corner of said Section 31; run thence N48°11'17"W 1,649.11 feet to the point of beginning of this description at elevation 668.61; run thence N53°53'55"W 3,768.70 feet to a point at elevation 818.61; continue thence N53°53'55"W 6,281.17 feet to a point at elevation 818.61; thence N41°48'43"E 2,500 feet to a point at elevation 818.61; thence S42°28'39"E 6,281.17 feet to a point at elevation 818.61; continue thence S42°28'39"E 3,768.70 feet to a point at elevation 668.61; thence S41°48'43"W 500.00 feet to the point of beginning.
- (4) Approach Surface No. 22. Commence at a point on the North-South ¼ line of Section 32, Township 4 North, Range 23 East, located N01°05'11"W 1,715.72 feet from the center of said Section 32; run thence N54°34'24"W 539.97 feet to the point of beginning of this description at elevation 665.25; run thence N28°18'06"E 5,139.69 feet to a point at elevation 815.25; continue thence N28°18'06"E 4,938.13 feet to a point at elevation 815.25; thence S54°35'24"E 3,500.00 feet to a point at elevation 815.25; thence S42°33'06"W 4,938.13 feet to a point at elevation 815.25; continue thence S42°33'06"W 5,139.69 feet to a point at elevation 665.25; thence N54°34'24"W 1,000.00 feet to the point of beginning.
- (5) Approach Surface No. 32. Commence at a point on the North-South ¼ line of Section 32, Township 4 North, Range 23 East, located N00°47'06"W 194.51 feet from the South ¼ corner of said Section; run thence S3°53'55"W 361.46 feet to the point of beginning of this description at elevation 655.06; run thence S53°53'55"E 3,768.70 feet to a point at elevation 805.06; continue thence S3°53'55"E 6,281.17 feet to a point at elevation 805.06; thence S41°48'43"W 2,500 feet to a point at elevation 805.06; thence N42°28'39"W 6,281.17 feet to a point at elevation 805.06; continue thence N42°28'39"W 3,768.70 feet to a point at elevation 655.06; thence N41°48'43"E 500.00 feet to the point of beginning.
- (6) Transition Surface "A." Commence at a point on the Section line between Section 31, Township 4 North, Range 23 East and Section 6, Township 3 North, Range 23 East, located S88°07'45"W 35.56 feet from the Southeast corner of said Section 31; run thence S35°25'36"W 329.76 feet to the point of beginning of this description at elevation 667.20; run thence S26°53'45"W feet to a point at elevation 817.20; thence N38°37'31"E 5,107.96 feet to a point at elevation 817.20; thence N35°25'36"E 613.87 feet to a point at elevation 809.48; thence S48°11'17"E 437.08 feet to a point at elevation 805.06; thence S58°23'32"E 3,810.27 to a point at elevation 805.06; thence N42°28'39"W 3,768.70 feet to a point at elevation 655.06; thence N48°11'17"W 1,611.14 feet to a point on the primary surface; thence S35°25'36"W 1,787.93 feet to the point of beginning.
- (7) Transition Surface "B." Commence at a point on the East line of Section 31, Township 4 North, Range 23 East; located N01°21'46"W 1,953.40 feet from the Southeast corner of said Section 31; run thence N48°11'17"W 1,649.11 feet to the point of beginning of this description at elevation 668.61; thence S48°11'17"E 1,791.55 feet to a point on the primary surface; thence S35°25'36"W 1,899.83 feet to a point at elevation 667.20; thence S43°57'27"W 5,157.06 feet to a point at elevation 817.20; thence N32°13'41"E 5,107.96

feet to a point at elevation 817.20; thence N35°25'36"E 960.78 feet to a point at elevation 817.96; thence N48°11'17"W 852.50 feet to a point at elevation 818.61; thence N37°59'03"W 3,810.27 feet to a point at elevation 818.61; thence S53°53'55"E 3,768.70 feet to the point of beginning.

- (8) Transition Surface "C." Commence at a point on the East line of Section 31, Township 4 North, Range 23 East, located S01°21'26"E 24.73 feet from the East ¼ corner of said Section 31; run thence N48°11'17"W 1,180.00 feet to the point of beginning of this description at elevation 668.61; run thence N42°28'39"W 3,768.70 feet to a point at elevation 818.61; run thence S58°23'32"E 3,810.27 feet to a point at elevation 818.61; thence S48°11'17"E 561.54 feet to a point at elevation 818.20; thence N35°25'36"E 1,893.70 feet to a point at elevation 815.25; thence N40°03'03"E 5,116.65 feet to a point at elevation 815.25; thence S28°18'06"W 5,139.69 feet to a point at elevation 665.25; thence S35°25'36"W 3,067.76 feet to a point on the primary surface; thence N48°11'17"W 1,735.60 feet to the point of beginning.
- (9) Transition Surface "D." Commence at a point on the North-South ¼ line of Section 32, Township 4 North, Range 23 East located N00°47'06"W 194.51 feet from the South ¼ corner of said Section; run thence N53°53'55"W 361.46 feet to the point of beginning of this description at elevation 655.06; run thence N48°11'17"W 1,667.09 feet to a point on the primary surface; thence N35°25'36"E 3,179.66 feet to a point at elevation 665.25; thence N42°33'06"E 5,139.69 feet to a point at elevation 815.25; thence S30°48'09"W 5,116.65 feet to a point at elevation 815.25; thence S35°25'36"W 2,240.61 feet to a point at elevation 807.15; thence S48°11'17"E 728.04 feet to a point at elevation 805.06; thence S37°59'03"E 3,810.27 feet to a point at elevation 805.06; thence N53°53'55"W 3,768.70 feet to the point of beginning.
- (10) The overlay district shall encompass the area as identified on the Airport Protection Area Map in Appendix A: APO Airport Overlay District.

CHAPTER 7

Planned Unit Development Districts

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-7-1	Purpose and Intent		
16-7-2	District and Requirements		
16-7-3	Application Procedure		
16-7-4	Basis For Approval		
16-7-5	Planned Development Districts and Requirements		

16-7-1 PURPOSE AND INTENT

- (1) The PUD planned unit development overlay district, set forth in this division, is intended to permit developments that will, over a period of time, be enhanced by coordinated area site planning and diversified location of structures. Such developments are intended to provide a safe and efficient system for pedestrian and vehicle traffic, to provide attractive recreation and open spaces as integral parts of the developments, to enable economic design in the location of public and private utilities and community facilities, and to ensure adequate standards of construction and planning. The PUD overlay district under this division will allow for flexibility of overall development design with benefits from such design flexibility intended to be derived by both the developer and the community, while at the same time maintaining insofar as possible the land use density and other standards or use requirements set forth in the underlying basic zoning district.
- (2) Permitted: The unified and planned development of a site, in single or corporate ownership at the time of development, may be permitted in a Planned Unit Development District, without the compliance with the specified lot size requirements as stated in Title 14, or without specific compliance to the district regulations as applicable to individual lots, subject to the regulations as hereinafter provided in this Section.

16-7-2 DISTRICT AND REQUIREMENTS

- (a) Size Allowed: For the purpose of this Ordinance all Planned Unit Development Projects shall be classified as follows and be limited to parent parcels of not less than the size indicated:

	Min. Size of District
Residential	10 Acres
Commercial	10 Acres
Industrial	20 Acres
Mixed	20 Acres

- (b) Application of Regulations:
 - (1) Uses and Structures. In addition to the uses permitted in the underlying district any other use may be permitted as hereinafter designated above consistent with the criteria established in the basis for approval below.
 - (2) Individual uses and structures in a Planned Development District need not comply with the specific building setback, height, building size, lot size, and open space requirements of the underlying basic district provided that the spirit and intent of such requirements are

complied with in the total development plan for such project consistent with the criteria as established in the basis for approval below.

- (3) Applicable Underlying Zoning Districts. The PUD Planned Unit Development District may be applied to all zoning districts.
- (4) All PUDs shall be serviced by sanitary sewer other than those PUDs proposed under the Village's subdivision ordinances in Title 14 that may be developed in outside of the sanitary sewer service boundary area.
- (5) Density: For specific project density computation, the allowable maximum unit density shall be determined by dividing the gross area of the planned development (Exclusive of existing public right-of-way or public open space easement) by the square feet per unit or lot as required by the district intended. In the case of mixed-use developments, a separate density calculation shall be computed for each defined use in the development (Ex. On an 80-acre planned development, 40 acres is intended for R-2 uses and 40 acres are intended for R-3 uses; the density computations would be run separately as follows: 1,742,400 square feet / 40,000 square feet per unit for R-2 and 1,742,400 square feet / 20,000 square feet per unit for R-3).

16-7-3 APPLICATION PROCEDURE

- (a) Petition: Petition shall be made to the Village by the owner or agent of property proposed for such development, to amend the zoning map by the overlaying of a PUD District in order to permit the application of the provisions of this section to such development. Such petition shall be accompanied by a fee, as from time to time established by the Village Board, and the following information:
 - (1) A statement describing the general character of intended development along with such other pertinent information as may be necessary to a determination that the contemplated arrangement or use makes it desirable to apply regulations and requirements differing from those ordinarily applicable under this ordinance.
 - (2) A general development plan including all applicable items per the Village's Building, Site, and Operation Plan submittal requirements per Chapter 4 of this ordinance. The development plan shall generally show the intended use or uses of land, the dimensions and location of proposed structures and of areas to be reserved for vehicular and pedestrian circulation, parking, public uses such as schools, and playgrounds, parks, landscaping, and other open spaces and architectural drawings and sketches illustrating the design and character of the proposed uses and the physical relationship of the use.
 - (3) Any proposed departures from the standards of development as set forth in the Village zoning regulations.
 - (4) The expected date of commencement, schedule of development by phases, and completion of physical development as set forth in the proposal.
 - (5) Total area to be included in the planned unit development, residential density computations, proposed number of dwelling units, area of open space, population analysis, availability of, or requirements for, municipal services and any other similar data pertinent to a comprehensive evaluation of the proposed development.
- (b) Public Hearing: Upon receipt of a petition the Village Board shall cause a public hearing to be held pursuant to Chapter 17 of this Ordinance in front of the Plan Commission.
- (c) Referral to Plan Commission: Such petition shall be referred to the Plan Commission and processed as any other petition for zoning change. Upon completion of necessary study and investigation the Plan Commission shall make its recommendation to the Village Board as to the appropriateness

and desirability of the proposed zoning change, the suitability of the building, site and development plans, and any additional conditions which it may feel necessary or appropriate.

16-7-4 BASIS FOR APPROVAL

- (a) Basis for Approval: The Plan Commission in making its recommendations and the Village Board in making its determination shall give consideration and satisfy themselves as to the following:
- (1) That the proponents of the proposed development have demonstrated that they intend to start construction within twelve (12) months following the approval of the project and requested overlay of the PUD District, that the project appears economically sound, that adequate financing is possible, and that the development will be carried out according to a reasonable construction schedule satisfactory to the Village.
 - (2) That the proposed development is consistent in all respects to the spirit and intent of this Ordinance, is in conformity with the general plans for community development, would not be contrary to the general welfare and economic prosperity of the Village or of the immediate neighborhood, that the specific development plans have been prepared with competent professional advice and guidance, and that the benefits and improved design of the resultant development justifies the variation from the normal requirements of this Ordinance through the application of the PUD Planned Development Overlay District.
 - (3) The Plan Commission in making its recommendations and the Village Board in making its determination shall further find that:
 - a. The proposed site is provided with adequate drainage facilities for surface waters and stormwater management.
 - b. The proposed site is accessible from public roads that are adequate to carry the traffic that can be expected to be generated by the proposed development.
 - c. No undue constraint or burden will be imposed on public services and facilities, such as, but not limited to, fire and police protection, street maintenance, and maintenance of public areas by the proposed development.
 - d. The streets and driveways on the site of the proposed development are adequate to serve the proposed development and to meet the minimum standards of all applicable ordinances or administrative regulations of the Village.
 - e. Centralized public sewer facilities are provided (unless as part of an approved unsewered subdivision per Title 14) and centralized public water is desired.
 - f. The density proposed meets the intent of the underlying comprehensive plan densities and/or the area zoning.
 - (4) In the case of proposed residential developments:
 - a. The following of any lot design considerations as per Title 14 of the Village Code.
 - b. That such development will create an attractive residential environment of sustained desirability and economic stability, compatible with the character established for the area by the community Comprehensive Plan, and where the economic impact of the development in terms of income levels, property values, and service demands is at least as beneficial to the community as that which could be anticipated under the base zoning.
 - c. The population composition of the development will not alter adversely the impact upon school or other municipal service requirements as anticipated under the existing basic zoning and Comprehensive Plan.
 - d. That the project will not create traffic or parking demand incompatible with that anticipated under the Comprehensive Plan.
 - e. That the total average residential density of the project will be compatible with the Comprehensive Plan, except as may be modified by this Section.

- f. Provision has been made for the installation of adequate public facilities and the continuing maintenance and operation of such facilities.
 - g. Adequate guarantee is provided for permanent preservation of open space areas as shown on the approved site plan either by private reservation and maintenance or by dedication to the public.
 - h. That the density doesn't exceed 10% of what a normal approved underlying district would allow.
- (5) In the case of proposed PUD Planned Development Overlays for commercial and industrial developments:
 - a. The economic practicality of the proposed development can be justified.
 - b. That the economic practicality of the proposed development can be justified on the basis of purchasing potential, competitive relationship and demonstrated tenant interest.
 - c. That the proposed development will be adequately served by off-street parking and truck service facilities.
 - d. That the locations for entrances and exits have been designed to prevent unnecessary interference with the safe and efficient movement of traffic on surrounding streets, and that the development will not create an effect upon the general traffic pattern of the area incompatible with that anticipated under the Comprehensive Plan.
 - e. The proposed development will be adequately provided with and will not impose any undue burden on public services and facilities, such as but not limited to fire and police protection, street maintenance, and maintenance of public areas.
 - f. That the architectural design, landscaping, control of lighting, and general site development will result in an attractive and harmonious service area compatible with and not creating an effect upon the property values of the surrounding neighborhood incompatible with that anticipated under the Comprehensive Plan.
- (6) In the case of PUD Planned Development Overlays for mixed use developments:
 - a. That the proposed mixture of uses produces a unified composite which is compatible within itself and which as a total developmental entity is compatible with the surrounding neighborhood and consistent with the general objectives of the Comprehensive Plan.
 - b. That the various types of uses conform to the general requirements as herein set forth, applicable to projects of such use character.
 - c. The allowable maximum residential density may be computed by dividing the gross area of the planned development by the square feet per family as required by the district intended. This is inclusive of the area of the other proposed uses in the development. (Ex. PD on 12 acres of land with 8 acres for multi-family residential and 4 acres for commercial still equals approximately 104 units (12 acres / 5,000 square feet per unit) upon approval of the Plan Commission and Village Board that the increased density is justified in terms of the relationship to the denser area, the commercial area, open areas, service demand, and the total quality and character of the project.
- (b) Determination:
 - (1) The Village Board after due consideration may deny the petition, approve the petition as submitted or approve the petition subject to additional conditions.
 - (2) The approval of a petition and consequent amending of the zoning map by overlay of the PUD District shall be based on and include as conditions thereto the Building, Site and Operational (BSO) Plans for the development as well as all other commitments offered or

required with regard to project value, character or other factor pertinent to assuring that the project will be developed basically as presented in the official submittal plans as approved by the Village Board. Such plans, however, need not necessarily be completely detailed at the time of rezoning provided they are of sufficient detail to satisfy the Plan Commission and Village Board as to the general character, scope, and appearance of the proposed development. Such preliminary plan shall at least designate the pattern of proposed streets, the basic pattern of land use, the size and arrangement of lots, and illustrate a "typical" example of the development proposed. The approval of such preliminary plan shall be conditioned upon the subsequent submittal and approval of more specific and detailed plans as the development progresses.

- (3) Any subsequent change or addition to the plans or use shall first be submitted for approval to the zoning administrator and if in the opinion of the zoning administrator such change or addition constitutes a substantial alteration of the original plan, a public hearing before the Village Board shall be required and notice thereof given pursuant to Chapter 18 of this Ordinance.
- (c) Failure to begin development.
 - (1) If no substantial construction has commenced or no use established in the planned unit development district within the time schedule which addresses construction commencement and construction completion submitted to the Village Board, the Village shall petition the board of trustees for the purpose of rescinding the planned unit development overlay designation so as to allow the land in question to revert to its underlying zone. If the planned unit development overlay district is rescinded, the planning and development office shall remove the district from the official zoning map. Those zoning regulations applicable before the creation of the district shall then be in effect and no vested rights in the planned unit development overlay district shall be deemed to have accrued.
- (d) Failure to comply with the provisions of the planned unit development approval.
 - (1) It shall be unlawful to construct, develop or use any structure or develop or use any land, water or air in violation of any provisions or conditions of a planned unit development approval or order of the Village regarding compliance with conditions of approval.

16-7-5 PLANNED DEVELOPMENT DISTRICTS AND REQUIREMENTS

- (a) Approved Planned Development districts shall be on file at the Village and shall state the development requirements and parameters as approved by the Village Board.
- (b) The text description outlining the parameters for each planned development shall be approved with the rezoning ordinance of the Village Board.
- (c) Amendments to existing PUD text descriptions shall be approved by ordinance of the Village Board concurrent with the determination of non-substantial change resolutions.
- (d) Planned Development District approval lapses twenty-four (24) months after its effective date if substantial development progress has not occurred. The Plan Commission may grant extensions for good cause.

CHAPTER 8

Nonconforming Uses, Structures and Lots

Section Number	Title	Ordinance Number	Date of Ordinance
16-8-1	Nonconforming Uses, Structures and Lots		
16-8-2	Existing Nonconforming Uses		
16-8-3	Conforming Structures on Nonconforming Lots		
16-8-4	Nonconforming Structures on Conforming or Nonconforming Lots		
16-8-5	Vacant Nonconforming Lots		
16-8-6	Shoreland-Wetland Nonconforming Structures		
16-8-7	Floodplain Nonconforming Uses and Structures		
16-8-8	Changes and Substitutions		

SEC. 16-8-1 NONCONFORMING USES, STRUCTURES, AND LOTS

Existing lawful nonconforming uses, structures, and lots shall meet the provisions of this Section, and those located within floodplains, shorelands, and shoreland-wetlands shall also comply with the Village floodplain, shoreland, and shoreland-wetland regulations, whichever is more restrictive.

SEC. 16-8-2 EXISTING NONCONFORMING USES

The lawful nonconforming use of land or water; or a lawful nonconforming use in a conforming or nonconforming structure; or a lawful nonconforming use on a conforming or nonconforming lot that existed at the time of the adoption or amendment of this Ordinance may be continued although the use does not conform with the provisions of this Ordinance; however:

- (a) Only that portion of the structure, fixture, land, or water in actual use may be so continued and the nonconforming use may not be extended, enlarged, reconstructed, substituted, or moved except when required to do so by law or order or so as to comply with the provisions of this Ordinance.
- (b) If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, fixture, or premises shall conform to the provisions of this Ordinance.
- (c) When a structure with a nonconforming use is damaged by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity to the extent of more than 50 percent of its equalized assessed value, it shall not be restored except so as to comply with the use provisions of this Ordinance.
- (d) Total Lifetime Structural Repair or alternations to a building, structure, fixture or premises containing a nonconforming use shall not during its life exceed 50 percent of the equalized assessed value of the building, premises, structure or fixture unless permanently changed

Deleted: nonconforming use or a

to a conforming use in accordance with the use provisions of this Zoning Code. Ordinary maintenance repairs are not considered structural repairs, modifications, or additions. Some examples of such repairs include painting, calking, decorating, paneling, and other nonstructural components; and the repair or replacement of doors, windows, utilities, and sewage treatment and water supply systems. Figure No. 1 reflects the method by which the Zoning Administrator shall determine when modifications to nonconforming uses and their structures are equal to 50 percent. Statutory Reference Sec. 62.23(7)(h), Wis. Stat.

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- (e) Substitution of New Equipment may be permitted by the Zoning Board of Appeals if such equipment will reduce the incompatibility of the nonconforming use with neighboring uses.

Deleted: Zoning

SEC. 16-8-3 CONFORMING STRUCTURES ON NONCONFORMING LOTS

The conforming use of a conforming structure existing at the time of the adoption or amendment of this Ordinance may be continued although the lot area and/or width does not conform to the requirements of this Ordinance.

- (a) Additions and Enlargements to such structures are permitted provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements.
- (b) Existing Structures on Nonconforming Lots that are damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity may be reconstructed provided they conform to the established yard/setback, height, parking, loading, access provisions, and other Development Regulations of this Ordinance, other than minimum lot dimensional requirements. Statutory Reference Sec. 62.23(7)(hc), Wis. Stat.

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SEC. 16-8-4 NONCONFORMING STRUCTURES ON CONFORMING OR NONCONFORMING LOTS

- (a) A Nonconforming Structure with a conforming use lawfully existing at the time of the adoption or amendment of this Ordinance may be continued although the structure's size or location does not conform to the Development Regulations of this Ordinance.
- (b) Nonconforming Structures with a conforming use may be repaired, maintained, renovated, rebuilt, or remodeled, subject to building code and other applicable requirements. No prohibition or limits based on cost may be imposed on the repair, maintenance, renovation, or remodeling of such structures.
- (c) Additions and Enlargements to existing encroachment. The provisions of this Subsection with respect to additions or enlargements are applicable only if the lot is served by public sanitary sewer or, if relevant, conforms with existing sanitary code requirements for private onsite sewage treatment systems (POWTS).

- (d) Existing Nonconforming Structures may be moved and shall conform to the established yard/setback, height, parking, loading, and access provisions of this Ordinance.
- (e) A Nonconforming Structure with a Conforming Use that is damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other calamity may be restored or replaced to the size, location, and use that it had immediately before the damage or destruction occurred, subject to building code and other applicable requirements.. No limits may be imposed on the costs of the repair, reconstruction, or improvement of said structure. The size of the structure may be larger than the size immediately before the damage or destruction occurred if necessary for the structure to comply with applicable State or Federal requirements. Any reconstruction shall conform to the Development Regulations of this Ordinance, to the extent practicable, and existing sanitary code requirements, and shall commence within 24 months of the date of damage or destruction, unless an extension is granted by the government agency having authority.

SEC. 16-8-5 VACANT NONCONFORMING LOTS

- (a) Development. The Zoning Administrator may issue a building permit for development of a vacant lot which does not contain sufficient area to conform to the lot dimensional requirements of this Ordinance to be used as a building site provided that the use is allowed in the zoning district in which it is located; the lot is of record in the County Register of Deeds Office prior to the effective date of this Ordinance or amendment thereof; and development is compatible with the character of the surrounding area. Nonconforming (substandard) lots to be served by public sanitary sewer shall be at least 50 feet wide and 7,200 square feet in area. Nonconforming lots to be served by POWTS shall be at least 100 feet wide and 40,000 square feet in area. Lots with smaller dimensions than mentioned above shall not be developed unless a variance is granted by the Board of Zoning Appeals.
- (b) Compliance. Development of vacant nonconforming lots granted permits under this Section shall be required to meet the yard/setback, height, parking, loading, access provisions, and other Development Regulations, except lot size requirements unless otherwise specified, of this Ordinance. A building permit for the improvement of a lot with lesser dimensions and requisites than those stated above may be issued only after a variance is granted by the Zoning Board of Appeals.
- (c) Statutory Provisions. In accordance with Section 66.10015(2)(e) of the Wisconsin Statutes, a property owner of a legal nonconforming (substandard) lot may:
 - 1. Convey an ownership interest in a substandard lot.
 - 2. Use the substandard lot as a building site if all of the following apply:
 - a. The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.
 - b. The substandard lot or parcel is developed to comply with all other

requirements of this Ordinance, except the minimum lot dimensional requirement unless otherwise specified.

- (d) Merging. In accordance with Section 66.10015(4) of the Statutes, the Village/City may not require one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

SEC. 16-8-6 SHORELAND-WETLAND NONCONFORMING STRUCTURES

The repair, reconstruction, renovation, remodeling, restoration, or expansion of a legal nonconforming structure, or any environmental control facility related to such structure located in shoreland-wetlands [*of five acres or more in size*] and in existence at the time of adoption or subsequent amendment of this Ordinance may be permitted in accordance with the provisions of Section 61.351(5) and (5m) of the Wisconsin Statutes.

SEC. 16-8-7 FLOODPLAIN NONCONFORMING USES AND STRUCTURES

Modifications or additions to nonconforming uses and structures in floodplains shall comply with the nonconforming regulations in Ch. 13 of Title 16 of the Village's floodplain ordinance. Modifications and additions include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding, or replacement of any such existing use or structure. Maintenance is allowed and is not considered a modification, which includes painting, decorating, paneling, and other nonstructural components and the maintenance, repair, or replacements of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

SEC. 16-8-8 CHANGES AND SUBSTITUTIONS

Once a nonconforming use or structure has been changed to conform to the requirements of this Ordinance, it shall not revert back to a nonconforming use or structure. The Zoning Board of Appeals may permit the substitution of a more restrictive nonconforming use for an existing nonconforming use. Once the Board of Zoning Appeals has permitted the substitution of a more restrictive nonconforming use, the prior existing use shall lose its status as a legal nonconforming use and the substituted more restrictive nonconforming use shall be subject to all the conditions required by the Board of Zoning Appeals.

Deleted: Zoning

Figure No. 1

(only applies to structures on nonconforming uses under Sec. 62.23(7)(h), Wis. Stats.)

IS IT 50 PERCENT YET?

Sample Problem: Let's assume that the owner of a house with a nonconforming use (i.e., nonconforming institutional use in a residential zoned home) wishes to add a room to the house. If the house had an equalized assessed value of \$100,000 in 1997, the property owner would be able to make improvements valued at up to 50 percent of the present (1997) equalized assessed value of the house, or \$50,000 at that time. The improvement would have to be built to zoning standards. Any further additions or structural alterations could not be allowed unless the use of the structure is permanently changed to a conforming use.

Additions and modifications are based upon a given time over the life of a structure. If, in the example above, the property owner constructed a \$50,000 addition in 1997, no further additions could be allowed because the 50 percent improvement limit had been reached. However, let's assume that the addition was valued at \$20,000 or 20 percent of the 1997 equalized assessed value of the structure (\$100,000). Ten years later, the property owner again comes in, wishing to add an attached storage room. In the meantime, the equalized assessed value of the house has increased from \$100,000 in 1997 to \$150,000 in 2007. The value of the storage room is \$15,000 in 2007. The property owner has now accumulated modifications totaling 30 percent of the equalized assessed values from 1997 and 2007.

Finally, ten years later, when the equalized assessed value of the house is \$200,000, the property owner again comes in wishing to modify his house to the extent of \$40,000. The cumulative percentage of the modifications totals 50 percent, based on the cumulative percentage of each modification in relation to the equalized assessed value of the house in the year the modification was made.

This example is further clarified in the following table:

(NOTE – the base for calculation is **not** the **original** value of the house at the time the Zoning Ordinance was enacted, but is the equalized assessed value of the house at each time the house is modified.)

Year	Equalized Assessed Value of Home	Value of Modification	Modification as a Percentage of Assessed Value	Cumulative Percentage
1997	\$ 100,000	\$20,000	20	20
2007	\$ 150,000	\$ 15,000	10	30
2017	\$200,000	\$40,000	20	50

Definition: Equalized Assessed Value is the value of a structure and/or lot of property as determined by the local assessor with any adjustments made to account for an assessment that does not reflect “full” (100%) value. Full assessed value of the structure and/or lot is usually equivalent to “full” (100%) fair market value at the time assessment is made.

CHAPTER 9 Conditional Uses

Section Number	Title	Ordinance	Date of Ordinance
16-9-1	Right to Conditional Uses		
16-9-2	Application		
16-9-3	Referral to Plan Commission		
16-9-4	Public Hearing		
16-9-5	Standards for Review		
16-9-6	Decisions		
16-9-7	Written Decisions		
16-9-8	Expiration		
16-9-9	Application to Existing Uses		
16-9-10	Termination		
16-9-11	Failure to Comply		
16-9-12	Conditional Use Permit Revocation		
16-9-13	Appeal		

Sec. 16-9-1 RIGHT TO CONDITIONAL USES

(a) A conditional use, as provided for in this chapter, is a use which may be permitted in a particular zoning district. It is not permitted until approved in the manner provided in this chapter.

(b) If a use or structure is not specifically permitted or prohibited and is of a character that could be compatible with the principal use or structure, such use may be allowed as a conditional use.

(c) If an applicant for a conditional use meets or agrees to meet all of the applicable requirements and conditions specified in this Title or those imposed by the Village Board, the Village shall grant the conditional use. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence. A conditional use once granted shall run with the land and shall not transfer to another parcel with the tenant or operator of the conditional use unless otherwise approved by the Village Board.

Sec. 16-9-2 APPLICATION

(a) An application for a conditional use shall be made by submitting two hard copies and one in electronic/digital format to the zoning administrator on a form established by the Village and shall include the following:

- (1) Names and addresses of the applicant, owner of the site, architect, professional engineer, contractor and all opposite and abutting property owners of record.
- (2) A description of the subject site by lot, block and recorded subdivision or by metes and bounds; parcel identification number of the subject site; address of the subject site; type of structure; proposed operation or use of the structure or site; proposed building, site, operational and parking plans, number of employees if applicable; screening, drainage and sewerage preliminary plans; operational control devices where necessary to eliminate notes, dust, odor, smoke, or other objectionable operating impacts; and the zoning district within which the subject site lies.
- (3) A plat of the survey prepared by a registered land surveyor showing all of the information required under Sec. 16-2-2 for a permit and, in addition, the mean and historic high water lines on or within 40 feet of the subject premises, and existing and proposed landscaping.
- (4) Fee receipt from the zoning administrator for the application fee set by the Village Board from time-to-time.
- (5) In addition to all submittal requirements as set forth, the Zoning Administrator may require the Applicant to submit a written report demonstrating that the proposed use and overall development of the property is compatible with the Village's adopted Comprehensive Plan, as amended from time-to-time and any Detailed Subarea Plans for the area (the "Compatibility and Impact Report"). The precise format, content, and submission procedures for the Compatibility and Impact Report are available from the Zoning Administrator. Among other elements, the Compatibility and Impact Report shall include:
 - (a) A description of how the proposed development is compatible with adopted Village Plans, including the Village's Comprehensive Plan, as amended from time to time detailed Subarea Plans and other plans officially adopted by the Village;
 - (b) An analysis of traffic impacts;
 - (c) An analysis of economic and fiscal impacts, including:
 - i. Identification and assessment of the impacts of proposed project, including positive, negative, and indirect impacts;
 - ii. Proposed measures to mitigate adverse impacts and/or maximize positive impacts including provision of infrastructure or public services improvements;
 - iv. Costs arising from increased demand for and required improvements to public services and infrastructure; and
 - v. Value of improvements to public services and infrastructure to be provided by the project.

- (6) Additional information as may be required by the Plan Commission, Village Board, engineer or Zoning Administrator for the purpose of assisting the Plan Commission and Village Board in their review of the application.

Sec. 16-9-3 REFERRAL TO PLAN COMMISSION.

Each application for a conditional use shall be referred to the plan commission, which shall review it pursuant to section 16-9-4, and shall make a recommendation to the Village Board prior to Village Board Action on the conditional use permit.

Sec. 16-9-4 PUBLIC HEARING.

Upon submission of a complete application under this Chapter, the Zoning Administrator shall fix a reasonable time and place for a public hearing before the Plan Commission on the application for a conditional use and shall give public notice thereof in the same manner as for a change or amendment to this Title under Sec. 16-17-2 including the notice to property owners within 300 feet of any part of the land included in the conditional use at least ten (10) days prior to the date of the public hearing. A copy of all notices for public hearing on applications for conditional uses in the floodplain districts, including a copy of the application, shall be transmitted to the Wisconsin Department of Natural Resources ("DNR") for review and comment. Final action on floodplain applications shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first.

Sec. 16-9-5 STANDARDS FOR REVIEW.

In reviewing the proposed conditional uses, the plan commission shall be guided by the following standards and requirements:

- (1) All conditional uses must be in accordance with the purpose and intent of this Title and shall not be hazardous, harmful, offensive, or otherwise adverse to the environmental quality, water quality, shoreland cover, or property values in the village.
- (2) A review of the site, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, waste disposal, water supply systems, and the effect of the proposed use, structure, operation, and improvement upon flood damage protection, water quality, shoreland cover, natural beauty, and wildlife habitat.
- (3) Conditions, such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, location, size and number of signs, water supply and waste disposal systems, higher performance standards, street dedication, certified survey maps, floodproofing, ground cover, diversions, silting basins, terraces,

stream bank protection, planting screens, operational control, hours of operations, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or additional parking may be required by the plan commission upon its finding that these are necessary to fulfill the purpose and intent of this Title and the State Water Resources Act of 1965 and to meet the provisions of state's floodplain, shoreland and wetland management programs. The Zoning Administrator may require a traffic impact analysis to be conducted and a report prepared.

- (4) Except as may be specifically otherwise provided, compliance with all other sections of this Title, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards, shall be required of all conditional uses.
- (5) The requirements and conditions described under this chapter must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the Village relating to the conditional use are or shall be satisfied, both of which shall be supported by substantial evidence.

Sec. 16-9-6 DECISIONS.

The Village's decision to approve or deny the conditional use must be supported by substantial evidence in accordance with Sec. 62.23(7)(de), Wis. Stat. and any approval shall be subject to conditions as set forth this Chapter or other applicable Chapter of this Zoning Code. The Village Board shall decide all applications for conditional uses, except applications for floodplain conditional uses, within 60 days after the public hearing. Decisions on floodplain district applications shall be made as soon as is practicable, but not more than 60 days after the required public hearing. Decisions on floodplain district applications shall not be made for 30 days or until the DNR has made its recommendation, whichever comes first.

Sec. 16-9-7 WRITTEN DECISIONS.

All conditional uses shall be acted upon by resolution of the Village Board. Such resolution shall be in writing and shall state the reasons for denial in the case of a denial, or the reasons for approval in the case of an approval including all conditions which are imposed, all variations if any from underlying zoning requirements and all agreements made by owners. All resolutions acted upon by the Village Board shall be transmitted by the Zoning Administrator to the applicant and the Village Clerk within days of adoption of the resolution. A copy of all decisions granting or denying applications for a conditional use or a temporary use for property located in a floodplain shall be transmitted by the Zoning Administrator to the DNR within ten days.

Sec. 16-9-8 EXPIRATION

All conditional uses or temporary uses granted pursuant to this Chapter shall expire within 12 months of the date of the written approval unless substantial work has commenced pursuant to such grant. For purposes of interpretation of substantial work, the Zoning Administrator shall review the individual circumstances of the conditional use permit and make a determination on whether substantial work has commenced. A business of a seasonal nature shall not be deemed to be discontinued during periods in which it is normally inactive (e.g., summer camps, ski areas, marinas, etc.).

Sec. 16-9-9 APPLICATION TO EXISTING USES

- (a) The grant of a conditional use shall be based upon the existing conditions at that time and any expansion or change in use shall require an application to amend the conditional use.
- (b) Applications to amend may be made at any time for expansion or other change of the conditional use and such application shall not prejudice the existing grant as herein authorized.
- (c) Conditional use status granted under previous zoning regulations (known as grandfathering) shall be considered in effect under this ordinance subject to the conditions established by the original grant. Any expansion or other change, however, shall be subject to the provisions of this ordinance.

Sec. 16-9-10 TERMINATION

Any conditional use granted under this Chapter that is discontinued or terminated for a period of twelve (12) consecutive months or eighteen (18) cumulative months in a three (3) year period (A conditional use of a seasonal nature shall not be deemed to be discontinued during periods in which it is normally inactive, i.e. summer camps, snowmobile courses, ski areas, marinas, quarries, etc.) shall be considered abandoned and any future use thereof will require additional Village review and approval.

Sec. 16-9-11 FAILURE TO COMPLY

- (a) No person, firm or corporation shall violate, disobey, neglect or refuse to comply with or abide by the terms and conditions of a conditional use permit.
- (b) The failure of any person, firm or corporation to obtain a conditional use permit when required shall constitute a violation of this chapter.
- (c) In the event of a violation of subsection (a), above, the zoning administrator or his designee may initiate revocation procedures for such conditional use, whether or not a citation for violation of the approval or this Title is issued or injunctive relief is sought.

Sec. 16-9-12 CONDITIONAL USE PERMIT REVOCATION

Should a permit applicant, or the applicant's heirs or assigns, fail to comply with the conditions of the conditional use permit issued by the Village Board or should the use, or characteristics of the use be changed without prior approval by the Village Board, the conditional use permit may be revoked. The process for revoking a permit shall follow the same procedures as those required for granting a conditional use permit as set forth in this Section. Additional grounds for revocation shall include, but not be limited to, the following:

- (1) A change in conditions affecting the public health, safety, and welfare since adoption of the conditional use permit; or
- (2) Fraudulent, false, or misleading information supplied by the applicant or his agent for the conditional use permit; or
- (3) Improper public notice of the conditional use permit public hearing(s) when the permit was considered by the Plan Commission and Village Board.

Sec. 16-9-13 APPEAL

If the Village denies an application for a conditional use, the applicant may appeal the decision to the Racine County Circuit Court under the procedures contained in Sec. 62.23(7)(e)10, Wis. Stat.

Drafter NOTES:

62.23(7)(de)

Need to add definitions to overall definition list:

- a. “Conditional use” means a use allowed under a conditional use permit, special exception, or other special zoning permission issued by a city, but does not include a variance.
- b. “Substantial evidence” means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

Reminder to address in specific sections:

specific site conditions for CUP's for:

- 1. recycling site restrictions p. 63 of Foth draft
- 2. Mobile Home Park restrictions p. 64 of Foth draft
- 3. concept of shoreland contract/CUP?

Statutory Requirements:

- a. If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city shall grant the conditional use permit. Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.
- b. The requirements and conditions described under subd. 2. a. must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit's duration, transfer, or renewal. The applicant must demonstrate that the application and all requirements and conditions established by the city relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence. The city's decision to approve or deny the permit must be supported by substantial evidence.
- 3. Upon receipt of a conditional use permit application, and following publication in the city of a class 2 notice under ch. 985, the city shall hold a public hearing on the application.
- 4. Once granted, a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the city may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the city zoning board.
- 5. If a city denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in par. (e) 10.

CHAPTER 10 Accessory Uses and Structures

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-10-1	General Requirements		
16-10-2	Home Occupations		
16-10-3	Accessory Uses and Structures		
16-10-4	Various Performance Standards		
16-10-5	Other Temporary and Accessory Use Restrictions		

16-10-1 GENERAL REQUIREMENTS

- (a) Any accessory use or structure shall conform to the applicable regulations of the district in which it is located except as specifically otherwise provided.
- (b) Accessory uses and structures are permitted in any district, but not until their principal structure is present or under construction, except as provided in agricultural districts.
- (c) Accessory structures may be permitted in the agricultural districts prior to the presence of the principal structure provided that the parcel on which the accessory structure will be located is ten (10) contiguous acres in size or larger, the accessory structure is intended for an agricultural use, the proposed accessory structure meets the setback requirements needed for a principal structure in that district, and the accessory structure is at least one hundred (100) feet from any existing residence on abutting parcels.
- (d) No accessory use or structure shall be permitted that by reason of noise, dust, odor, appearance, or other objectionable factor creates a nuisance or substantial adverse effect on the property value or reasonable enjoyment of the surrounding properties.
- (e) No accessory use or structure shall be permitted without a principal use on a property except as specifically otherwise provided or approved by the Plan Commission or as part of an allowed use in an agricultural district.
- (f) Except for signs and towers for broadcast facilities and/or wind energy, which are regulated separately, any detached accessory structure less than thirty-six (36) square feet in area is exempt from the requirement for obtaining a Building Permit. In addition, any temporary, seasonal outdoor above-ground swimming pool, hot tub, or whirlpool bath that does not remain erected on the same lot for more than one hundred twenty (120) consecutive days is exempt from the requirement for obtaining a Building Permit.

16-10-2 HOME OCCUPATIONS

- (a) Home Occupations are permitted Accessory Uses in any residential district, not requiring a building permit, subject to the provisions of this Section.
- (b) Regulations Applicable to Home Occupations:
 - (1) The primary use of the structure shall be as a dwelling unit.
 - (2) No person other than a resident of the dwelling unit shall be engaged or employed in the home occupation on the premises.

- (3) No mechanical equipment shall be utilized except that which is necessarily, customarily, or ordinarily used for household or leisure purposes.
- (4) No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or other restricted materials shall be used or stored on the site except those which are necessarily, customarily, or ordinarily used for household or leisure purposes.
- (5) There shall be no outside operations, storage, or display of materials or products.
- (6) Total storage of materials or products used in the business shall not exceed 128 cubic feet in volume.
- (7) No alteration of the residential appearance of the premises shall occur, including the creation of a separate entrance for the home occupation.
- (8) No process shall be used which is hazardous to public health, safety, morals, or welfare.
- (9) Visitors, customers, or deliveries shall not exceed that normally and reasonably occurring for a residence including not more than two business visitors per hour, not to exceed a total of eight visitors per day, and not more than two deliveries of product or material per week.
- (10) The home occupation shall not displace or impede use of required parking spaces, including any business storage in required garage parking areas.
- (11) No advertisement shall be placed in any media containing the address of the property.
- (12) No activity related to a home occupation shall be conducted in any detached structure or in any attached garage. On-site tune-up, servicing, repair, salvage, wrecking, or painting services for non-property owner automobiles, trucks, boats, trailers, snowmobiles, recreational vehicles, or other motorized vehicles shall be prohibited as a home occupation.

16-10-3 ACCESSORY USES AND STRUCTURES

- (a) **RESIDENTIAL ("R" DISTRICT) ACCESSORY STRUCTURES:** Accessory buildings such as detached garages, gazebos, garden or utility sheds shall be subject to the following regulations:
 - (1) **Size:**
 - a. **Parcels Less Than 5 Acres.** The area of an accessory structure shall not exceed 1,500 square feet.
 - b. **Parcels 5 Acres or Greater.** The area of an accessory structure shall not exceed 3% of the acreage of the parcel.
 - (2) **Aggregate Total Footprint Area for All Accessory Buildings.** The following is the maximum square footage allowed for all accessory buildings for a stated lot size, exclusive of road right-of-way:
 - < 10,000 square-foot lot = 1,050 square feet
 - ≥ 10,000 square-foot to 20,000 square-foot lot = 1,500 square feet
 - ≥ 20,000 square-foot to < 1 acre lot = 2,000 square feet
 - 1 acre to < 2-acre lot = 4,000 square feet
 - 2 acres to < 3-acre lot = 5,000 square feet
 - 3 acres to < 4-acre lot = 6,000 square feet
 - 4 acres to < 5-acre lot = 7,500 square feet
 - 5 acres to < 10-acre lot = 4% of lot area
 - ≥ 10-acre = 5% of lot area
 - (3) **Height.**
 - a. **Parcels Less Than 5 Acres.** Buildings shall not exceed 17 feet in height.
 - b. **Parcels 5 Acres or Greater.** Buildings shall not exceed in height twice the distance from the nearest lot line
 - (4) **Location:** Detached structures are permitted in the rear and side yards only and shall not be closer than ten (10) feet to a principal structure or five (5) feet to a side or rear lot line. Structures greater than 1,500 square feet shall not be closer than ten (10) to a side or rear

lot line. When the street yard setback of a principal structure exceeds the required setback for the particular district in question, a detached accessory structure may be permitted in the street yard provided the street yard setback of the accessory structure is not less than the required setback for the district or the average street yard setback of principal structures on abutting parcels, if any, whichever is greater.

- (5) **Patios** constructed at or below yard grade, may be installed in the rear or side yard adjacent to the principal structure without the issuance of a building permit; and shall not be located closer than five (5) feet to a lot line.
- (6) **Decks** located adjacent to or attached to a principal structure shall not be closer to the lot line than the required side setback and rear setback for principal structures for the district in which they are located. Freestanding decks surrounding private swimming pools shall be located at least ten (10) feet from the principal structure and shall be located at least five (5) feet from a side or rear lot line. All decks shall require the issuance of a building permit.
- (7) **Residential Air Conditioning Condensers / Power Generators** may be located adjacent to a residence in the rear yard and side yard, provided that all condensers and generators shall be located at least five (5) feet from a side or rear lot line. Residential air conditioning condensers and power generators shall not be located in the street yard.
- (8) **Private Swimming Pools** are permitted as accessory uses in the rear yard in any district; except the C-1 Resource Conservation District; however, the swimming pool shall be located at least eight (8) feet from the principal structure, be located at least three (3) feet from any side or rear lot line, and be installed in accordance with the City building, plumbing, and electrical codes, including the issuance of all required permits.
- (9) **Private Tennis Courts / Basketball Courts** are permitted as accessory uses in the rear yard in any district, except the C-1 Resource Conservation District. A Building Permit is required for all tennis/basketball courts and:
 - a. All tennis courts shall be surrounded by a fence not less than ten (10) feet in height.
 - b. No lighting installed around a tennis court or basketball court shall project onto adjacent properties; and
 - c. No private tennis court or basketball court shall be located closer than five (5) feet to a lot line.
- (10) **Residential Ground Solar Power Arrays**. Solar power arrays shall be located in the side or rear yard in all residential districts; located a minimum of ten (10) feet from the principal structure and; five (5) feet from a side or rear lot line. Solar power arrays are prohibited in the street yard.

(b) AGRICULTURAL DISTRICT ACCESSORY STRUCTURES:

- (1) **Height:** Shall not exceed in height twice their distance from the nearest lot line.
- (2) **Area:** The aggregate total floor area shall not exceed three (3) percent of the total lot area, except that on agriculturally zoned parcels, ten (10) acres or more in area, the accessory building areas may be greater than the three (3) percent limit when used solely for the pursuit of agriculture; in all non-residential and non-agricultural districts accessory building areas greater than three (3) percent are allowed, when approved by the Planning Commission as part of a Building, Site, and Operation Plan review, and where said buildings are used solely accessory to the principal use on said lot.
- (3) **Size:** Parcels 3 acres or less and zoned Agricultural shall limit the size of an accessory structure not to exceed 1,500 square feet.

- (c) SHORELAND DISTRICT:** Within the shoreland wetland overlay district, accessory uses and detached accessory structures are permitted in the street yard portion of waterfront lots provided that such uses or structures shall not be closer than twenty-five (25) feet to the street right-of-way.

- (d) **FENCES:** Per the requirements found in Title 15 Chapter 5 of the Village of Caledonia ordinances
- (e) **FLAGPOLES:** are permitted as accessory uses in all yards of any zoning district.
- (f) **MUNICIPALLY-OWNED EMERGENCY SIRENS:** are permitted as accessory structures in all yards on any property in any zoning district with or without an existing principal structure or use.

16-10-4 VARIOUS PERFORMANCE STANDARDS

- (a) **Water Quality Protection:** No residential, commercial, industrial, institutional or recreational use shall locate, store, discharge or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that might run off, seep, percolate or wash or be harmful to human, animal, plant or aquatic life. This section shall not apply to uses other than those enumerated in it.
- (b) **Noise:** At no point on the boundary of a Residence or Business district shall the sound intensity level of any individual operation (other than the operation of motor vehicles or other mobile equipment) exceed 62 dBA, respectively, during normal operations.
- (c) **Exterior Lighting:** Any lighting source on a lot or parcel which is for the purpose of illuminating any structure exterior, sign, parking lot or outdoor area shall be established in a manner which satisfies the following conditions:
 - (1) The maximum allowable light trespass shall be 0.5 horizontal footcandles four feet above ground. The point of measurement of this offending light shall be at the property line for residential, commercial, industrial, institutional or public use. The measurement shall not include any ambient natural light.
 - (2) Light sources shall be shielded or installed so that there is not a direct line of sight between the light source or its reflection and at a point five (5) feet or higher above the ground of adjacent property and public streets. The light source shall not be of such intensity so as to cause discomfort or annoyance
- (d) **Maintenance:** Any fence, wall, hedge, yard space or landscaped area required by this chapter or grant of variance or conditional use shall be kept free of an accumulation of refuse or debris. Plant materials must be well kept in a healthy, growing condition; and structures, such as walls and fences, shall be maintained in good repair and appearance at all times.
- (e) **Odors:** No residential, commercial, industrial, institutional or recreational use shall emit an odor of such nature or quantity as to be offensive or unhealthful which is detectable at the lot line.

16-10-5 OTHER TEMPORARY AND ACCESSORY USE RESTRICTIONS

- (a) Temporary uses may be permitted by the Zoning Administrator for a period of 14 days or as hereinafter provided. Temporary use permits for longer periods may be issued by the Village Plan Commission after review of site and operation plans. Special requirements may be imposed for parking, sanitary facilities, lighting, and hours of operation. Temporary uses permitted under this section may be allowed one (1) temporary sign not to exceed 32 square feet in area on one side and 64 square feet in area on all sides. All buildings, tents, equipment, supplies, and debris shall be removed from the site within ten (10) days following the temporary activity.
 - (1) Christmas tree sales may be permitted in the commercial and manufacturing districts, but not exceed 42 days.

- (2) Farmers markets may be permitted in all commercial and manufacturing districts.
- (b) Regulation on Rummage/Garage Sales
- (1) Definitions.
- a. Rummage/Garage Sale. Rummage/Garage Sale shall mean any sale of personal property, which is not exempted as per 7-16-1 (d), conducted on any residentially zoned property within the Town, irrespective of what the sale is designated as by the seller.
 - b. Personal Property. Personal Property shall mean and include any property, other than real estate, which is acquired in the course of living in or maintaining a dwelling unit.
 - c. Residentially Zoned Property. Residentially zoned property shall mean any property zoned as R-1, R-2, R-2S, R-3, R-3A, R-4, R-5, R-6, R-6A, R-7, or R-8.
- (2) Application. The purpose of this ordinance is to restrict the frequency of rummage/garage sales at a residential property. This ordinance does not affect or impact the applicability of health ordinances, nuisance ordinances, zoning ordinances, business and licensing ordinances or any other ordinance of the Town.
- (3) Restrictions.
- a. It shall be unlawful for any person or party to sell other than personal property at a Rummage/Garage Sale.
 - b. It shall be unlawful for any person or party to hold or permit to be held a Rummage/Garage Sale on more than nine (9) calendar days, whether or not consecutive, within any calendar year.
 - c. It shall be unlawful for any person or party to hold or permit to be held a Rummage/Garage Sale during the hours of 8:00 p.m. to 8:00 a.m. on any day.
- (4) Exceptions.
- a. Farm produce. The sale of farm produce on property zoned R-1 shall not constitute Rummage/Garage Sale and shall not be regulated by Section 7—16-1
 - b. Juvenile Beverage Stands. The sale of beverages and/or snacks by a juvenile shall not constitute a Rummage/Garage Sale and shall not be regulated by Section 7-16-l.
 - c. Single Article Sales. The offering for sale of not more than one article of personal property, such as the sale of a single car, boat, snowmobile, bicycle, snow blower, etc., shall not be regulated by Section 7-16-1.
 - d. Licensed Sales. Any sale which is otherwise licensed by the Town of Caledonia shall not be regulated by Section 7-16-1.
- (5) Penalties. Penalties and restrictions as per Sec. 1-1-6 "General Penalty" shall apply to violations of this Section.
- (c) "Portable Storage Structure" is any container, storage unit, shed-like container or portable structure, other than an accessory building or shed complying with all building codes and land use requirements, that can or is used for the disposal or storage of personal property of any kind and which is located for such purposes outside an enclosed building.
- (1) The use of portable storage structures is allowed under the following conditions.
- a. There must be no more than one (1) portable structure per property.
 - b. The portable storage structure must be no larger than ten (10) feet wide, twenty (20) feet long, and ten (10) feet high.
 - c. A portable storage structure must not remain on the property in any zoning district in excess of thirty (30) consecutive days in any calendar year.

- d. Portable structures associated with construction at a site where a building permit has been issued are permitted for the duration of construction and must be removed from the site within fourteen (14) days of the end of the construction. Portable storage structures associated with construction are exempt from the aforementioned conditions.
- (d) Ponds, impoundments and similar bodies are permitted in all zoning districts provided that:
- (1) To the maximum extent possible, all excavated material shall remain on site and shall be integrated into the restoration of the pond area.
 - (2) Detailed plans (site plan, cross section, depth, area, location and disposition of spoils, timing) of the proposed pond excavation and restoration shall be submitted to the planning and development department for review and approval.
 - (3) A permit is required for such pond construction prior to any excavation.
 - (4) Except as discussed below, these provisions apply to all ponds, including, but not limited to, those utilized for the following purposes: drainage, recreation, aesthetics, sediment control, fish management. Stormwater ponds done by drainage districts according to district plans, ponds which have been previously reviewed and approved as part of an erosion control plan and existing ponds are exempt from such provisions.
 - (5) Borrow pits for public facility construction, such as for public roads, are subject to review and approval by the planning and development department.
 - (6) Ponds to be constructed in the shoreland or floodplain areas remain subject to the shoreland, wetland and/or floodplain provisions of this chapter which may limit such construction and will require a shoreland conditional use permit.
 - (7) Ponds should be constructed in conformance with the standards of the soil conservation service.
 - (8) If the excavated material from the project site is sold, given away, or is otherwise removed from the site in a manner in which the principal use appears to be soil removal, and pond construction appears to be a secondary result, the parcel shall be rezoned to M-4 quarrying district and a mineral extraction conditional use permit shall be obtained prior to any excavation or grading on the parcel.
- (d) Because it is difficult to enumerate all temporary uses that may occur in the City, any other use which the Plan Commission finds to be similar to other temporary uses permitted in a given district, will not be disruptive to the neighborhood, and will not create a hazard to traffic in a neighborhood may be permitted. The Plan Commission may impose additional operational or construction conditions on such temporary uses when it is deemed necessary.

CHAPTER 11 Signs

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-11-1	Scope, Purpose and Findings		
16-11-2	Definitions		
16-11-3	General Restrictions		
16-11-4	Existing Signs		
16-11-5	Obsolete Signs		
16-11-6	Administration		
16-11-7	Construction and Maintenance		
16-11-8	Measuring Signs		
16-11-9	Requirements		

16-11-1 SCOPE, PURPOSE AND FINDINGS

- (a) **Scope and Purpose.** This Chapter regulates all Signs in the Village of Caledonia that are readable/visible from the street right-of-way, public facilities, publicly owned or publicly managed trails and other recreation areas, and navigable waterways. The sign regulations of this Chapter establish regulations for the fabrication, construction, and use of signs in the Village. The regulations govern the location, type, size, and height of signs within the Village. These sign regulations do not regulate every form and instance of visual communication that may be displayed. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more general purposes or findings set forth in this division.
- (b) **Intent.** The Village of Caledonia has a tradition and reputation as a community with a rich mix of land uses that blend into a landscape of high aesthetic quality. Depending on their size, number, and character, Signs may attract or repel visitors, affect the visual quality enjoyed daily by residents, affect the safety of vehicular traffic, and define the character of the area. Thus, aesthetic considerations impact economic values as well as public health, safety, and welfare. This Chapter sets standards for the following purposes:
- (1) Maintain and enhance the visual quality (aesthetics) of Signage and the community;
 - (2) Enhance the pedestrian environment and improve pedestrian and motorist safety by minimizing distractions and obstacles from directional or warning Signs, Signs pertinent to the Village's businesses, and clear views of the street;
 - (3) Protect and enhance economic viability;
 - (4) Protect property values and private/public investments in property;
 - (5) Protect views of the natural landscape and sky;
 - (6) Avoid personal injury and property damage from structurally unsafe Signs;
 - (7) Provide businesses with effective and efficient opportunities for advertising and identification;
 - (8) Create attractive gateways and enhance the image of the community; and
 - (9) Inform the public of recreational opportunities, including for trails, within the Village.

- (c) **Findings.** The adoption of this Chapter reflects the formal findings by the Plan Commission and Village Board that these sign regulations advance the following compelling governmental interests:
- (1) Protecting Village residents. Signs can obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately require regulation.
 - (2) Protecting property values. Regulating signs preserves the character of various neighborhoods, creates a harmonious community, and encourages economic development. This Chapter allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs.
 - (3) Promoting public health, safety and general welfare. Regulating signs helps protect all persons using public thoroughfares and rights-of-way within the Village in relation to the signage displayed thereon, or overhanging, or projecting into such public spaces.
- (d) **Interpretation and administration.** The regulations of this Chapter must be interpreted and administered in a manner consistent with the First Amendment guarantee of free speech.
- (e) **Content neutrality.** Any sign allowed under this chapter may contain, in lieu of any other message or copy, any lawful noncommercial message, as long as the sign complies with all size, height, location and other applicable regulations of this division.
- (f) **Compliance required.** The sign regulations of this Chapter and all local and state building codes apply to all signs in all zoning districts, except as may be otherwise expressly stated in this chapter.
- (g) **General government exemption.** The sign regulations of this division are not intended to and do not apply to signs erected, maintained or otherwise posted, owned or leased by the Village, state, or federal government. The inclusion of the term "government" in describing some types of signs does not subject the government to regulation but instead is intended to help clarify the types of signs that are exempt under this general government exemption.

16-11-2 DEFINITIONS.

- (a) **Signage Components.** The following words and phrases shall be regulated as a Signage Component, whether singularly or collectively, and shall have the meanings set forth below:
- (1) **Sign.** Any object, device, display, structure or part thereof, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

As used herein *Sign* does not include the flag or emblem of any nation, organization of nations, or other governmental or municipal agencies or units; traffic control or other public agency Signs; community information Signs placed by a governmental entity; displays within the confines of a building; merchandise or models of products or services

incorporated in a window display; works of art which in no way identify a product or service; temporary holiday decorations or displays with no commercial message; sculptural representations of an organization's or business's logo which do not contain any words and are not illuminated except that only one such representation of a particular business's or organization's logo is permitted; scoreboards located on athletic fields; and Signs mounted or painted on commercial vehicles incidental to the primary use of that vehicle as a mode of transportation.

- (2) **Sign Copy Area.** The total area of a Sign Face which may be used for display of advertising, message, announcement, etc.
- (3) **Sign Face.** The total surface of a Sign including the Sign Trim and Sign Copy Area.
- (4) **Sign Trim.** A separate border or framing around the Sign Copy Area.
- (5) **Vision Clearance Triangle.** The area in each quadrant of an Intersection that is bounded by the right-of-way lines of the roads and a vision clearance setback line connecting points on each right-of-way line that are located a distance back from the Intersection equal to the setback required for each right-of-way.
- (6) **Intersection.** The point at which the right-of-way lines meet or, for highway interchanges, the beginning and ending points of the on and off ramps. A "T" intersection shall be considered the same as a four-way intersection in the determination of the required distance of Signs from said intersection.

(b) **Freestanding Sign.**

The following words and phrases shall be regulated as a Freestanding Sign, whether defined singularly or collectively, and shall have the meanings set forth below:

- (1) **Agriculture Homestead Sign.** A Sign identifying the name of a specific farm.
- (2) **Directional Sign.** On-premises or off-premises Signs directing the public to governmental, cultural, religious, or charitable institutions and Signs that provide directions, e. g., enter, exit, parking, or location of any place or area on the same premises.
- (3) **Freeway Sign.** A Sign within one-hundred fifty (150) feet of the Interstate 94 right-of-way. The roadside edge of such Sign should be located as close to the interstate right-of-way as feasible but shall maintain a minimum of five (5) feet from the public right-of-way. Freeway Signs shall be constructed as set forth in the Design Guidelines Manual and this ordinance.
- (4) **Governmental Sign.** On-premises or Off-premises Signs of any public or governmental agency addressing traffic, railroads, trespassing, evacuation routes, danger, governmental service (including a welcome Sign) or safety including water dependent informational Signs with public health, safety or regulatory information that are no larger than necessary to accommodate the information that needs to be displayed.
- (5) **Home Occupation Sign.** A Sign that advertises a permitted home occupation.
- (6) **Monument Sign.** A Freestanding Sign mounted on a base and whose Sign Face is less than three (3) feet above the ground.
- (7) **Off-premises Sign.** A Sign that directs attention to a place, business, commodity, service or entertainment conducted, sold, offered or located elsewhere other than upon the premises where the Sign is displayed.
- (8) **Pole Sign.** A Sign that is mounted on one (1) or more poles. A Freeway Sign shall not be considered a Pole Sign.
- (9) **Private Property Sign.** A Sign containing the words "no trespassing," "no hunting," "no entry," "private property" or similar language indicating an intent to deny entry to the general public. *Private Property Signs* include Signs erected to conform to s. 943.13(2)(a) or (b), Wis. Stats.
- (10) **Private Trail Sign.** On-premises or Off-premises Signs that direct the people to privately owned trails, whether held open to the public or for private use by invitation only.
- (11) **Public Trail Sign.** On-Premises or Off-premises Signs that direct the public to publicly

- owned or publicly managed trails.
- (12) **Recreational Sign.** On-premises or Off-premises Signs indicating the direction and/or distance to a specific cottage, resort, residence, park or recreations facility.
 - (13) **Subdivision Sign.** A permanently installed Sign located on the subdivision property that identifies the subdivision name, etc.
 - (14) **Street Banner Sign.** A Sign affixed to a light pole or similar object.
 - (15) **Temporary Sign.** A Sign that is installed for a limited time period for the purpose of advertising a forthcoming event, e.g. retailer's Signs temporarily displayed for the purpose of informing the public of a sale or special offer, garage sale Signs, church or club event Signs, etc. A permanently mounted Sign shall not be considered as temporary even though the message displayed is subject to periodic changes. Temporary Signs include **construction, event, political, private sale, and real estate** Signs. These subtypes are further outlined in Section 16-7-9(d).
- (c) **Building Signs.** The following words and phrases shall be regulated as a Building Sign, whether singularly or collectively, and shall have the meanings set forth below:
- (1) **Awning or Canopy Sign.** A Sign consisting of letters or symbols applied to the top as well as the front of an awning. Canopy Sign may consist of individually mounted lettering or symbols or lettering and symbols applied to a background and mounted to a canopy.
 - (2) **Projecting Sign.** A Sign which is attached to and projects out from a wall or a building.
 - (3) **Wall Sign.** A Sign mounted on and parallel to a building wall or other vertical building surface.
 - (4) **Window Sign.** A Sign consisting of painted or placed lettering or symbols presented in a way that does not significantly reduce the visual transparency of the window. Permanent Signage painted or printed on a background and placed in windows shall be avoided. Neon Signs may be used so long as the message it advertises relates to the business on the subject premises. Such Signs shall not be animated or flashing as stated in Section 16-7-3(h)(3).
- (d) **Billboard.** A Sign that pertains to the premises where the sign is located or directs persons to a different location from where the sign is located, regardless of the Sign's content with a Sign Face that is larger than thirty-two (32) square feet, except for a Freeway Sign, Monument Sign, Sponsorship Sign, or Governmental Sign, regardless of whether it is displayed on or off of the premises to which the sign relates.
- (e) **Roof Sign.** A Sign that is erected or constructed wholly on or over the roof of a building, supported by the roof structure.
- (f) **Sponsorship Sign.** A Sign that is erected or constructed off-premises advertising the sponsorship of public facilities, such as parks, pavilions and fields, and publicly sponsored programs, such as youth baseball and soccer. Sponsorship Signs may be erected as Freestanding Signs or Building Signs. Sponsorship Signs shall be no larger than thirty-two (32) square feet and shall be subject to a sponsorship agreement, including maintenance requirements, with the Village and/or municipal entity who owns the public facility or runs the program.

16-11-3 GENERAL RESTRICTIONS

- (a) All Signs are prohibited in any zoning district, except as provided in this Chapter.
- (b) Signs as permitted in Section 16-11-6 are permitted to face a residential neighborhood or conservation district within one hundred (100) feet of such district boundary, except that Trail and

Recreation Signs shall be allowed within and up to these districts.

- (c) No Sign may be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered in any Conservancy District, Shoreland Wetland Overlay District, or any Floodplain, unless the Sign is a Governmental Sign, Public Trail Sign, Private Trail Sign or Recreational Sign.
- (d) All Signs in shoreland areas that are readable to stream or lake users at any time of the year may not exceed sixteen (16) square feet in area on one (1) side or thirty-two (32) square feet in area on all sides for any one (1) premises; the Sign may not exceed a height of ten (10) feet, may not be located closer than twenty-five (25) feet to any side lot lines, and may not be located closer than seventy-five (75) feet to the ordinary high water mark of any navigable water body, unless the Sign is a Governmental Sign, Public Trail Sign, Private Trail Sign or Recreational Sign. All Signs placed in a shoreland area shall comply with applicable Wisconsin Department of Natural Resources regulations.
- (e) Signage shall be integrated into and designed to be consistent with the building façade and site design. Similar materials, colors, and styles should be used to ensure the Signage is consistent with the building design.
- (f) No Sign may be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a sign permit as required under this Chapter, except for normal maintenance and repair as allowed under Sec. 16-11-4.
- (g) Number of Signs shall be limited as follows:
 - (1) Total signs are limited to two (2) signs per street frontage and no use shall have both a Pole Sign and a Monument Sign on one street frontage.
 - (2) **SHOPPING CENTERS AND MULTI-TENANT BUILDINGS:** May provide one (1) monument sign per street frontage. Shopping centers and multi-tenant buildings shall not install Pole Signs. Such facilities may also install one (1) Wall Sign, Awning or Canopy Sign, or Projecting Sign for each tenant space in the building.
 - (3) **GASOLINE STATIONS** (Also service stations, convenience stores with pumps, or any combination thereof): May provide a maximum of two (2) Monument Signs unless otherwise allowed under a conditional use permit or planned unit development by the Village Board as set forth in Section 16-11-9(a)(5). Building Signs may also be provided subject to requirements under Section 16-11-9(e). Signs advertising incidental products for sale that are located on the gasoline pumps, and are not readable from the street right-of-way, will not require permits or be regulated in number.
 - (4) As an alternative to limitations in subsections (1) through (3) above, the parcel owner may submit a master sign plan to the Zoning Administrator for review and approval by the Village Plan Commission. This master sign plan must indicate the type, construction, location, and height of each proposed sign on the site. Approval of the master sign plan may modify the limitations so long as the total plan is consistent with the intent and goals identified in this chapter and the Design Guidelines Manual and such approval is required before issuance of the first sign permit for the property. After approval of a master sign plan, no sign shall be erected, placed, painted, or maintained, except in conformance with

such plan, and such plan may be enforced in the same way as any provision of this Chapter. In cases of any conflict between the provision of such a plan and any other provision of this Chapter, the chapter shall control. The Village Board may establish an application fee for the review and processing of any such master sign plan by resolution from time-to-time.

(h) The following items are prohibited:

- (1) Beacons, streamers, pennants, pinwheels, strings of lights not permanently mounted to a rigid background, and inflatable Signs and tethered balloons,
- (2) Signs affixed to a cart, trailer or other rolling mechanism are prohibited, unless specifically permitted as a Temporary Sign but not to exceed 30 days of use in each calendar year. This provision shall not prohibit Signs attached to a vehicle, trailer, farm wagon, or equipment if the Sign is incidental to the primary use of the vehicle, trailer, farm wagon, or equipment and the vehicle, trailer, farm wagon or equipment as a mode of transportation and are not parked for the purpose of advertising a product or directing people to a business or activity such that the Sign is readable from the street right-of-way; nor shall this provision prohibit any official Signs in the street right-of-way regulated by the federal, state, county, or local government.
- (3) Signs that revolve, are animated, or have moving parts, or Signs that contain, include, or are illuminated by flashing or moving lights, have a display that may appear to grow, melt, x-ray, up- or down-scroll, write-on, travel, inverse, roll, twinkle, snow, or present pictorials or other animation, or are externally illuminated other than by white lights. This section shall not prohibit changeable copy light emitting diode Signs (collectively "LED Sign(s)") on Monument Signs, Pole Signs and Freeway Signs as further regulated in this section. LED signs shall not be allowed on other types of Signs. LED Signs and Digital signage shall not be placed in a manner that interferes with a traffic control signal as determined by the Zoning Administrator and the Village Engineer.
- (4) Signs that resemble, imitate, or approximate the shape, size, form, location, or color of railroad or traffic Signs, Signals, or devices.
- (5) Signs that interfere with the effectiveness of railroad or traffic Signs, Signals, or devices, or that obstruct or interfere with traffic visibility by blocking sight lines for streets, sidewalks, or driveways, or are lighted in such a way as to cause glare or impair driver visibility upon public ways.
- (6) Signs that prevent free ingress to or egress from any door or window, or any other way required by the local building or fire codes.
- (7) Signs that contain characters, cartoons, statements, works or pictures of an obscene nature that are deemed to be obscene material as described in W.S.A. §944.21(2)(c).
- (8) Billboards, Pole Signs where the bottom of the Sign is more than eleven (11) feet above grade and Roof Signs.
- (9) Signs that are located in a vision corner or Vision Clearance Triangle unless allowed as part of a conditional use permit or planned unit development by the Village Board, after review and recommendation by the Village Engineer and Village Plan Commission.

16-11-4 EXISTING SIGNS.

- (a) Signs lawfully existing at the time of the adoption or amendment of this article may be continued, although the use, size, height, or location does not conform to the provisions of this Chapter. However, these Signs are deemed a nonconforming use or structure and the provisions of Chapter 5 of this Title of Ordinances apply.
- (b) A Sign loses its legal nonconforming status if the size, design, or structure of the Sign is altered in any way that makes the Sign less in compliance with requirements of this Chapter than it was before alteration.

- (c) Notwithstanding subsection 16-11-3(f), a Sign Permit will be required for any structural alteration, addition, or repair to a legal nonconforming Sign.

16-11-5 ADMINISTRATION

- (a) **Administrator.** This Chapter shall be administrated by the Village's Zoning Administrator, in consultation with the Village Engineer as indicated. Approval shall be by the Zoning Administrator unless otherwise specified. Sign administration in the Village of Caledonia is intended to provide clear instruction on the type of Signs in each zoning district and land use classifications, and whether specific Sign types are (a) allowed, (b) require a permit, or (c) do not require a permit. Detailed regulations regarding the size and style of Signs are set forth in Sections 16-11-7 through 16-11-9.
- (b) **Signs for which no permit is required.** A permit shall not be required for the following Signs but compliance with indicated standards for the following signs is required:
- (1) Nameplates not over two (2) square feet in area, provided the same is limited to one (1) for each premises, tenant, or family and the same is located at least five (5) feet from the outer limits of the street right-of-way and lot lines;
 - (2) **Private Property Signs:**
 - a. Up to three (3) square feet of window signage.
 - b. Up to four (4) square feet of (non-window) temporary signage not more than five feet in height is allowed per 100 (100) feet of lot frontage, subject to a maximum of thirty-two (32) square feet of signage per parcel.
 - (3) Property address markers assigned by the Village and of a design approved by the Village;
 - (4) Tablets, grave markers, headstones, statuary, or monuments of persons or events that are noncommercial in nature;
 - (5) On-Premises Directional Signs or operational signs that meet the requirements of Sec. 16-11-9(a)(2). The number of signs on one (1) premises shall be limited to the number necessary to safely direct traffic into the specific site as determined by the Zoning Administrator;
 - (6) Signs erected and maintained pursuant to the discharge of governmental functions, or that are required by law, ordinance, or government regulation, or that are required to be posted in order to effectual a legal right;
 - (7) Temporary Political Signs that promote a particular candidate or candidates for a particular election may be erected during an election campaign period if in compliance with Section 12.04. Wis. Stats. The person or organization responsible for the erection or distribution of any such Signs, or the owner or owner's agent of the property upon which such Signs may be located, shall be responsible for the proper erection or removal of said Signs. Such Signs must be located behind the outer limits of the street right-of-way line. Such Signs shall not exceed thirty-two (32) square feet in Sign area on one (1) side and sixty-four (64) square feet in area on all sides. A maximum of four (4) such Signs may be placed on a lot.
 - (8) **Private Sale.** Temporary Private Sale Signs advertising occasional noncommercial sales of personal property such as "house sales", "garage sales", "rummage sales", and the like;
 - (9) **Real Estate.** Temporary Real Estate Signs that advertise the sale, lease, or rental of the structure(s) and/or property upon which said Signs are temporarily located are permitted on all properties advertised for sale, lease, or rent. Such real estate Signs are not to exceed thirty-two (32) square feet in area on one (1) side and sixty-four (64) square feet in area on all sides. These Signs shall be removed within thirty (30) days following sale, lease, or

occupancy. Real estate Signs may be located not closer than five (5) feet to any street right-of-way, nor closer than five (5) feet to a side or rear lot line. Two (2) such Signs are permitted per street frontage. Signs advertising the sale, lease, or rental of residentially zoned land may not exceed a height of eight (8) feet. Signs advertising the sale, leave, or rental of real estate that is not residentially zoned may not exceed fifteen (15) feet in height;

- (10) Signs advertising events or activities sponsored by a governmental body, as defined in Wis. Stat. Sec. 19.82(1).
- (11) All signs shall be kept neatly finished and repaired, including all parts and supports. The Zoning Administrator or designee will inspect and have authority to order the painting, repair, alteration, or removal of a sign that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence if it violates the provisions of this section.

- (a) **Design Guidelines Manual.** The applicant shall also follow the Design Guidelines Manual, where applicable, as published and revised by the Village from time-to-time. Among other features, these guidelines address the standards delineated under this Chapter and provide examples of Signs that meet the requirements of this Chapter. These guidelines are available from the Village Clerk.
- (b) **Sign Permit Application.** A Sign Permit application for a Sign must be submitted to the Village Zoning Administrator on forms provided by the Zoning Administrator for review and approval. The Sign Permit application must contain or have attached thereto at least the following information:
 - (1) Applicant's name, address, and telephone number.
 - (2) Location of building, structure, or lot to which or upon which the Sign is to be located.
 - (3) Type of Sign applicant wishes to erect.
 - (4) Zoning district in which the Sign will be erected.
 - (5) Name of person, firm, corporation, or association erecting the Sign.
 - (6) Written consent of the owner or lessee of the building, structure, or land to or upon which the Sign is to be located. Owner or lessee's Signature on the Building Permit application is considered written consent. The Signature of an owner's representative or agent is acceptable provided a letter of agency is on file with the Village.
 - (7) A drawing of such Sign indicating the materials to be used, the type of illumination, if any, and the method of construction and attachment. Said drawing must be drawn at a scale no smaller than one-tenth (1/10) inch equals one (1) foot or dimensions must be shown on the drawing.
 - (8) A drawing indicating the location and position of such Sign in relation to parcel boundary lines, nearby buildings and structures. Said drawing must include the Sign's height above finished yard grade. Said drawing must be at a scale no smaller than one (1) inch equals fifty (50) feet or dimensions must be shown on the drawing.
 - (9) A landscape plan for landscaping surrounding the base of applicable ground level signs as required by the Zoning Administrator.
 - (10) Signs requiring state or federal approval must provide a copy of such approval with the Sign permit application.
 - (11) Additional information as may be required by the Zoning Administrator.
 - (12) All Submittals for a master sign plan shall also include the type, construction, location and height of each proposed sign. Approval of the master sign plan is required before issuance of the first sign permit for the property. After approval of a master sign plan, no sign shall be erected, placed, painted, or maintained, except in conformance with such plan, and such plan may be enforced in the same way as any provision of this Chapter.

16-11-6 TEMPORARY SIGN REGULATIONS

- (a) **Permits and Regulations.** All temporary signs require a permit issued by the Planning & Zoning Department. Fees for this permit are outlined in the approved Review and Zoning Fee Schedule which is updated from time to time.
- (1) A Temporary Sign Permit allows the use of one (1) sign that does not exceed thirty-two (32) square feet in area on one side and sixty-four (64) feet in area on all sides and does not exceed twelve (12) feet in height, measured from the ground to the top of the sign.
 - (2) A sign permit allows a temporary sign to be displayed for a maximum of fifteen (15) consecutive days and must be removed within twenty-four (24) hours of the expiration of the permit.
 - (3) Temporary signs, if illuminated, shall not flash, blink, or fluctuate in light intensity and not change copy more than every ten seconds.
 - (4) Temporary signs, if wind borne, can only be of a feather or tear drop flag design.
- (c) **Location.** Temporary signs shall not be located in any public right-of-way, shall not be closer than five (5) feet to a property lint, shall not cause a hazard to traffic or adjoining properties, shall not be located within the vision triangle of intersecting streets or driveways, and shall not be attached to utility poles and structures, traffic signs, rocks, trees, or other vegetation.
- (d) **Temporary Construction Signs.** Temporary Construction Signs for the purpose of designating a new building or development or for promotion of a subdivision may be permitted for a period up to two (2) years, and extensions may be granted for a period not to exceed five (5) years total. Signs may not exceed forty-eight (48) square feet in area on one (1) side and ninety-six (96) square feet in area on all sides; may not exceed eight (8) feet in height, and must be located not closer than fifteen (15) feet from any street right-of-way, nor closer than ten (10) feet to any side or rear lot line. Only one (1) such Sign is permitted per street frontage.
- (e) **Temporary Event Sign.** Temporary Event Signs for events sponsored by non-profit organizations or for a non-profit charitable event shall not exceed four (4) square feet in area and not more than five (5) feet in height. Such Signs must be located at least one (1) foot from the outer limits of the street right-of-way and one (1) foot from a side or rear lot line and outside of any Vision Clearance Triangle. Such Signs may be erected thirty (30) days prior to the event and must be removed within three (3) days after the event.
- (e) **Maintenance:** All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Zoning Administrator or designee will inspect and have authority to order the painting, repair, alteration, or removal of a sign that constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence if it violates the provisions of this section.

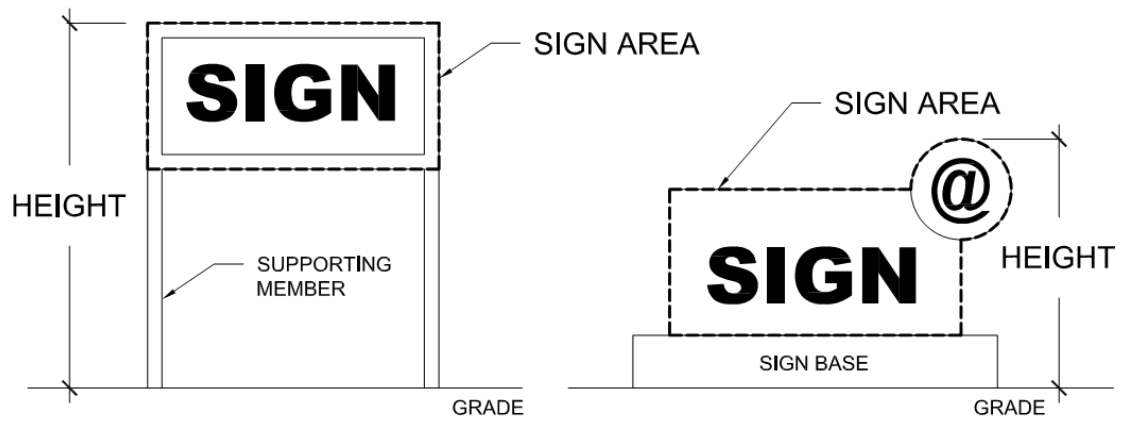
16-11-7 CONSTRUCTION AND MAINTENANCE STANDARDS

- (a) All Signs must be designed and constructed to withstand wind pressure of not less than forty (40) pounds per square foot of area and must be constructed to receive dead loads as required by the Village.
- (b) The temporary occupancy of a sidewalk or street or other public property during construction, removal, repair, alteration, or maintenance of a Sign is permitted subject to the approval of the jurisdictional authority, provided that the space occupied is roped off, fenced off, or otherwise isolated as directed by said authority.

- (c) The owner of any Sign must keep it in good maintenance and repair which includes restoring, repainting, or replacing a worn or damaged Sign to its original condition; and must maintain the immediate premises on which the Sign is erected in a clean sanitary, and inoffensive condition, free and clear of all obnoxious substances, rubbish, weeds, and grass.
- (d) No Sign or any part thereof or Sign anchor, brace, or guide rod may be attached, fastened, or anchored to any fire escape, fire ladder, or standpipe and no such Sign or any part of any such Sign or any anchor, brace, or guide rod may be erected, put up, relocated, or maintained so as to hinder or prevent ingress or egress through such door, doorway, fire escape, window, or opening designated by the local fire department, or so as to hinder or prevent the raising or placing of ladders against such building by the local fire department as necessity may require.
- (e) Upon request of the Zoning Administrator, it is the responsibility of the applicant to establish by competent evidence that the Sign meets any above stated standards or requirement.

16-11-8 MEASURING SIGNS

- (a) In calculating the area of a Sign to determine whether it meets the requirements of this chapter, the Zoning Administrator must include the Sign copy and any border or frame surrounding that copy. Customary supporting members of a Sign will be excluded from the area calculation. The area of irregularly shaped Signs or of Signs containing two (2) or more detached elements will be determined by the area of the smallest circle, square, triangle, rectangle, or combination thereof, that will encompass all elements of the Sign. Where individual letters, words, emblems, symbols, etc. are affixed to a building, a rectangle around the entire phrase or sentence will be measured to compute Sign area. Where the Sign background is made a different color from the building such as by painting, the area of different color will be measured. Back-to-back, side-by-side, bottom-on-top, and V-shaped Signs constitute one (1) Sign within the meaning of this article.
- (b) The Sign height shall be computed as the distance from the base of the Sign or structure to which it is attached at normal grade to the top of the highest attached component of the Sign. Normal grade shall be construed to be the lower of: (1) Existing grade prior to construction; or (2) The newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of elevating the Sign. In cases in which the normal grade cannot reasonably be determined, Sign height shall be computed on the assumption that the elevation of the normal grade at the base of the Sign is equal to the elevation of the nearest point of the crown of a street or the grade of the principal pedestrian entrance to the principal structure on the site, whichever is lower.
- (c) For Monument Signs, the structural elements and artistic elements without any advertising language or identification on them shall not exceed one hundred (100) square feet in area for each Sign face and are excluded from the square footage calculation for the Monument Sign. Such structural and artistic elements may exceed one hundred (100) square feet if approved through a site plan review by the Village Plan Commission. Alternatively, such elements in excess of one hundred (100) square feet may be included as part of the total base of such Monument Signs, thereby reducing the available area.
- (d) Spherical, free-form, sculptural, or other non-planar Sign area is fifty (50) percent of the sum of the areas using only the four (4) vertical sides of the smallest four-sided polyhedron that will encompass the Sign structure. Signs with more than four (4) faces are prohibited.



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16-11-9 REQUIREMENTS

The following requirements apply based on type of Sign and may be modified only by approval of the Village Board under a master sign plan upon review and recommendation by the Zoning Administrator, the Village Engineer and the Village Plan Commission. A submittal for a master sign plan shall include the additional information specified under this code.

Sign Type	Zoning District Allowed	SF Allowed I	SF Allowed II	Height Max	Min. Setback	Notes
Freestanding Signs:						
Agricultural Signs	A-1 & Lands with the primary use as agricultural	24 (one side)	48 (two sides)	6'	5'	
Freeway Signs [§]	"B", "M", & "BP" Districts	primary sign: 196 Secondary sign: 84	primary sign: 392 Secondary sign: 168	35'	5'	Masonry base 3' min./6' max.; 28" lettering height maximum
Monument Signs [§]	"B", "M", "BP", "P", & "C" districts	64 (one side)	128 (all sides)	8'	5'	Base must be equal to width of sign or Greater. Include parcel address.
Pole Signs [§]	"B", "M", & "BP" districts	64 (one side)	128 (all sides)	15'	10'	1 per premises allowed
Home Occupation Signs	A-1, "R" and "RM" Districts	4 SF max (All sides)	"		5'	
Directional Signs	All districts except "R", RM-1, and RM-2	12 (one side)	24 (all sides)	5'	1'	
Temporary Signs	All Districts	32 (one side)	64 (all sides)	12'	5'	
Building Signs:						
Awning & Canopy	"B", "M", "BP", "P", & "C" districts	No max.	"	"	"	1 per tenant; no extension beyond 1-foot from curb line
Projecting	"B", "M", "BP", "P", & "C" districts	32	"	20'	"	Must be 10' above sidewalk and 15' above driveway/alley; No extension more than 6 feet from structure; one per tenant (2 for corner tenant)
Wall	"B", "M", "BP", "P", & "C" districts	32	"	"	"	Cannot extend more than 12" from building.
Window	"B", "M", "BP", "P", & "C" districts	20% of window area OR 100 SF (whichever is less)	"	"	"	Window neon signs shall not be greater than 8 SF
[§] Subject to landscape plan for base						
[§] Light Emitting Diode Signs (LED) allowed on Monument Signs, Pole Signs and Freeway Signs only; can't be larger than 30% of sign copy area.						
Note 1: Total signs are limited to two (2) signs per street frontage and no use shall have both a Pole Sign and a Monument Sign on one street frontage.						

(a) **Freestanding Signs.**

- (1) **Agricultural Homestead Signs.** Signs may not exceed twenty-four (24) square feet on one side and forty-eight (48) square feet on all sides. Agriculture Signs are limited to one Sign for any one farm. Such Signs may be located within five (5) feet of the property line except Public Trail Signs and Private Trail Signs, if the location does not interfere with vision clearance triangles or pedestrian amenities (i.e., sidewalks) and in such case the placement of the sign shall be in a manner that does not create an obstacle for the right-of-way and does not interfere with drainage ways, plowing and snow plowing.
- (2) **Directional Signs.** Directional Signs, including internal Public Trail Signs and Private Trail Signs, may not exceed twelve (12) square feet on one side and twenty-four (24) square feet on all sides, nor may such Signs be greater than five (5) feet in height. Directional Signs may be located within one (1) foot of the property line except Public Trail Signs and Private Trail Signs, if the location does not interfere with vision clearance triangles or pedestrian amenities (i.e. sidewalks) and in such case the placement of the sign shall be in a manner that does not create an obstacle for the right-of-way and does not interfere with drainage ways, plowing and snow plowing.
- (3) **Freeway Signs.** Freeway Signs may be erected in those areas within one-hundred fifty (150) feet of the State of Wisconsin Interstate 94 right-of-way with a permit. Freeway Signs shall not be erected in any other part of the Village. Freeway Signs designed, intended or located in such a manner as to be visible to the traveling public on a freeway or expressway shall be limited to a height of thirty-five (35) feet. Such height shall be measured from the centerline street grade of such freeway adjacent to where the freeway Sign is oriented or ground level at the freeway Sign location, whichever is higher. All freeway Signs shall have a masonry base with a minimum overall height of three (3) feet and a maximum of six (6) feet. No primary Sign area is to exceed one-hundred ninety-six (196) square feet on one side and three-hundred ninety-two (392) square feet on all sides. No secondary Sign area is to exceed eighty-four (84) square feet on one side and one-hundred sixty-eight (168) square feet on all sides. All lettering shall be a maximum of twenty-eight (28) inches in height. The roadside edge of such Sign should be located as close to the interstate right-of-way as feasible but shall maintain a minimum of five (5) feet from the public right-of-way. Illuminated freeway Signs shall be erected or maintained so that the beams or rays of light are effectively shielded so as not to cause glare or impair the vision of the driver of any motor vehicle and shall contain no flashing, intermittent or moving lights. Freeway Signs which are not designed, intended or located in a manner so as to be visible to the traveling public on freeways and expressways are prohibited. The owner of any freeway Sign shall keep it in sound condition, well-maintained, and in good appearance and repair which includes restoring, repainting, or replacement of a worn or damaged legally existing Freeway Sign to its original condition, and shall maintain the premises on which the freeway Sign is erected in a clean, sanitary, and inoffensive condition, free and clear of all obnoxious substances, rubbish, refuse, debris and weeds. To the extent possible, signage for businesses within a Business Campus shall consolidate signage to the Freeway Sign. The use of LED and Digital Signage on Freeway Signs is as regulated under this code.
- (4) **Home Occupation Signs.** Home Occupation Signs shall not exceed four (4) square feet on all sides. Signs affixed to a yard light post or Signpost must be set back a minimum of five (5) feet from the street right-of-way line. Such Signs may include the name, address and type of home occupation.
- (5) **Monument Signs.** Monument type Signage should be consistent with the materials, colors and style of the building it advertises. The base of a monument Sign should be at least as wide as the rest of the Sign. Only individual letters and symbols should be internally

illuminated. Monument Signs should not exceed eight (8) feet in height and shall not exceed sixty-four (64) square feet on one side and one hundred twenty-eight (128) square feet on all sides. External point source lighting may be used on non-illuminated Signage. Time and/or temperature devices may be erected on Monument Signs. Shopping centers and multi-tenant buildings may provide one (1) Monument Sign for each street frontage. Gasoline stations, service stations, convenience stores with pumps, or any combination thereof may provide a maximum of two (2) Monument Signs unless otherwise allowed under a conditional use permit or planned unit development by the Village Board upon review and recommendation by the Zoning Administrator and the Village Plan Commission. All others are limited to one monument unless otherwise approved under a Master Site Plan for a conditional use or a planned unit development. Monument Signs may be located no closer than five (5) feet of the property line if the location does not interfere with vision clearance triangles or pedestrian amenities (i.e., sidewalks) and in such case the placement of the sign shall be in a manner that does not create an obstacle for the right-of-way and does not interfere with drainage ways, plowing and snow plowing. Governmental Signs shall not count toward the maximum number of allowable Signs on any one site. The use of LED and Digital Signage on Monument Signs is as regulated under this code.

- (6) **Off-Premises Signs.** Off-Premises Signs are only allowed on public or private recreational properties to promote sponsorship needs and require Plan Commission approval. Signs shall not to exceed thirty-two (32) square feet in area on one side and sixty-four (64) square feet in area on all sides. Such Signs shall be located at least fifteen (15) feet from the outer limits of the street right-of-way or a side or rear lot line. Except for Recreational, Public Trail and Private Trail Signs, each entity erecting such a Sign is limited to three (3) in number under this Section. Such Signs are limited to a maximum height of eight (8) feet except that Sponsorship Signs may be higher upon approval of the Village. Off-Premise Signs may be located within one (1) foot of the property line, subject to Plan Commission approval, if the location does not interfere with vision clearance triangles or pedestrian amenities (i.e. sidewalks) and in such case the placement of the sign shall be in a manner that does not create an obstacle for the right-of-way and does not interfere with drainage ways, plowing and snow plowing. Governmental Signs shall not count toward the maximum number of allowable Signs on any one site.
- (7) **Pole Signs.** Pole Signs may not exceed a height of fifteen (15) feet, except that Sponsorship Signs may be higher upon approval of the Village. The bottom of the Pole Sign face may not be less than eleven (11) feet above grade. The Pole Sign may not exceed sixty-four (64) square feet on one-side and may not exceed one hundred twenty-eight (128) square feet on all sides. Only one (1) Pole Sign is allowed per premises. If the premises is part of a conditional use or planned unit development, signage shall be consolidated pursuant to a Master Sign Plan. Such Signs shall be located at least fifteen (15) feet from the outer limits of the street right-of-way or a side or rear lot line. Governmental Signs shall not count toward the maximum number of allowable Signs on any one site. The use of LED Signs on Pole Signs is as regulated under this code.
- (8) **Private Property Signs.** Private Property Signs may not encroach upon any street right-of-way and may not be greater than two (2) square feet on one side.
- (9) **Street Banner Signs.** Street Banner Signage is permitted on light poles provided that the Signage does not block illumination from the streetlight. Street banner Signs shall be no larger than eight (8) square feet on one side and sixteen (16) square feet on all sides.
- (10) **Subdivision Signs.** Subdivision Signs not to exceed forty-eight (48) square feet in area on one (1) side and ninety-six (96) square feet in area on all sides, that are located at entrances to subdivisions or developments or along abutting streets or highways, identifying residential complexes or displaying the property addresses. Said Signs shall be located on

an outlet, permanent easement, or other common area and they shall not be located closer than fifteen (15) feet to any street right-of-way, nor closer than ten (10) feet to any side or rear lot line, unless otherwise allowed by the Zoning Administrator to be located on a median island within a gateway entry to a subdivision. Such Signs may not exceed twelve (12) feet in height and the design shall be approved by the Zoning Administrator. No more than two (2) such Signs are permitted for any one (1) subdivision or development.

- (11) **Recreational Signs.** Recreational Signs shall not exceed two (2) in number and not exceed twelve (12) square feet in display area on one (1) side and twenty-four (24) square feet on all sides, five (5) feet in height and no closer than (10) feet to any right-of-way or property line. Governmental Signs shall not count toward the maximum number of allowable Signs on any one site.

- (12) **Public Trail Signs.** Public Trail Signs shall be uniform in color in a style determined by the Village to create uniform notice to trails that are open to the public. Public Trail Signs shall be placed no closer than (10) feet to any right-of-way or property line unless otherwise approved by the Zoning Administrator or Engineer if visibility of the Sign is frustrated by this requirement and in such case the placement of the Sign shall be in a manner that does not create an obstacle for the right-of-way and does not interfere with drainage ways and/or mowing and snowplowing. Governmental Signs shall not count toward the maximum number of allowable Signs on any one site. The Village shall not be responsible for damage to any Sign placed closer than ten (10) feet to any right-of-way.

- (13) **Private Trail Signs.** Private Trail Signs shall not be in the same color or style as the Village's Public Trail Sign. Private Trail Signs shall be placed no closer than (10) feet to any right-of-way or property line unless otherwise approved by the Village Administrator or Engineer if visibility of the Sign is frustrated by this requirement and in such case the placement of the Sign shall be in a manner that does not create an obstacle for the right-of-way and does not interfere with drainage ways and/or mowing and snowplowing. Governmental Signs shall not count toward the maximum number of allowable Signs on any one site. The Village shall not be responsible for damage to any Sign placed closer than ten (10) feet to any right-of-way.

(b) **Building Signs.**

- (1) **Awning and Canopy.** Awning Signage may consist of letters or symbols applied to the top as well as the front. Both the lettering and the awning should be made of an opaque material. Canopy Signage may consist of individually mounted lettering or symbols applied to a background and mounted to a canopy. Awning and canopy Signs are permitted provided that the Signs do not extend vertically or horizontally beyond the limits of such awning or canopy. An awning or canopy for a shopping center may not extend beyond a point one (1) foot back from the vertical plane formed by the curbline in the shopping center. No awning or canopy may project into a required street yard, side yard, or rear yard, unless such structure already exists as an existing legal nonconforming structure or was approved by variance by the board of appeals and such Sign does not increase the dimensional nonconformity. Awnings shall not be lit from within; however, down cast lighting mounted beneath the awning to light a walkway below is allowed. Canopy lettering may be internally illuminated. External point source lighting may be used to light both awning and canopy Signage. Shopping centers and multi-tenant buildings may provide one (1) canopy Sign for each business in the building.

- (2) **Projecting.** Projecting Signs fastened to, suspended from, or supported by structures may not extend more than six (6) feet from said structure; may not exceed a height of twenty (20) feet; and the bottom of the Sign may not be less than ten (10) feet above the sidewalk or fifteen (15) feet above a driveway or an alley. Total area of all projecting Signs may not exceed one hundred (100) square feet in area for any one (1) premises, regardless of the number of projecting Signs on the site. One projecting Sign is permitted per tenant. Corner

tenants are permitted one Sign per street frontage.

- (3) **Wall.** Wall Signs placed against the exterior walls of buildings may not extend more than twelve (12) inches outside of a building's wall surface and shall fit within a rectangular perimeter no greater than thirty-two (32) square feet in size. The wall Signs should be composed of individual letters or symbols mounted directly on background material acceptable to the Village. The letters/symbols may be internally illuminated but the background, if any, must be an opaque material. External point source lighting may be used on non-illuminated Signage.
- (4) **Window.** Window Signage should consist of painted or placed lettering or symbols directly on the window and presented in a way that does not significantly reduce the visual transparency of the window. Neon Signs may be used so long as the message it advertises relates to the business on the subject premises. Any neon Sign shall consist only of letters, numbers and symbols and fit within a rectangular perimeter no greater than eight (8) square feet in size. Window Signs may not occupy more than twenty (20) percent of the total window area or one hundred (100) square feet, whichever is less.

(c) Electronic Message Center Signs

Light emitting diode Signs (collectively "LED Sign(s)") are allowed on Monument Signs, Pole Signs and Freeway Signs only. Electronic Message Center Signs shall not be permitted as a wall sign. LED Signs and Digital signage shall not be placed in a manner that interferes with a traffic control signal as determined by the Zoning Administrator and the Village Engineer. LED Sign displays must be steady in nature and each message lasts no less than five (5) seconds. No more than 50% of the Sign Copy Area shall be of an LED nature if such LED Sign is otherwise allowed with an intermittent change of display.

CHAPTER 12 Off Street Parking

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-12-1	Off Street Parking		

16-12-1 OFF STREET PARKING

- (a) **OFF STREET PARKING REQUIRED:** Off-street vehicle parking space shall be provided for buildings and uses as hereinafter specified. Such parking shall be reasonably adjacent to the use or building served; be intended specifically to serve the residents, patrons, or employees of said use or building; and the required number of spaces must be demonstrably usable and accessible for such purpose.
- (b) **APPLICATION TO EXISTING USES:** The provision of parking space shall not be required for legally existing uses as of the date of this ordinance, but shall be required for any expansion for such use by the addition of new primary floor area or other spatial expansion of building or use generating new parking demand.
- (c) **DETERMINATION OF NEED:** The number of parking areas required shall be based upon the anticipated parking demand of individual uses and shall be as follows or as may be designated hereinafter for specific uses or situations as per Plan Commission approval. In any case of structures or uses not mentioned, the provision for a use which is similar shall apply:

Use	Parking Requirements
Single Family Dwelling and Mobile Homes	2 spaces per dwelling unit
Two-Family and Multi-Family Dwellings	2 spaces per dwelling unit
Hotels and Motels	1 space for each guest room plus 1 stall for each 3 employees
Colleges, Secondary, and Elementary Schools	1 stall for each 2 employees plus a reasonable number of stalls for student and other parking
Hospitals, Clubs, Lodges, Sororities, Dormitories, Lodginghouses, and Boardinghouses	1 stall for each 2 beds plus 1 stall for each 3 employees
Rest Homes, Nursing Homes, Sanitariums, and Institutions	1 stall for each 5 beds plus 1 stall for each 3 employees
Medical and Dental Clinics	3 stall for doctor plus 1 stall for each employee
Churches, Theatres, Auditoriums, Community Centers, Vocational and Night Schools, and Other Places of Public Assembly	1 stall for each 5 seats
Restaurants, Bars, Places of Entertainment, Repair Shops, Retail and Service Stores	1 stall for each 150 square feet of floor area
Manufacturing and Processing Plants, Laboratories and Warehouses	1 stall for each 2 employees during any 12-hour period
Financial Institutions, Business, Governmental and Professional Offices	1 stall for each 300 square feet of floor area
Funeral Homes	1 stall for each 4 seats
Bowling Alleys	5 stalls for each alley

- (d) **STANDARD DIMENSIONS:**
- (1) Parking stalls shall be no less than nine (9) feet in width and not less than 180 square feet in area exclusive of the space required for ingress and egress.
 - (2) Drive aisles shall be a minimum of 24 feet in width for two-way traffic and 12-feet in width for one-way traffic on sites. Fire Code requirements may apply above these stated drive aisle requirements in some cases.
- (e) **AMERICAN DISABILITIES ACT:** Adequate parking stalls shall be made available for disabled persons per federal and state requirements.
- (f) **LOCATION:** Location of parking areas shall be on the same lot as the principal use and not over four hundred (400) feet from the principal use.
- (g) **SURFACING:** Any driveway or off-street parking area (other than that provided for a residence) shall be hard surfaced or maintained in a reasonably dustless condition by dust-proofing applications. The method of surfacing shall be approved by the Plan Commission.
- (h) **CURBS:** Curbs or barriers shall be installed so as to prevent parked vehicles from extending over any lot lines. The extent of curbing need on a given parking lot shall be approved by the Plan Commission.
- (i) **SCREENING:** Any off-street parking area, other than that provided for a residence, which abuts or faces a residence district shall provide a planting screen, landscaped fence, or wall, at least four (4) feet in height along the side abutting or fronting on a residence district (Subject to Planning Commission discretion for unique situations). Plans for such screen shall be submitted to the Plan Commission for approval prior to installation.
- (j) **PARKING SETBACKS:**
- (1) In any residential district no vehicle shall be allowed to park closer nor shall any drive be permitted closer than five (5) feet to the abutting residential lot line and the parking of a vehicle must be on a hard surface of compacted gravel or concrete/asphalt.

Off-Street Parking Setbacks by District:

District	Setback from Right-of-Way	Setback from Side & Rear Property Lines
Residential	0 ft	5 ft
Multi Family -Residential	15 ft	15 ft
Commercial	15 ft	0 ft
Manufacturing	15 ft	0 ft
Park/Institutional	15 ft	15 ft

- (2) In any off-street parking area for a commercial use, no vehicle shall be allowed to park closer nor shall any drive be permitted closer than fifteen (15) feet to an abutting residential district (Subject to Planning Commission discretion for unique situations and approved

screening methods).

(h) **DRIVEWAY ACCESS:**

- (1) Adequate access to a public street shall be provided for each parking area, and driveways shall be at least ten (10) feet wide for one- and two-family dwellings and a minimum of twenty-four (24) feet for all other uses.
- (2) No direct access shall be permitted to the existing or proposed rights-of-way of expressways, freeways or interstate highways, nor to any other road, street or highway, without permission of the authority maintaining the facility.
- (3) Vehicle entrances and exits to drive-in theaters, banks, and restaurants; motels; funeral homes; vehicular sales, service, washing and repair stations; garages; or public parking lots shall be not less than two hundred (200) feet from any pedestrian entrance or exit to a school, college, university, church, hospital, park, playground, library, public emergency shelter or place of public assembly.
- (4) Adjacent residential uses may agree to establish a common driveway. In such cases, the driveway midpoint should be the property line between the two (2) parcels; however, the precise location of such driveway will be determined by the jurisdictional authority. The driveway must meet standard specifications and the landowner(s) shall record cross access agreements to ensure continued use, upkeep and maintenance of the combined access points.
- (5) Cross access to and between neighboring properties shall be implemented wherever possible. The goal in this requirement is to remove as much incidental, site-to-site traffic from adjacent roads as practical thus reducing the possibility of traffic conflicts and accidents. Cross access may be achieved by the interconnection of parking lots or the construction of a separate drive. Sharing of access to state and county trunk highways by commercial or industrial land uses may also be permitted. Such shared access shall have the approval of the county highway department or state department of transportation, depending upon jurisdiction. A cross access agreement shall be recorded by all landowners utilizing such shared access. Such shared access must meet standard specifications.
- (6) Access drives to principal structures which traverse wooded, steep, or open fields shall be constructed and maintained to a width and base material depth sufficient to support access by emergency vehicles. All driveways shall have a minimum width of twelve (12) feet with road strength capable of supporting emergency and fire vehicles, in compliance with any Village standards.

(i) **RESIDENTIAL & COMMERCIAL PARKING RESTRICTIONS:**

- (1) Parking of vehicles accessory to a residential use on private property shall be limited to those actually used by the residents or for temporary parking for guests. Vans or pickup trucks used for private and recreational use, or a motor home (recreational vehicle), or a van or pickup truck used in a business or trade and commercial vehicle used for transportation to and from a place of employment or workplace of the occupant may be parked on a residential property subject to the requirements of this Section.
- (2) Commercial Vehicles of not over 10,000 lbs may be parked on private property, providing all of the following conditions are met: vehicle is registered and licensed; used by a resident of the premises; gross weight does not exceed ten thousand (10,000) pounds, including any load; height does not exceed nine (9) feet as measured from ground level, excluding antennas, air vents, and roof-mounted air conditioning units, but including any load, bed, or box; and total vehicle length does not exceed twenty-six (26) feet, including attachments thereto (such as plows, trailers, etc.) unless approved through a conditional use permit.

- (3) Recreational vehicles parked on private property in residentially zoned districts (all R designations) must maintain a minimum of a five-foot setback from the rear and side lot lines but are not restricted to a minimum setback to the principal structure. If parked in the street yard, the recreational vehicle must be parked on the driveway or on an improved surface such as asphalt, concrete, or compacted gravel. For the purpose of this section, recreational vehicles shall include boats and trailers, snowmobiles and their trailers, minibikes or trailbikes and their trailers, and unoccupied tent campers and travel trailers, all-terrain vehicles and personal watercraft and their trailers.
 - a. Utility trailers and recreational vehicles parked on residential parcels less than five acres cannot exceed 32 feet in length (not including trailer tongue and hitch) and 13 feet in height. For residential parcels five acres or greater, trailers and recreational vehicles shall not exceed 37 feet in length (not including tongue and hitch) and 13 feet in height.
 - (4) Vehicles, trailers, and recreational vehicles shall be parked either within an enclosed attached garage or detached accessory structure or on an improved surface such as: asphalt; concrete; or compacted gravel. Improved surfaces, including driveways, that cover more than fifty percent (50%) of a residential street yard is prohibited.
 - (5) No other vehicular equipment of a commercial or industrial nature, except as stated above, shall be parked or stored for more than two (2) consecutive hours and four (4) accumulated hours during any twenty-four-hour period on any lot in any zoning district except business and industrial districts or as permitted by an approved conditional use or in the A-1 district.
 - (6) Outdoor parking of one semi-tractor or dump truck is permitted in Residential Districts if the parcel is greater than one (1) acre and has direct access to a Class A Highway (e.g. STH 31, STH 32). Outdoor parking of semi-tractor trailers in residential districts is prohibited.
 - (7) A gathering, not to exceed 24 hours at any one time, which results in the parking of vehicles or trailers not on an approved surface be exempt from these parking limits for a 24-hour period.
- (j) NON-RESIDENTIAL PARKING RESTRICTIONS
- (1) Outdoor parking of semi-tractors/trailers and/or dump trucks on commercial property (B-districts), that is not a principal use (e.g., truck sales), an accessory use (e.g., delivery vehicles), or which has not been approved through the conditional use or site plan review process is prohibited.
- (n) OCCUPATION OF PARKED VEHICLES PROHIBITED: No Camping Trailer or Recreational Vehicle shall be used for the purpose of habitation in the Village.
- (o) USES NOT ENUMERATED: In any case where there is question as to the parking requirements for a use or where such requirements are not specifically enumerated, such case shall brought before the Plan Commission, which shall have the authority to determine the appropriate application of the parking requirements to the specific situation.

Chapter 13

Floodplain Regulations

(DNR approved Ordinance 2019-01; 01/07/19)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-13-1	Statutory Authorization, Finding of Fact, Statement of Purpose, Title and General Provisions.		
16-13-2	General Standards Applicable to all Floodplain Districts.		
16-13-3	Floodway District (FW).		
16-13-4	Floodfringe District (FF).		
16-13-5	General Floodplain District (GFP).		
16-13-6	Nonconforming Uses.		
16-13-7	Administration.		
16-13-8	Amendments.		
16-13-9	Enforcement and Penalties.		
16-13-10	Definitions.		
Sec. 16-13-1	STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE, TITLE AND GENERAL PROVISIONS		
(a)	<i>Statutory Authorization.</i> This ordinance is adopted pursuant to the authorization in Sec. 61.35 and 62.23, Wis. Stats., for villages and cities; and the requirements in Sec. 87.30, Wis. Stats.		
(b)	<i>Finding Of Fact.</i> Uncontrolled development and use of the floodplains and rivers of this municipality would impair the public health, safety, convenience, general welfare and tax base.		
(c)	<i>Statement Of Purpose.</i> This ordinance is intended to regulate floodplain development to:		
	(1)	Protect life, health and property;	
	(2)	Minimize expenditures of public funds for flood control projects;	
	(3)	Minimize rescue and relief efforts undertaken at the expense of the taxpayers;	
	(4)	Minimize business interruptions and other economic disruptions;	
	(5)	Minimize damage to public facilities in the floodplain;	
	(6)	Minimize the occurrence of future flood blight areas in the floodplain;	
	(7)	Discourage the victimization of unwary land and homebuyers;	

- (8) Prevent increases in flood heights that could increase flood damage and result in conflicts between property owners; and
- (9) Discourage development in a floodplain if there is any practicable alternative to locate the activity, use or structure outside of the floodplain.
- (d) *Title.* This ordinance shall be known as the Floodplain Zoning Ordinance for the Village of Caledonia, Wisconsin.
- (e) *General Provisions.*
 - (1) *Areas To Be Regulated.*
This ordinance regulates all areas that would be covered by the regional flood or base flood, including floodplain islands unless actual dry land access can be obtained, as shown on the Flood Insurance Rate Map (FIRM) or other maps approved by DNR. Base flood elevations are derived from the flood profiles in the Flood Insurance Study (FIS) and are shown as AE, A1-30, and AH Zones on the FIRM. Other regulatory zones are displayed as A and AO zones. Regional Flood Elevations (RFE) may be derived from other studies. If more than one map or revision is referenced, the most restrictive information shall apply.
 - (2) *Official Maps & Revisions.*
The boundaries of all floodplain districts are designated as A, AE, AH, AO or A1-30 on the maps based on the Flood Insurance Study (FIS) listed below. Any change to the base flood elevations (BFE) or any changes to the boundaries of the floodplain or floodway in the FIS or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the DNR and FEMA through the Letter of Map Change process (see Sec.16-13-8 *Amendments*) before it is effective. No changes to RFE's on non-FEMA maps shall be effective until approved by the DNR. These maps and revisions are on file in the office of the Village Clerk at the Village of Caledonia Hall. If more than one map or revision is referenced, the most restrictive information shall apply.
 - (a) *Official Maps:* Based on the FIS:
Flood Insurance Rate Map (FIRM), panel numbers **55101C0079D, 55101C0083, 55101C0084D, 55101C0089D, 55101C0091D, 55101C0092D, 55101C0093D, 55101C0094D, 55101C0103D, 55101C0104D, 55101C0108D, 55101C0111D, 55101C0112D, 55101C0113D, 55101C0114D, 55101C0116D, 55101C0117D, 55101C0118D** dated **May 2, 2012**, and **55101C0093E, 55101C0094E, 55101C0113E** effective **February 1, 2019** with corresponding profiles that are based on the **Flood Insurance Study (FIS) dated February 1, 2019, volume number 55101CV001B.**

Approved by: The DNR and FEMA

VILLAGE STAFF NEED TO REVIEW MAP LISTINGS AND CONFIRM

- (3) *Establishment Of Floodplain Zoning Districts.*
The regional floodplain areas are divided into three districts as follows:

- (a) The Floodway District (FW), is the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional floodwaters and are contained within AE Zones as shown on the FIRM.
 - (b) The Floodfringe District (FF) is that portion between the regional flood limits and the floodway and displayed as AE Zones on the FIRM.
 - (c) The General Floodplain District (GFP) is those areas that may be covered by floodwater during the regional flood and does not have a BFE or floodway boundary determined, including A, AH and AO zones on the FIRM.
- (4) *Locating Floodplain Boundaries.* Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved using the criteria in subd (a) or (b) below. If a significant difference exists, the map shall be amended according to Sec. 16-13-8 *Amendments*. The zoning administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required. The zoning administrator shall be responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the zoning administrator and an applicant over the district boundary line shall be settled according to Sec. 16-13-7(c)(3) and the criteria in (a) and (b) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision pursuant to Sec. 16-13-8 *Amendments*.
- (a) If flood profiles exist, the map scale and the profile elevations shall determine the district boundary. The regional or base flood elevations shall govern if there are any discrepancies.
 - (b) Where flood profiles do not exist for projects, the location of the boundary shall be determined by the map scale, visual on-site inspection and any information provided by the Village's zoning and planning department under the direction of the Zoning Administrator, Department of Natural Resources, FEMA and the Zoning Administrator.
- Note: Where the Floor Profiles are based on established Base Flood elevations from a FIRM, FEMA must also approve any map amendment involving channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe.
- (5) *Removal Of Lands From Floodplain.* Compliance with the provisions of this ordinance shall not be grounds for removing land from the floodplain unless it is filled at least two feet above the regional or base flood elevation, the fill is contiguous to land outside the floodplain, and the map is amended pursuant to Sec.16-13-8 *Amendments*.

- (6) *Compliance.*
Any development or use within the areas regulated by this ordinance shall be in compliance with the terms of this ordinance, and other applicable local, state, and federal regulations.
- (7) *Municipalities And State Agencies Regulated.* Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Sec. 13.48(13), Wis. Stat., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation is exempt when Sec. 30.2022, Wis. Stat., applies.
- (8) *Abrogation And Greater Restrictions.*
 - (a) This ordinance supersedes all the provisions of any municipal zoning ordinance enacted under Sec. 62.23, Wis. Stats., for cities; Sec. 61.35, Wis. Stats., for villages; or Sec. 87.30, Wis. Stats., which relate to floodplains. A more restrictive ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
 - (b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. If this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.
- (9) *Interpretation.*
In their interpretation and application, the provisions of this ordinance are the minimum requirements liberally construed in favor of the governing body and are not a limitation on or repeal of any other powers granted by the Wisconsin Statutes. If a provision of this ordinance, required by Ch. NR 116, Wis. Adm. Code, is unclear, the provision shall be interpreted in light of the standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.
- (10) *Warning And Disclaimer Of Liability.* The flood protection standards in this ordinance are based on engineering experience and research. Larger floods may occur or the flood height may be increased by man-made or natural causes. This ordinance does not imply or guarantee that non-floodplain areas or permitted floodplain uses will be free from flooding and flood damages. This ordinance does not create liability on the part of, or a cause of action against, the municipality or any officer or employee thereof for any flood damage that may result from reliance on this ordinance.
- (11) *Severability.*
Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.
- (12) *Annexed Areas For Cities And Villages.* The Racine County floodplain zoning provisions in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements of Ch. NR 116, Wis. Adm. Code and 44 CFR 59-72, *National Flood Insurance Program* (NFIP). These annexed lands are described on the municipality's official zoning map. County floodplain zoning provisions are incorporated by reference for the purpose of

administering this section and are on file in the office of the municipal zoning administrator. All plats or maps of annexation shall show the regional flood elevation and the floodway location.

Sec. 16-13-2 GENERAL STANDARDS APPLICABLE TO ALL FLOODPLAIN DISTRICTS

The Village shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be designed and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads; be constructed with flood-resistant materials; be constructed to minimize flood damages and to ensure that utility and mechanical equipment is designed and/or located so as to prevent water from entering or accumulating within the equipment during conditions of flooding.

Subdivisions shall be reviewed for compliance with the above standards. All subdivision proposals (including manufactured home parks) shall include regional flood elevation and floodway data for any development that meets the subdivision definition of this ordinance and all other requirements in Sec. 16-13-7(a)(2). Adequate drainage shall be provided to reduce exposure to flood hazards and all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damages.

(a) *Hydraulic And Hydrologic Analyses.*

(1) No floodplain development shall:

- (a) Obstruct flow, defined as development which blocks the conveyance of floodwaters by itself or with other development, causing any increase in the regional flood height; or**
- (b) Cause any increase in the regional flood height due to floodplain storage area lost.**

(2) The zoning administrator shall deny permits if it is determined the proposed development will obstruct flow or cause any increase in the regional flood height, based on the officially adopted FIRM or other adopted map, unless the provisions of Sec. 16-13-8 *Amendments* are met.

(b) *Watercourse Alterations.*

No land use permit to alter or relocate a watercourse in a mapped floodplain shall be issued until the local official has notified in writing all adjacent municipalities, the Department and FEMA regional offices, and required the applicant to secure all necessary state and federal permits. The standards of Sec. 16-13-2(a) must be met and the flood carrying capacity of any altered or relocated watercourse shall be maintained.

As soon as is practicable, but not later than six months after the date of the watercourse alteration or relocation and pursuant to Sec. 16-13-8 *Amendments*, the community shall apply for a Letter of Map Revision (LOMR) from FEMA. Any such alterations must be reviewed and approved by FEMA and the DNR through the LOMC process.

(c) *Chapter 30 and 31, Wis. Stats., Development.*

Development which requires a permit from the Department, under Chs. 30 and 31, Wis. Stats., such as docks, piers, wharves, bridges, culverts, dams and navigational aids, may be allowed if the necessary permits are obtained and amendments to the floodplain zoning

ordinance are made according to Sec. 16-13-8 *Amendments*.

(d) *Public or Private Campgrounds.*

Public or private campgrounds shall have a low flood damage potential and shall meet the following provisions:

- (1) The campground is approved by the Department of Health Services;
- (2) A land use permit for the campground is issued by the zoning administrator or as applicable a conditional use permit for the campground is approved by the Village Board;
- (3) The character of the river system and the campground elevation are such that a 72-hour warning of an impending flood can be given to all campground occupants;
- (4) There is an adequate flood warning procedure for the campground that offers the minimum notice required under this section to all persons in the campground. This procedure shall include a written agreement between the campground owner, the municipal emergency government coordinator and the chief law enforcement official which specifies the flood elevation at which evacuation shall occur, personnel responsible for monitoring flood elevations, types of warning systems to be used and the procedures for notifying at-risk parties, and the methods and personnel responsible for conducting the evacuation;
- (5) This agreement shall be for no more than one calendar year, at which time the agreement shall be reviewed and updated - by the officials identified in sub. (4) above - to remain in compliance with all applicable regulations, including those of the state Department of Health Services and all other applicable regulations;
- (6) Only camping units that are fully licensed, if required, and ready for highway use are allowed;
- (7) The camping units shall not occupy any site in the campground for more than 180 consecutive days, at which time the camping unit must be removed from the floodplain for a minimum of 24 hours;
- (8) All camping units that remain on site for more than 30 days shall be issued a limited authorization by the campground operator, a written copy of which is kept on file at the campground. Such authorization shall allow placement of a camping unit for a period not to exceed 180 days and shall ensure compliance with all the provisions of this section;
- (9) The municipality shall monitor the limited authorizations issued by the campground operator to assure compliance with the terms of this section;
- (10) All camping units that remain in place for more than 180 consecutive days must meet the applicable requirements in either Sec. 16-13-3, 16-13-4 or 16-13-5 for the floodplain district in which the structure is located;
- (11) The campground shall have signs clearly posted at all entrances warning of the flood hazard and the procedures for evacuation when a flood warning is issued; and
- (12) All service facilities, including but not limited to refuse collection, electrical service, gas lines, propane tanks, sewage systems and wells shall be properly anchored and placed at or floodproofed to the flood protection elevation.

(e) *Floodland Uses.* Floodland uses are conditional uses and may be permitted by the Village Board.

- (1) Open space and related uses may be permitted in any floodplain zoning district for the following uses provided that the applicant shall show that such use or

improvement will not impeded drainage, will not cause ponding, will not obstruct the floodway according to the requirements in section 16-13-1(a), will not increase flood flow velocities, will not increase the flood stage, and will not retard the movement of the floodwaters. When permitted, all structures shall be floodproofed in accordance with the standards set in section 16-13-7(e) of this division and constructed so as not to catch or collect debris nor be damaged by floodwaters. All floodproofed structures shall be securely anchored to protect them from large floods. Certification of floodproofing shall be made to the zoning administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths, and other factors associated with the regional flood elevation.

- (a) Navigational structures.
 - (b) Public water measuring and control facilities.
 - (c) Bridges and approaches.
 - (d) Marinas.
 - (e) Utility poles, towers, and underground conduit for transmitting electricity, telephone, natural gas and similar products and services.
 - (f) Park and recreational areas, not including structures.
 - (g) Parking lots and loading areas accessory to permitted uses in adjacent districts, not including new or used vehicle sales or storage areas, provided that such uses shall not be subject to inundation depths greater than two (2) feet or flood velocities greater than two (2) feet per second.
 - (h) Filing as authorized by the Department to permit the establishment of approved bulkhead lines.
 - (i) Other open space uses consistent with the purpose and intent of the district and compatible with uses in adjacent districts, not including structures.
- (2) The thin mantle spreading of spoils resulting from the cleanout and/or dredging of existing drainage ditches or canals may be permitted in floodplain zoning districts provided that the spreading does not result in an increase in the regional flood elevation; the spoils are leveled to a maximum depth of twelve (12) inches; and provided that such spreading will not have a significant adverse impact upon the criteria established by the Department in NR 116.07. Applicants are required to complete hydrologic and hydraulic analyses per section 16-13-2(a) unless the applicant can demonstrate the spoils are being placed to pre-existing elevations (i.e. due to settlement or erosion).
 - (3) Municipal water supply and sanitary sewerage systems may be permitted provided that the system is floodproofed – in accordance set forth in section 16-13-7(e) of this article – to an elevation at least two (2) feet above the regional flood elevation and is designed to eliminate or minimize infiltration of floodwaters into the system. All floodproofed utilities shall be anchored to prevent floatation. Certification of floodproofing shall be made to the zoning administrator and shall consist of a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood velocities, forces, depths and other factors associated with the regional flood elevation for the particular stream reach. Municipal water supply and sanitary sewerage systems are prohibited in the floodway.

Sec. 16-13-3 FLOODWAY DISTRICT (FW).

- (a) *Applicability.* This section applies to all floodway areas on the floodplain zoning maps and those identified pursuant to Sec. 16-13-5(d).
- (b) *Permitted Uses.* The following open space uses are allowed in the Floodway District and the floodway areas of the General Floodplain District, if:
- they are not prohibited by any other ordinance;
 - they meet the standards in Sec. 16-13-3(c) and 16-13-3(d); and
 - all permits or certificates have been issued according to Sec. 16-13-7(a).
- (1) Agricultural uses, such as: farming, outdoor plant nurseries, horticulture, viticulture, grazing, sod farms, truck farming and wild crop harvesting.
 - (2) Nonstructural industrial and commercial uses, such as loading areas, parking areas and airport landing strips.
 - (3) Nonstructural recreational uses, such as golf courses, tennis courts, archery ranges, picnic grounds, boat ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting, trap and skeet activities, hunting and fishing areas and hiking and horseback riding trails, subject to the fill limitations of Sec. 16-13-3(c)(4).
 - (4) Uses or structures accessory to open space uses, or classified as historic structures that comply with Sec. 16-13-3(c) and 16-13-3(d).
 - (5) Extraction of sand, gravel or other materials that comply with Sec. 16-13-3(c)(4).
 - (6) Functionally water-dependent uses, such as docks, piers or wharves, dams, flowage areas, culverts, navigational aids and river crossings of transmission lines, and pipelines that comply with Chs. 30 and 31, Wis. Stats.
 - (7) Public utilities, streets and bridges that comply with Sec. 16-13-3(c)(3).
 - (8) Accessory structures for navigation controls and aids and bridge approaches may be permitted by conditional use.
- (c) *Standards For Developments In The Floodway.*
- (1) *General.*
 - (a) Any development in the floodway shall comply with Sec. 16-13-2 and have a low flood damage potential.
 - (b) Applicants shall provide the following data to determine the effects of the proposal according to Sec. 16-13-2(a):
 1. A cross-section elevation view of the proposal, perpendicular to the watercourse, showing if the proposed development will obstruct flow; or
 2. An analysis calculating the effects of this proposal on regional flood height.
 - (c) The zoning administrator shall deny the permit application if the project will

cause any increase in the flood elevations upstream or downstream, based on the data submitted for Subd. (b) above.

- (2) *Structures.* Structures accessory to permanent open space uses, classified as a historic structure, or functionally dependent on a waterfront location may be allowed by conditional use permit if the structures comply with the following criteria:
 - (a) Not designed for human habitation, does not have a high flood damage potential and is constructed to minimize flood damage;
 - (b) The structures are constructed and placed on the building site so as to increase Flood heights less than 0.00 foot and minimally obstruct the flow of floodwaters. Structures shall be constructed with the long axis parallel to the flow of floodwaters and on the same line as adjoining structures;
 - (c) Shall have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings shall be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (d) Must be anchored to resist flotation, collapse and lateral movement; and restriction of bridge openings or other restricted sections of the stream or river;
 - (e) The structures shall have all services facilities, including mechanical and utility equipment, elevated or flood proofed to or above the flood protection elevation; and
 - (f) It must not obstruct flow of flood waters or cause any increase in flood levels during the occurrence of the regional flood.
- (3) *Public Utilities, Streets And Bridges.* Public utilities, streets and bridges may be allowed by permit, if:
 - (a) Adequate floodproofing measures are provided to the flood protection elevation; and
 - (b) Construction meets the development standards of Sec.16-13-2(a).
- (4) *Fills Or Deposition Of Materials.* Fills or deposition of materials may be allowed by permit, if:
 - (a) The requirements of s. 16-13-2(a) are met;
 - (b) No material is deposited in navigable waters unless a permit is issued by the Department pursuant to Ch. 30, Stats., and a permit pursuant to S. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344 has been issued, if applicable, and all other requirements have been met;
 - (c) The fill or other materials will be protected against erosion by riprap, vegetative cover, sheet piling or bulkheading; and
 - (d) The fill is not classified as a solid or hazardous material.
- (d) *Prohibited Uses.* All uses not listed as permitted uses in Sec. 16-13-4(b) are prohibited, including the following uses:
 - (1) Habitable structures, structures with high flood damage potential, or those not

- associated with permanent open-space uses;
- (2) Storing materials that are buoyant, flammable, explosive, injurious to property, water quality, or human, animal, plant, fish or other aquatic life;
- (3) Uses not in harmony with or detrimental to uses permitted in the adjoining districts;
- (4) Any private or public sewage systems, except portable latrines that are removed prior to flooding and systems associated with recreational areas and Department-approved campgrounds that meet the applicable provisions of local ordinances and Ch. SPS 383, Wis. Adm. Code;
- (5) Any public or private wells which are used to obtain potable water, except those for recreational areas that meet the requirements of local ordinances and Chs. NR 811 and NR 812, Wis. Adm. Code;
- (6) Any solid or hazardous waste disposal sites;
- (7) Any wastewater treatment ponds or facilities, except those permitted under s. NR 110.15(3)(b), Wis. Adm. Code; and
- (8) Any sanitary sewer or water supply lines, except those to service existing or proposed development located outside the floodway which complies with the regulations for the floodplain area occupied.

Sec. 16-13-4 FLOODFRINGE DISTRICT (FF).

- (a) *Applicability.* This section applies to all floodfringe areas shown on the floodplain zoning maps and those identified pursuant to Sec. 16-13-5(d).
- (b) *Permitted Uses.* Any structure, land use, or development is allowed in the Floodfringe District if the standards in Sec. 16-13-4(c) are met, the use is not prohibited by this or any other ordinance or regulation and all permits or certificates specified in Sec. 16-13-7(a) have been issued.
- (c) *Standards For Development In The Floodfringe.* Sec. 16-13-2(a) shall apply in addition to the following requirements according to the use requested. Any existing structure in the floodfringe must meet the requirements of Sec. 16-13-6 *Nonconforming Uses*;
 - (1) *Residential Uses.* Any structure, including a manufactured home, which is to be newly constructed or moved into the floodfringe, shall meet or exceed the following standards. Any existing structure in the floodfringe must meet the requirements of Sec. 16-13-6 *Nonconforming Uses*;
 - (a) The elevation of the lowest floor shall be at or above the flood protection elevation on fill unless the requirements of Sec. 16-13-4(c)(1)(b) can be met. The fill shall be one foot or more above the regional flood elevation extending at least 15 feet beyond the limits of the structure.
 - (b) The basement or crawlway floor may be placed at the regional flood elevation if it is dry floodproofed to the flood protection elevation. No basement or crawlway floor is allowed below the regional flood elevation;
 - (c) Contiguous dryland access shall be provided from a structure to land outside of the floodplain, except as provided in Subd. (d).
 - (d) In developments where existing street or sewer line elevations make compliance with Subd. (c) impractical, the municipality may permit new

development and substantial improvements where roads are below the regional flood elevation, if:

1. The municipality has written assurance from police, fire and emergency services that rescue and relief will be provided to the structure(s) by wheeled vehicles during a regional flood event; or
 2. The municipality has a DNR-approved emergency evacuation plan.
- (2) *Accessory Structures Or Uses.* Accessory structures shall be constructed on fill with the lowest floor at or above the regional flood elevation.
 - (3) *Commercial Uses.* Any commercial structure which is erected, altered or moved into the floodfringe shall meet the requirements of Sec. 16-13-4(c)(1). Subject to the requirements of Sec. 16-13-4(c)(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.
 - (4) *Manufacturing And Industrial Uses.* Any manufacturing or industrial structure which is erected, altered or moved into the floodfringe shall have the lowest floor elevated to or above the flood protection elevation or meet the floodproofing standards in Sec. 16-13-7(e). Subject to the requirements of Sec. 16-13-4(c)(5), storage yards, surface parking lots and other such uses may be placed at lower elevations if an adequate warning system exists to protect life and property.
 - (5) *Storage Of Materials.* Materials that are buoyant, flammable, explosive, or injurious to property, water quality or human, animal, plant, fish or aquatic life shall be stored at or above the flood protection elevation or floodproofed in compliance with Sec. 16-13-7(e). Adequate measures shall be taken to ensure that such materials will not enter the water body during flooding.
 - (6) *Public Utilities, Streets And Bridges.* All utilities, streets and bridges shall be designed to be compatible with comprehensive floodplain development plans; and
 - (a) When failure of public utilities, streets and bridges would endanger public health or safety, or where such facilities are deemed essential, construction or repair of such facilities shall only be permitted if they are designed to comply with Sec. 16-13-7(e).
 - (b) Minor roads or non-essential utilities may be constructed at lower elevations if they are designed to withstand flood forces to the regional flood elevation.
 - (7) *Sewage Systems.* All sewage disposal systems shall be designed to minimize or eliminate infiltration of flood water into the system, pursuant to Sec. 16-13-7(e)(3), to the flood protection elevation and meet the provisions of all local ordinances and Ch. SPS 383, Wis. Adm. Code.
 - (8) *Wells.* All wells shall be designed to minimize or eliminate infiltration of flood waters into the system, pursuant to Sec. 16-13-7(e)(3), to the flood protection elevation and shall meet the provisions of Chs. NR 811 and NR 812, Wis. Adm. Code.
 - (9) *Solid Waste Disposal Sites.* Disposal of solid or hazardous waste is prohibited in floodfringe areas.
 - (10) *Deposition Of Materials.* Any deposited material must meet all the provisions of this ordinance.

- (11) *Manufactured Homes.*
 - (a) Owners or operators of all manufactured home parks and subdivisions shall provide adequate surface drainage to minimize flood damage, and prepare, secure approval and file an evacuation plan, indicating vehicular access and escape routes, with local emergency management authorities.
 - (b) In existing manufactured home parks, all new homes, replacement homes on existing pads, and substantially improved homes shall:
 - 1. have the lowest floor elevated to the flood protection elevation; and
 - 2. be anchored so they do not float, collapse or move laterally during a flood
 - (c) Outside of existing manufactured home parks, including new manufactured home parks and all single units outside of existing parks, all new, replacement and substantially improved manufactured homes shall meet the residential development standards for the floodfringe in Sec. 16-13-4(c)(1).
- (12) *Mobile Recreational Vehicles.* All mobile recreational vehicles that are on site for 180 consecutive days or more or are not fully licensed and ready for highway use shall meet the elevation and anchoring requirements in s. 16-13-4(c)(11)(b) and (c). A mobile recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect utilities and security devices and has no permanently attached additions.

Sec. 16-13-5 GENERAL FLOODPLAIN DISTRICT (GFP).

- (a) *Applicability.* The provisions for this district shall apply to all floodplains mapped as A, AO or AH zones.
- (b) *Permitted Uses.* Pursuant to Sec. 16-13-5(d), it shall be determined whether the proposed use is located within the floodway or floodfringe.

Those uses permitted in the Floodway (Sec. 16-13-3(b)) and Floodfringe (Sec. 16-13-4(b)) Districts are allowed within the General Floodplain District, according to the standards of Sec. 16-13-5(c), provided that all permits or certificates required under Sec. 16-13-7(a) have been issued.

- (c) *Standards For Development In The General Floodplain District.* Sec. 16-13-3 applies to floodway areas, Sec. 16-13-4 applies to floodfringe areas. The rest of this ordinance applies to either district.
 - (1) In AO/AH Zones the structure's lowest floor must meet one of the conditions listed below whichever is higher:
 - (a) at or above the flood protection elevation; or
 - (b) two (2) feet above the highest adjacent grade around the structure; or
 - (c) the depth as shown on the FIRM
 - (2) In AO/AH zones, provide plans showing adequate drainage paths to guide floodwaters around structures.
- (d) *Determining Floodway And Floodfringe Limits.* Upon receiving an application for development within the general floodplain district, the zoning administrator shall:
 - (1) Require the applicant to submit two copies of an aerial photograph or a plan which

shows the proposed development with respect to the general floodplain district limits, stream channel, and existing floodplain developments, along with a legal description of the property, fill limits and elevations, building floor elevations and flood proofing measures; and the flood zone as shown on the FIRM.

- (2) Require the applicant to furnish any of the following information deemed necessary by the Department to evaluate the effects of the proposal upon flood height and flood flows, regional flood elevation and to determine floodway boundaries.
 - (a) A Hydrologic and Hydraulic Study as specified in Sec. 16-13-7(a)(2)(c).
 - (b) Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevations; size, location and layout of all proposed and existing structures on the site; location and elevations of streets, water supply, and sanitary facilities; soil types and other pertinent information;
 - (c) Specifications for building construction and materials, floodproofing, filling, dredging, channel improvement, storage, water supply and sanitary facilities.
- (e) *Limited Floodplain Boundary Adjustments.*
 - (1) Limited floodplain boundary adjustments by a combination of excavating and filling may be permitted in the GFP general floodplain district provided that:
 - (a) The excavation shall take place prior to or simultaneously with the filling and be in areas either within or contiguous to the floodland;
 - (b) At a minimum, the area removed from the floodplain shall be the same or less than the area created.
 - (c) The fill must be at least two feet above the regional or base flood elevation; the fill must be contiguous to land outside the floodplain and the map must be amended pursuant to section 16-13-8(b).
 - (d) The excavated earth material, if suitable for reuse in the area to be filled, shall be so used and, if not suitable or if insufficient in quantity for the fill required, the applicant may be permitted to utilize suitable fill obtained from land other than that which is being excavated.
 - (e) There shall be created by the excavation floodwater storage and conveyance capacity at least equal to that which shall be lost by filling.
 - (f) If it is determined that the floodplain boundary adjustment will be located in the floodway as determined by this section, then hydrologic and hydraulic analyses will need to be completed per section 16-13-2(a) to determine no increase to Base Flood Elevations.
 - (2) It is the express legislative intent that this section allow, after careful review, limited excavation and filling in and immediately adjacent to floodlands so as to create more usable and functional parcels in and adjacent to floodlands while not reducing the floodwater storage and conveyance capacity then existing in the floodlands.
 - (3) Before issuing a conditional use permit under this section, the Village Board shall make a specific written determination that the proposed excavation and filling complies with each of the foregoing four (4) standards as well as the standards applicable to conditional uses under Racine County Code of Ordinances section 20-1182 applicable in the Village. In making such determinations, the committee may request an advisory review by a duly constituted watershed committee of the

- Southeastern Wisconsin Regional Planning Commission.
- (4) A limited floodplain boundary adjustment requires department of natural resources (DNR) and federal emergency management agency (FEMA) approval before a conditional use permit may be issued.

Sec. 16-13-6 NONCONFORMING USES

(a) General.

- (1) *Applicability.* If these standards conform with Sec. 87.30, Wis. Stat. and Ch. NR 116.15, Wis. Adm. Code and 44 CFR 59-72, they shall apply to all modifications or additions to any nonconforming use or structure and to the use of any structure or premises which was lawful before the passage of this ordinance or any amendment thereto.
- (2) The existing lawful use of a structure or its accessory use which is not in conformity with the provisions of this ordinance may continue subject to the following conditions:

- (a) No modifications or additions to a nonconforming use or structure shall be permitted unless they comply with this ordinance. The words "modification" and "addition" include, but are not limited to, any alteration, addition, modification, structural repair, rebuilding or replacement of any such existing use, structure or accessory structure or use. Maintenance is not considered a modification; this includes painting, decorating, paneling and other nonstructural components and the maintenance, repair or replacement of existing private sewage or water supply systems or connections to public utilities. Any costs associated with the repair of a damaged structure are not considered maintenance.

The construction of a deck that does not exceed 200 square feet and that is adjacent to the exterior wall of a principal structure is not an extension, modification or addition. The roof of the structure may extend over a portion of the deck in order to provide safe ingress and egress to the principal structure.

- (b) If a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months, it is no longer permitted and any future use of the property, and any structure or building thereon, shall conform to the applicable requirements of this ordinance;
- (c) The Zoning Administrator shall keep a record which lists all nonconforming uses and nonconforming structures, their present equalized assessed value, the cost of all modifications or additions which have been permitted, and the percentage of the structure's total current value those modifications represent;
- (d) No modification or addition to any nonconforming structure or any structure with a nonconforming use, which over the life of the structure would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of

this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Sec. 16-13-4(c)(1). The costs of elevating the lowest floor of a nonconforming building or a building with a nonconforming use to the flood protection elevation are excluded from the 50% provisions of this paragraph;

- (e) No maintenance to any nonconforming structure or any structure with a nonconforming use, the cost of which would equal or exceed 50% of its present equalized assessed value, shall be allowed unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Sec. 16-13-4(c)(1).
- (f) If on a per event basis the total value of the work being done under (d) and (e) above equals or exceeds 50% of the present equalized assessed value the work shall not be permitted unless the entire structure is permanently changed to a conforming structure with a conforming use in compliance with the applicable requirements of this ordinance. Contiguous dry land access must be provided for residential and commercial uses in compliance with Sec. 16-13-4(c)(1).
- (g) Except as provided in subd. (h) below, if any nonconforming structure or any structure with a nonconforming use is destroyed or is substantially damaged, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the current ordinance requirements. A structure is considered substantially damaged if the total cost to restore the structure to its pre-damaged condition equals or exceeds 50% of the structure's present equalized assessed value.
- (h) For nonconforming buildings that are substantially damaged or destroyed by a nonflood disaster, the repair or reconstruction of any such nonconforming building shall be permitted in order to restore it to the size and use in effect prior to the damage event, provided that the minimum federal code requirements below are met and all required permits have been granted prior to the start of construction.
 - 1. Residential Structures
 - a. Shall have the lowest floor, including basement, elevated to or above the base flood elevation using fill, pilings, columns, posts or perimeter walls. Perimeter walls must meet the requirements of s. 16-13-7(e)(2).
 - b. Shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and shall be constructed with methods and materials resistant to flood damage.
 - c. Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components

- d. during conditions of flooding.
- e. In A Zones, obtain, review and utilize any flood data available from a federal, state or other source.
- f. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in Sec. 16-13-5(c)(1).
- g. In AO Zones, shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
- 2. Nonresidential Structures
 - a. Shall meet the requirements of s. 16-13-6(a)(2)(h)1a-b and e-f.
 - b. Shall either have the lowest floor, including basement, elevated to or above the regional flood elevation; or, together with attendant utility and sanitary facilities, shall meet the standards in Sec. 16-13-7(e)(1) or (2).
 - c. In AO Zones with no elevations specified, shall have the lowest floor, including basement, meet the standards in Sec. 16-13-5(c)(1).
- (3) A nonconforming historic structure may be altered if the alteration will not preclude the structure's continued designation as a historic structure, the alteration will comply with Sec. 16-13-3(c)(1), flood resistant materials are used, and construction practices and floodproofing methods that comply with Sec. 16-13-7(e) are used. Repair or rehabilitation of historic structures shall be exempt from the development standards of Sec. 16-13-6(a)(2)(h)1 if it is determined that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure.
- (4) Notwithstanding anything in this Chapter to the contrary, modifications, additions, maintenance and repairs to a nonconforming building shall not be prohibited based on cost and the building's nonconforming use shall be permitted to continue if:
 - (a) Any living quarters in the nonconforming building are elevated to be at or above the flood protection elevation;
 - (b) The lowest floor of the nonconforming building, including the basement, is elevated to or above the regional flood elevation;
 - (c) The nonconforming building is permanently changed to conform to the applicable requirements of Sec. 16-3-2; and
 - (d) The nonconforming building is in the floodway, the building is permanently changed to confirm to the applicable requirements of Sections 16-13-3(c), 16-13-3(c)(2)(b) through (f), 16-13-3(c)(3), 16-13-3(c)(4) and 16-13-6(b); or
 - (e) If the nonconforming building is in the floodfringe, the building is permanently changed to confirm to the applicable requirements of 16-13-4

and 16-13-6(c).

Note: 2019 ACT 175

(b) *Floodway District.*

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use in the Floodway District, unless such modification or addition:
 - (a) Has been granted a permit or variance which meets all ordinance requirements;
 - (b) Meets the requirements of Sec. 16-13-6(a);
 - (c) Shall not increase the obstruction to flood flows or regional flood height;
 - (d) Any addition to the existing structure shall be floodproofed, pursuant to Sec. 16-13-7(e), by means other than the use of fill, to the flood protection elevation; and
 - (e) If any part of the foundation below the flood protection elevation is enclosed, the following standards shall apply:
 1. The enclosed area shall be designed by a registered architect or engineer to allow for the efficient entry and exit of flood waters without human intervention. A minimum of two openings must be provided with a minimum net area of at least one square inch for every one square foot of the enclosed area. The lowest part of the opening can be no more than 12 inches above the adjacent grade;
 2. The parts of the foundation located below the flood protection elevation must be constructed of flood-resistant materials;
 3. Mechanical and utility equipment must be elevated or floodproofed to or above the flood protection elevation; and
 4. The use must be limited to parking, building access or limited storage.
- (2) No new on-site sewage disposal system, or addition to an existing on-site sewage disposal system, except where an addition has been ordered by a government agency to correct a hazard to public health, shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing on-site sewage disposal system in a floodway area shall meet the applicable requirements of all municipal ordinances, Sec. 16-13-7(e)(3) and Ch. SPS 383, Wis. Adm. Code.
- (3) No new well or modification to an existing well used to obtain potable water shall be allowed in the Floodway District. Any replacement, repair or maintenance of an existing well in the Floodway District shall meet the applicable requirements of all municipal ordinances, Sec. 16-13-7(e)(3) and Chs. NR 811 and NR 812, Wis. Adm. Code.

(c) *Floodfringe District.*

- (1) No modification or addition shall be allowed to any nonconforming structure or any structure with a nonconforming use unless such modification or addition has been granted a permit or variance by the municipality, and meets the requirements of Sec. 16-13-4(c) except where Sec. 16-13-6(c)(2) is applicable.

- (2) Where compliance with the provisions of Subd. (1) would result in unnecessary hardship and only where the structure will not be used for human habitation or be associated with a high flood damage potential, the Board of Adjustment/Appeals, using the procedures established in Sec. 16-13-7(c), may grant a variance from those provisions of Subd. (1) for modifications or additions using the criteria listed below. Modifications or additions which are protected to elevations lower than the flood protection elevation may be permitted if:
 - (a) floor is allowed below the regional flood elevation for residential or commercial structures;
 - (b) Human lives are not endangered;
 - (c) Public facilities, such as water or sewer, shall not be installed;
 - (d) Flood depths shall not exceed two feet;
 - (e) Flood velocities shall not exceed two feet per second; and
 - (f) The structure shall not be used for storage of materials as described in Sec. 16-13-4(c)(5).
- (3) All new private sewage disposal systems, or addition to, replacement, repair or maintenance of a private sewage disposal system shall meet all the applicable provisions of all local ordinances, Sec. 16-13-7(e)(3) and Ch. SPS 383, Wis. Adm. Code.
- (4) All new wells, or addition to, replacement, repair or maintenance of a well shall meet the applicable provisions of this ordinance, Sec. 16-13-7(e)(3) and Ch. NR 811 and NR 812, Wis. Adm. Code.

Sec. 16-13-7 ADMINISTRATION

Where a zoning administrator, planning agency or a board of appeals has already been appointed to administer a zoning ordinance adopted under Sec. 59.69, 59.692 or 62.23(7), Wis. Stats., these officials shall also administer this ordinance.

- (a) *Zoning Administrator.*
 - (1) *Duties And Powers.* The zoning administrator is authorized to administer this ordinance and shall have the following duties and powers:
 - (a) Advise applicants of the ordinance provisions, assist in preparing permit applications and appeals, and assure that the regional flood elevation for the proposed development is shown on all permit applications.
 - (b) Issue permits and inspect properties for compliance with provisions of this ordinance and issue certificates of compliance where appropriate.
 - (c) Inspect and assess all damaged floodplain structures to determine if substantial damage to the structures has occurred; assist owners of substantially damaged structures with increased cost of compliance insurance claims in accordance with federal regulations.
 - (d) Keep records of all official actions such as:
 1. All permits issued, inspections made, and work approved;

2. Documentation of certified lowest floor and regional flood elevations;
3. Floodproofing certificates.
4. Water surface profiles, floodplain zoning maps and ordinances, nonconforming uses and structures including changes, appeals, variances and amendments.
5. All substantial damage assessment reports for floodplain structures.
6. List of nonconforming structures and uses.
7. Where Base Flood elevation data are utilized, within the 1% annual chance flood:
 - i. Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and
 - ii. Obtain, if the structure has been floodproofed in accordance with this Chapter, the elevation (in relation to mean sea level) to which the structure was floodproofed, and
 - iii. Maintain a record of all such information in the office of the Zoning Administrator.
- (e) Submit copies of the following items to the Department Regional office:
 1. Within 10 days of the decision, a copy of any decisions on variances, appeals for map or text interpretations, and map or text amendments;
 2. Copies of case-by-case analyses and other information required by the Wisconsin Department of Natural Resources including an annual summary of floodplain zoning actions taken.
 3. Copies of substantial damage assessments performed and all related correspondence concerning the assessments.
- (f) Investigate, prepare reports, and report violations of this ordinance to the municipal zoning agency and attorney for prosecution. Copies of the reports shall also be sent to the Department Regional office.
- (g) Submit copies of text and map amendments to the FEMA Regional office.
- (h) Conduct public information activities.
- (i) Cause marks to be placed on structures to show the depth of inundation during the regional flood.
- (j) Ensure that all maps, engineering data, and regulations shall be available and widely distributed.
- (k) Encourage all real estate transfers to show within what floodplain zoning district any real property is located.
- (2) *Land Use Permit.* A land use permit shall be obtained before any new development; repair, modification or addition to an existing structure; or change in the use of a building or structure, including sewer and water facilities, may be initiated. The zoning administrator shall review all permit applications to determine whether proposed building sites will be reasonably safe from flooding and such applications shall meet the following standards and include:
 - (a) *General Information.*
 1. Name and address of the applicant, property owner and contractor;

2. Legal description, proposed use, and whether it is new construction or a modification;
- (b) *Site Development Plan.* A site plan drawn to scale shall be submitted with the permit application form and shall contain:
1. Location, dimensions, area and elevation of the lot;
 2. Location of the ordinary highwater mark of any abutting navigable waterways;
 3. Location of any structures with distances measured from the lot lines and street center lines;
 4. Location of any existing or proposed on-site sewage systems or private water supply systems;
 5. Location and elevation of existing or future access roads;
 6. Location of floodplain and floodway limits as determined from the official floodplain zoning maps;
 7. The elevation of the lowest floor of proposed buildings and any fill using the vertical datum from the adopted study – either National Geodetic Vertical Datum (NGVD) or North American Vertical Datum (NAVD);
 8. Data sufficient to determine the regional flood elevation in NGVD or NAVD at the location of the development and to determine whether or not the requirements of Sec. 16-13-3 or 16-13-4 are met; and
 9. Data to determine if the proposed development will cause an obstruction to flow or an increase in regional flood height or discharge according to Sec. 16-13-2(a). This may include any of the information noted in Sec. 16-13-3(c)(1).
- (c) *Hydraulic and Hydrologic Studies to Analyze Development.* All hydraulic and hydrologic studies shall be completed under the direct supervision of a professional engineer registered in the State. The study contractor shall be responsible for the technical adequacy of the study. All studies shall be reviewed and approved by the Department.
1. Zone A floodplains:
 - a. *Hydrology.* The appropriate method shall be based on the standards in Ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge.*
 - b. *Hydraulic Modeling.* The regional flood elevation shall be based on the standards in Ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
 - i. determination of the required limits of the hydraulic model shall be based on detailed study information for downstream structures (dam, bridge, culvert) to determine adequate starting WSEL for the study.

- ii. channel sections must be surveyed.
- iii. minimum four foot contour data in the overbanks shall be used for the development of cross section overbank and floodplain mapping.
- iv. a maximum distance of 500 feet between cross sections is allowed in developed areas with additional intermediate cross sections required at transitions in channel bottom slope including a survey of the channel at each location.
- v. the most current version of HEC_RAS shall be used.
- vi. a survey of bridge and culvert openings and the top of road is required at each structure.
- vii. additional cross sections are required at the downstream and upstream limits of the proposed development and any necessary intermediate locations based on the length of the reach if greater than 500 feet.
- viii. standard accepted engineering practices shall be used when assigning parameters for the base model such as flow, Manning's N values, expansion and contraction coefficients or effective flow limits. The base model shall be calibrated to past flooding data such as high water marks to determine the reasonableness of the model results. If no historical data is available, adequate justification shall be provided for any parameters outside standard accepted engineering practices.
- ix. the model must extend past the upstream limit of the difference in the existing and proposed flood profiles in order to provide a tie-in to existing studies. The height difference between the proposed flood profile and the existing study profiles shall be no more than 0.00 feet.

c. Mapping. A work map of the reach studied shall be provided, showing all cross section locations, floodway/floodplain limits based on best available topographic data, geographic limits of the proposed development and whether the proposed development is located in the floodway.

- i. If the proposed development is located outside of the floodway, then it is determined to have no impact on the regional flood elevation.
- ii. If any part of the proposed development is in the floodway, it must be added to the base model to show the difference between existing and proposed conditions. The study must ensure that all

coefficients remain the same as in the existing model, unless adequate justification based on standard accepted engineering practices is provided.

2. Zone AE Floodplains

- a. Hydrology If the proposed hydrology will change the existing study, the appropriate method to be used shall be based on Ch. NR 116.07(3), Wis. Admin. Code, *Hydrologic Analysis: Determination of Regional Flood Discharge*.
- b. Hydraulic model The regional flood elevation shall be based on the standards in Ch. NR 116.07(4), Wis. Admin. Code, *Hydraulic Analysis: Determination of Regional Flood Elevation* and the following:
 - i. Duplicate Effective Model. The effective model shall be reproduced to ensure correct transference of the model data and to allow integration of the revised data to provide a continuous FIS model upstream and downstream of the revised reach. If data from the effective model is available, models shall be generated that duplicate the FIS profiles and the elevations shown in the Floodway Data Table in the FIS report to within 0.1 foot.
 - ii. Corrected Effective Model. The Corrected Effective Model shall not include any man-made physical changes since the effective model date, but shall import the model into the most current version of HEC-RAS for Department review.
 - iii. Existing (Pre-Project Conditions) Model. The Existing Model shall be required to support conclusions about the actual impacts of the project associated with the Revised (Post-Project) Model or to establish more up-to-date models on which to base the Revised (Post-Project) Model.
 - iv. Revised (Post-Project Conditions) Model. The Revised (Post-Project Conditions) Model shall incorporate the Existing Model and any proposed changes to the topography caused by the proposed development. This model shall reflect proposed conditions.
 - v. All changes to the Duplicate Effective Model and subsequent models must be supported by certified topographic information, bridge plans, construction plans and survey notes.
 - vi. Changes to the hydraulic models shall be limited to the stream reach for which the revision is being requested. Cross sections upstream and downstream of the revised reach shall be identical to those in the

effective model and result in water surface elevations and top widths computed by the revised models matching those in the effective models upstream and downstream of the revised reach as required. The Effective Model shall not be truncated.

- c. Mapping Maps and associated engineering data shall be submitted to the Department for review which meet the following conditions:
- i. Consistency between the revised hydraulic models, the revised floodplain and floodway delineations, the revised flood profiles, topographic work map, annotated FIRMs and/or Flood Boundary Floodway Maps (FBFMs), construction plans, bridge plans.
 - ii. Certified topographic map of suitable scale, contour interval, and a planimetric map showing the applicable items. If a digital version of the map is available, it may be submitted in order that the FIRM may be more easily revised.
 - iii. Annotated FIRM panel showing the revised 1% and 0.2% annual chance floodplains and floodway boundaries.
 - iv. If an annotated FIRM and/or FBFM and digital mapping data (GIS or CADD) are used then all supporting documentation or metadata must be included with the data submission along with the Universal Transverse Mercator (UTM) projection and State Plane Coordinate System in accordance with FEMA mapping specifications.
 - v. The revised floodplain boundaries shall tie into the effective floodplain boundaries.
 - vi. All cross sections from the effective model shall be labeled in accordance with the effective map and a cross section lookup table shall be included to relate to the model input numbering scheme.
 - vii. Both the current and proposed floodways shall be shown on the map.
 - viii. The stream centerline, or profile baseline used to measure stream distances in the model shall be visible on the map.

- (d) *Expiration.* All permits issued under the authority of this ordinance shall expire no more than 180 days after issuance. The permit may be extended for a maximum of 180 days for good and sufficient cause.
- (3) *Certificate Of Compliance.* No land shall be occupied or used, and no building which is hereafter constructed, altered, added to, modified, repaired, rebuilt or replaced shall be occupied until a certificate of compliance is issued by the zoning administrator, except where no permit is required, subject to the following provisions:
 - (a) The certificate of compliance shall show that the building or premises or part thereof, and the proposed use, conform to the provisions of this ordinance;
 - (b) Application for such certificate shall be concurrent with the application for a permit;
 - (c) If all ordinance provisions are met, the certificate of compliance shall be issued within 10 days after written notification that the permitted work is completed;
 - (d) The applicant shall submit a certification signed by a registered professional engineer, architect or land surveyor that the fill, lowest floor and floodproofing elevations are in compliance with the permit issued. Floodproofing measures also require certification by a registered professional engineer or architect that the requirements of s. 16-13-7(e) are met.
- (4) *Other Permits.* Prior to obtaining a floodplain development permit the applicant must secure all necessary permits from federal, state, and local agencies, including but not limited to those required by the U.S. Army Corps of Engineers under s. 404 of the Federal Water Pollution Control Act, Amendments of 1972, 33 U.S.C. 1344.
- (b) *Zoning Agency.*
 - (1) The Village of Caledonia Planning Commission shall:
 - (a) oversee the functions of the office of the zoning administrator;
 - (b) review and advise the Village Board by making recommendations on all proposed amendments to this ordinance, maps and text;
 - (c) review and make recommendations to the Village Board on conditional uses and site plan; and
 - (d) such other functions as established by the Village Board.
 - (2) The Village of Caledonia Planning Commission shall not:
 - (a) grant variances to the terms of the ordinance in place of action by the Board of Adjustment/Appeals; or
 - (b) amend the text or zoning maps in place of official action by the governing body.
- (c) *Board Of Appeals.* The Board of Appeals, created under Sec. 62.23(7)(e), Stats., for cities or villages, is hereby authorized or shall be appointed to act for the purposes of this ordinance. The Board shall exercise the powers conferred by Wisconsin Statutes and adopt rules for the conduct of business. The zoning administrator shall not be the secretary of the Board.
 - (1) *Powers And Duties.* The Board of Appeals shall:

- (a) Appeals - Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement or administration of this ordinance;
 - (b) Boundary Disputes - Hear and decide disputes concerning the district boundaries shown on the official floodplain zoning map; and
 - (c) Variances - Hear and decide, upon appeal, variances from the ordinance standards.
- (2) *Appeals To The Board.*
- (a) Appeals to the board may be taken by any person aggrieved, or by any officer or department of the municipality affected by any decision of the zoning administrator or other administrative officer. Such appeal shall be taken within 30 days unless otherwise provided by the rules of the board, by filing with the official whose decision is in question, and with the board, a notice of appeal specifying the reasons for the appeal. The official whose decision is in question shall transmit to the board all records regarding the matter appealed.
 - (b) *Notice And Hearing For Appeals Including Variances.*
 - 1. Notice - The board shall:
 - a. Fix a reasonable time for the hearing;
 - b. Publish adequate notice pursuant to Wisconsin Statutes, specifying the date, time, place and subject of the hearing; and
 - c. Assure that notice shall be mailed to the parties in interest and the Department Regional office at least 10 days in advance of the hearing.
 - 2. Hearing - Any party may appear in person or by agent. The board shall:
 - a. Resolve boundary disputes according to Sec. 16-13-7(c)(3);
 - b. Decide variance applications according to Sec. 16-13-7(c)(4); and
 - c. Decide appeals of permit denials according to Sec. 16-13-7(d).
 - (c) Decision: The final decision regarding the appeal or variance application shall:
 - 1. Be made within a reasonable time;
 - 2. Be sent to the Department Regional office within 10 days of the decision;
 - 3. Be a written determination signed by the chairman or secretary of the Board;
 - 4. State the specific facts which are the basis for the Board's decision;
 - 5. Either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or grant or deny the variance

- application; and
 - 6. Include the reasons for granting an appeal, describing the hardship demonstrated by the applicant in the case of a variance, clearly stated in the recorded minutes of the Board proceedings.
 - (3) *Boundary Disputes.* The following procedure shall be used by the Board in hearing disputes concerning floodplain district boundaries:
 - (a) If a floodplain district boundary is established by approximate or detailed floodplain studies, the flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined;
 - (b) The person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board; and
 - (c) If the boundary is incorrectly mapped, the Board should inform the zoning committee or the person contesting the boundary location to petition the governing body for a map amendment according to s. 16-13-8 *Amendments*.
 - (4) *Variance.*
 - (a) The Board may, upon appeal, grant a variance from the standards of this ordinance if an applicant convincingly demonstrates that:
 - 1. Literal enforcement of the ordinance will cause unnecessary hardship;
 - 2. The hardship is due to adoption of the floodplain ordinance and unique property conditions, not common to adjacent lots or premises. In such case the ordinance or map must be amended;
 - 3. The variance is not contrary to the public interest; and
 - 4. The variance is consistent with the purpose of this ordinance in Sec. 16-13-1(c).
 - (b) In addition to the criteria in subd. (a) above, to qualify for a variance under FEMA regulations, the following criteria must be met:
 - 1. The variance shall not cause any increase in the regional flood elevation;
 - 2. Variances can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE; and
 - 3. Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risks to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of the ordinance.
 - (c) A variance shall not:
 - 1. Grant, extend or increase any use prohibited in the zoning district;
 - 2. Be granted for a hardship based solely on an economic gain or loss;
 - 3. Be granted for a hardship which is self-created.
 - 4. Damage the rights or property values of other persons in the area;
 - 5. Allow actions without the amendments to this ordinance or map(s) required in Sec. 16-13-8 *Amendments*; and
 - 6. Allow any alteration of an historic structure, including its use, which

would preclude its continued designation as an historic structure.

- (d) When a floodplain variance is granted the Board shall notify the applicant in writing that it may increase risks to life and property and flood insurance premiums could increase up to \$25.00 per \$100.00 of coverage. A copy shall be maintained with the variance record.
- (d) *To Review Appeals Of Permit Denials in Floodland Districts.*
 - (1) The Zoning Agency (Sec. 16-13-7(b)) or Board shall review all data related to the appeal. This may include:
 - (a) Permit application data listed in Sec. 16-13-7(a)(2);
 - (b) Floodway/floodfringe determination data in Sec. 16-13-5(d);
 - (c) Data listed in Sec. 16-13-3(c)(1)(b) where the applicant has not submitted this information to the zoning administrator; and
 - (d) Other data submitted with the application, or submitted to the Board with the appeal.
 - (2) For appeals of all denied permits the Board shall:
 - (a) Follow the procedures of Sec. 16-13-7(c);
 - (b) Consider zoning agency recommendations; and
 - (c) Either uphold the denial or grant the appeal.
 - (3) For appeals concerning increases in regional flood elevation the Board shall:
 - (a) Uphold the denial where the Board agrees with the data showing an increase in flood elevation. Increases may only be allowed after amending the flood profile and map and all appropriate legal arrangements are made with all adversely affected property owners as per the requirements of Sec. 16-13-8 *Amendments*; and
 - (b) Grant the appeal where the Board agrees that the data properly demonstrates that the project does not cause an increase provided no other reasons for denial exist.
- (e) *Floodproofing Standards For Nonconforming Structures Or Uses.*
 - (1) No permit or variance shall be issued for a non-residential structure designed to be watertight below the regional flood elevation until the applicant submits a plan certified by a registered professional engineer or architect that the floodproofing measures will protect the structure or development to the flood protection elevation and submits a FEMA Floodproofing Certificate.
 - (2) For a structure designed to allow the entry of floodwaters, no permit or variance shall be issued until the applicant submits a plan either:
 - (a) certified by a registered professional engineer or architect; or
 - (b) meets or exceeds the following standards:
 - 1. a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2. the bottom of all openings shall be no higher than one foot above grade; and
 - 3. openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (3) Floodproofing measures shall be designed, as appropriate, to:

- (a) Withstand flood pressures, depths, velocities, uplift and impact forces and other regional flood factors;
 - (b) Protect structures to the flood protection elevation;
 - (c) Anchor structures to foundations to resist flotation and lateral movement;
 - (d) Minimize or eliminate infiltration of flood waters; and
 - (e) Minimize or eliminate discharges into flood waters.
- (f) *Public Information.*
 - (1) Place marks on structures to show the depth of inundation during the regional flood.
 - (2) All maps, engineering data and regulations shall be available and widely distributed.
 - (3) Real estate transfers should show what floodplain district any real property is in.

Sec. 16-13-8 AMENDMENTS

- (a) *When Allowed.* Obstructions or increases may only be permitted if amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with s. 16-13-8(b).
 - (1) In AE Zones with a mapped floodway, no obstructions or increases shall be permitted unless the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain zoning maps, floodway lines and water surface profiles, in accordance with Sec. 16-13-8(b). Any such alterations must be reviewed and approved by FEMA and the DNR.
 - (2) In A Zones increases equal to or greater than 1.0 foot may only be permitted if the applicant receives a Conditional Letter of Map Revision from FEMA and amendments are made to this ordinance, the official floodplain maps, floodway lines, and water surface profiles, in accordance with Sec. 16-13-8(b).
- (b) *General.* The governing body shall change or supplement the floodplain zoning district boundaries and this ordinance in the manner outlined in Sec. 16-13-8(c) below. Actions which require an amendment to the ordinance and/ or submittal of a Letter of Map Change (LOMC) include, but are not limited to, the following:
 - (1) Any fill or floodway encroachment that obstructs flow causing any increase in the regional flood height;
 - (2) Any change to the floodplain boundaries and/or watercourse alterations on the FIRM;
 - (3) Any changes to any other officially adopted floodplain maps listed in 16-13-1(e)(2)(b);
 - (4) Any floodplain fill which raises the elevation of the filled area to a height at or above the flood protection elevation and is contiguous to land lying outside the floodplain;
 - (5) Correction of discrepancies between the water surface profiles and floodplain maps;
 - (6) Any upgrade to a floodplain zoning ordinance text required by s. NR 116.05, Wis. Adm. Code, or otherwise required by law, or for changes by the municipality; and

- (7) All channel relocations and changes to the maps to alter floodway lines or to remove an area from the floodway or the floodfringe that is based on a base flood elevation from a FIRM requires prior approval by FEMA.
- (c) *Procedures.* Ordinance amendments may be made upon petition of any party according to the provisions of Sec. 62.23, Wis. Stat., for cities and villages, or Sec. 59.69, Wis. Stat., for counties. The petitions shall include all data required by Sec. 16-13-5(d) and 16-13-7(a)(2). The Land Use Permit shall not be issued until a Letter of Map Revision is issued by FEMA for the proposed changes.
 - (1) The proposed amendment shall be referred to the zoning agency for a public hearing and recommendation to the governing body. The amendment and notice of public hearing shall be submitted to the Department Regional office for review prior to the hearing. The amendment procedure shall comply with the provisions of Sec. 62.23, Wis. Stat., for cities and villages or Sec. 59.69, Wis. Stat., for counties.
 - (2) No amendments shall become effective until reviewed and approved by the Department.
 - (3) All persons petitioning for a map amendment that obstructs flow causing any increase in the regional flood height, shall obtain flooding easements or other appropriate legal arrangements from all adversely affected property owners and notify local units of government before the amendment can be approved by the governing body.

Sec. 16-13-9 ENFORCEMENT AND PENALTIES

Any violation of the provisions of this ordinance by any person shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, forfeit to the municipality a penalty of not more than \$50.00 (Fifty dollars), together with a taxable cost of such action. Each day of continued violation shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the municipality, the state, or any citizen thereof pursuant to Sec. 87.30, Wis. Stat.

Sec. 16-13-10 DEFINITIONS.

Unless specifically defined, words and phrases in this ordinance shall have their common law meaning and shall be applied in accordance with their common usage. Words used in the present tense include the future, the singular number includes the plural and the plural number includes the singular. The word "may" is permissive, "shall" is mandatory and is not discretionary.

- 1. A ZONES – Those areas shown on the Official Floodplain Zoning Map which would be inundated by the regional flood. These areas may be numbered or unnumbered A Zones. The A Zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

2. AH ZONE – See “AREA OF SHALLOW FLOODING”.
3. AO ZONE – See “AREA OF SHALLOW FLOODING”.
4. ACCESSORY STRUCTURE OR USE – A facility, structure, building or use which is accessory or incidental to the principal use of a property, structure or building.
5. ALTERATION – An enhancement, upgrading or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.
6. AREA OF SHALLOW FLOODING – A designated AO, AH, AR/AO, AR/AH, or VO zone on a community’s Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.
7. BASE FLOOD – Means the flood having a one percent chance of being equaled or exceeded in any given year, as published by FEMA as part of a FIS and depicted on a FIRM.
8. BASEMENT – Any enclosed area of a building having its floor sub-grade, i.e., below ground level, on all sides.
9. BUILDING – See STRUCTURE.
10. BULKHEAD LINE – A geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the Department pursuant to s. 30.11, Stats., and which allows limited filling between this bulkhead line and the original ordinary highwater mark, except where such filling is prohibited by the floodway provisions of this ordinance.
11. CAMPGROUND – Any parcel of land which is designed, maintained, intended or used for the purpose of providing sites for nonpermanent overnight use by 4 or more camping units, or which is advertised or represented as a camping area.
12. CAMPING UNIT – Any portable device, no more than 400 square feet in area, used as a temporary shelter, including but not limited to a camping trailer, motor home, bus, van, pick-up truck, or tent that is fully licensed, if required, and ready for highway use.
13. CERTIFICATE OF COMPLIANCE – A certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this ordinance.
14. CHANNEL – A natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.
15. CRAWLWAYS or CRAWL SPACE – An enclosed area below the first usable floor of a building, generally less than five feet in height, used for access to plumbing and electrical utilities.
16. DECK – An unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.
17. DEPARTMENT – The Wisconsin Department of Natural Resources.
18. DEVELOPMENT – Any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory

structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

19. DRYLAND ACCESS – A vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.
20. ENCROACHMENT – Any fill, structure, equipment, use or development in the floodway.
21. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) – The federal agency that administers the National Flood Insurance Program.
22. FLOOD INSURANCE RATE MAP (FIRM) – A map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.
23. FLOOD or FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following conditions:
 - The overflow or rise of inland waters;
 - The rapid accumulation or runoff of surface waters from any source;
 - The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
 - The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.
24. FLOOD FREQUENCY – The probability of a flood occurrence which is determined from statistical analyses. The frequency of a particular flood event is usually expressed as occurring, on the average once in a specified number of years or as a percent (%) chance of occurring in any given year.
25. FLOODFRINGE – That portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.
26. FLOOD HAZARD BOUNDARY MAP – A map designating approximate flood hazard areas. Flood hazard areas are designated as unnumbered A-Zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a Flood Insurance Study and a Flood Insurance Rate Map.
27. FLOOD INSURANCE STUDY – A technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines.

The flood hazard areas are designated as numbered and unnumbered A-Zones. Flood Insurance Rate Maps, that accompany the Flood Insurance Study, form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

28. FLOODPLAIN – Land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, and may include other designated floodplain areas for regulatory purposes.
29. FLOODPLAIN ISLAND – A natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.
30. FLOODPLAIN MANAGEMENT – Policy and procedures to insure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.
31. FLOOD PROFILE – A graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.
32. FLOODPROOFING – Any combination of structural provisions, changes or adjustments to properties and structures, water and sanitary facilities and contents of buildings subject to flooding, for the purpose of reducing or eliminating flood damage.
33. FLOOD PROTECTION ELEVATION – An elevation of two feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: FREEBOARD.)
34. FLOOD STORAGE – Those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.
35. FLOODWAY – The channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.
36. FREEBOARD – A safety factor expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for any factors that cause flood heights greater than those calculated, including ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of watershed urbanization, loss of flood storage areas due to development and aggregation of the river or stream bed.
37. HABITABLE STRUCTURE – Any structure or portion thereof used or designed for human habitation.
38. HEARING NOTICE – Publication or posting meeting the requirements of Ch. 985, Stats. For appeals, a Class 1 notice, published once at least one week (7 days) before the hearing, is required. For all zoning ordinances and amendments, a Class 2 notice, published twice, once each week consecutively, the last at least a week (7 days) before the hearing. Local ordinances or bylaws may require additional notice, exceeding these minimums.
39. HIGH FLOOD DAMAGE POTENTIAL – Damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.
40. HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
41. HISTORIC STRUCTURE – Any structure that is either:

- Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior; or by the Secretary of the Interior in states without approved programs.
42. **INCREASE IN REGIONAL FLOOD HEIGHT** – A calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.
43. **LAND USE** – Any nonstructural use made of unimproved or improved real estate. (Also see DEVELOPMENT.)
44. **LOWEST ADJACENT GRADE** – Elevation of the lowest ground surface that touches any of the exterior walls of a building.
45. **LOWEST FLOOR** – The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.
46. **MAINTENANCE** – The act or process of restoring to original soundness, including redecorating, refinishing, non structural repairs, or the replacement of existing fixtures, systems or equipment with equivalent fixtures, systems or structures.
47. **MANUFACTURED HOME** – A structure transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected to required utilities. The term "manufactured home" includes a mobile home but does not include a "mobile recreational vehicle."
48. **MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION** – A parcel (or contiguous parcels) of land, divided into two or more manufactured home lots for rent or sale.
49. **MOBILE/MANUFACTURED HOME PARK OR SUBDIVISION, EXISTING** – A parcel of land, divided into two or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this ordinance. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

50. **MOBILE/MANUFACTURED HOME PARK, EXPANSION TO EXISTING** – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.
51. **MOBILE RECREATIONAL VEHICLE** – A vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of "mobile recreational vehicles."
52. **MODEL, CORRECTED EFFECTIVE** – A hydraulic engineering model that corrects any errors that occur in the Duplicate Effective Model, adds any additional cross sections to the Duplicate Effective Model, or incorporates more detailed topographic information than that used in the current effective model.
53. **MODEL, DUPLICATE EFFECTIVE** – A copy of the hydraulic analysis used in the effective FIS and referred to as the effective model.
54. **MODEL, EFFECTIVE** – The hydraulic engineering model that was used to produce the current effective Flood Insurance Study.
55. **MODEL, EXISTING (PRE-PROJECT)** – A modification of the Duplicate Effective Model or Corrected Effective Model to reflect any man made modifications that have occurred within the floodplain since the date of the effective model but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective model, then this model would be identical to the Corrected Effective Model or Duplicate Effective Model.
56. **MODEL, REVISED (POST-PROJECT)** – A modification of the Existing or Pre-Project Conditions Model, Duplicate Effective Model or Corrected Effective Model to reflect revised or post-project conditions.
57. **MUNICIPALITY or MUNICIPAL** – The county, city or village governmental units enacting, administering and enforcing this zoning ordinance.
58. **NAVD or NORTH AMERICAN VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1988 adjustment.
59. **NGVD or NATIONAL GEODETIC VERTICAL DATUM** – Elevations referenced to mean sea level datum, 1929 adjustment.
60. **NEW CONSTRUCTION** – For floodplain management purposes, "new construction" means structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

61. **NONCONFORMING STRUCTURE** – An existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this ordinance for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the flood protection elevation, the structure is nonconforming.)
62. **NONCONFORMING USE** – An existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this ordinance for the area of the floodplain which it occupies. (Such as a residence in the floodway.)
63. **OBSTRUCTION TO FLOW** – Any development which blocks the conveyance of floodwaters such that this development alone or together with any future development will cause an increase in regional flood height.
64. **OFFICIAL FLOODPLAIN ZONING MAP** – That map, adopted and made part of this ordinance, as described in s. 1.5(2), which has been approved by the Department and FEMA.
65. **OPEN SPACE USE** – Those uses having a relatively low flood damage potential and not involving structures.
66. **ORDINARY HIGHWATER MARK** – The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.
67. **PERSON** – An individual, or group of individuals, corporation, partnership, association, municipality or state agency.
68. **PRIVATE SEWAGE SYSTEM** – A sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also means an alternative sewage system approved by the Department of Safety and Professional Services, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.
69. **PUBLIC UTILITIES** – Those utilities using underground or overhead transmission lines such as electric, telephone and telegraph, and distribution and collection systems such as water, sanitary sewer and storm sewer.
70. **REASONABLY SAFE FROM FLOODING** – Means base flood waters will not inundate the land or damage structures to be removed from the floodplain and that any subsurface waters related to the base flood will not damage existing or proposed buildings.
71. **REGIONAL FLOOD** – A flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE.
72. **START OF CONSTRUCTION** – The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of

columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

73. **STRUCTURE** – Any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts.
74. **SUBDIVISION** – Has the meaning given in Sec. 236.02(12), Wis. Stat.
75. **SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the equalized assessed value of the structure before the damage occurred.
76. **SUBSTANTIAL IMPROVEMENT** – Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the equalized assessed value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the work performed. The term does not, however, include either any project for the improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions; or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
77. **UNNECESSARY HARDSHIP** – Where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing areas, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the ordinance.
78. **VARIANCE** – An authorization by the board of adjustment or appeals for the construction or maintenance of a building or structure in a manner which is inconsistent with dimensional standards (not uses) contained in the floodplain zoning ordinance.
79. **VIOLATION** – The failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.
80. **WATERSHED** – The entire region contributing runoff or surface water to a watercourse or body of water.
81. **WATER SURFACE PROFILE** – A graphical representation showing the elevation

of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

82. WELL – means an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

DRAFT

CHAPTER 14

(Ordinance 2014-17; 01/19/15)

(*Overlay in Ordinance Chapter – See Chapter 15 for Shoreland Zoning Ordinance)

MOBILE TOWER SITING

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-14-1	Definitions.	2014-17*	01/19/15
16-14-2	Purpose.		
16-14-3	Amateur and Citizen Band Towers.		
16-14-4	Application Submittal Requirements – New Mobile Service Support Structures.		
16-14-5	Application Process – New Mobile Service Support Structures.		
16-14-6	Technical Review.		
16-14-7	Abandonment.		
16-14-8	Security for Removal.		
16-14-9	Continued Compliance.		
16-14-10	Use of Existing Structures.		
16-14-11	Application Submittal Requirements – Class 1 Collocations.		
16-14-12	Application Process – Class 1 Collocation.		
16-14-13	Application Submittal Requirements – Class 2 Collocation.		
16-14-14	Application Process – Class 2 Collocation.		
16-14-15	Application Process – Liability.		
16-14-16	Site Specifics.		
16-14-17	Severability.		
16-14-18	Fees.		
16-14-19	Reserved.		

SEC. 16-14-1 DEFINITIONS.

In addition to the definitions under Chapter 18 of Title 16 of the Code, the following definitions shall apply to this Chapter:

- (a) **Class 1 Collocation** means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free-standing support structure for the facility but does need to engage in substantial modification.
- (b) **Class 2 Collocation** means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free-standing support structure for the facility but does not need to engage in substantial modification.
- (c) **Mobile Service Facility** means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.
- (d) **Mobile Service Provider** means a person who provides mobile service as defined by federal law.
- (e) **Support Structure** means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.
- (f) **Utility Pole** means a structure owned or operated by an alternative telecommunications utility, public utility, telecommunications utility, county, municipality, or cooperative associate, all as defined under current law or under the proposal, and that is specifically for and used to carry lines, cables, or wires for telecommunications service, video service, or for electricity or to provide light.
- (g) **Antenna** means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.
- (h) **Mobile Service Support Structure** means free-standing structure that is designed to support a mobile service facility.
- (i) **Search Ring** means shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and demographics of the service area.
- (j) **Substantial Modification** means the modification of a mobile service support structure, including the mounting of an antenna on such a structure that does any of the following:
 - (1) for structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet;
 - (2) for structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by 10% or more;
 - (3) measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by more than twenty (20) feet or more, unless a larger area is needed for collocation;
- (k) **Equipment Compound** means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

- (l) **Existing Structure** means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a county or municipality.
- (m) **Fall Zone** means the area over which a mobile support structure is designed to collapse.

SEC. 16-14-2. PURPOSE.

The purpose of this section is to regulate by zoning permit, site plan review, or conditional use the siting and construction of any new mobile service support structures and/or facilities.

Mobile service support structures or other supporting buildings or structures that are used to elevate an antenna, or which act as an antenna, and are intended for wireless telecommunications, are subject to the regulations and site development standards set forth in this Chapter.

SEC. 16-14-3. AMATEUR AND CITIZEN BAND TOWERS.

Amateur and citizen band towers and antennas where the structure is fifty (50) feet or more in height are exempt from the provisions of this Chapter except for the following:

- (a) The installation or construction of such structure must require a site plan review and approval in accordance with the procedure set forth in **[Insert New Section No. _____, old Section is 20-1184]**. The Plan Commission may request a hearing following a site plan review if it is determined that such a hearing is in the public interest.
- (b) Such structures must be considered an accessory structure and may only be permitted in the side yard and rear yard. A minimum ten (10) foot side-yard and rear-yard setback must be maintained.

SEC. 16-14-4 APPLICATION SUBMITTAL REQUIREMENTS – NEW MOBILE SERVICE SUPPORT STRUCTURES.

The siting and construction of any new mobile service support structures will require a conditional use permit. All structures should be camouflaged to the greatest extent possible, including compatible building materials, colors, and screening. Per Wisconsin State Statutes 66.0404(4)(g), an application may not be denied based solely on aesthetics concerns. A zoning permit application must be completed by the applicant and submitted to the Development Services Office. In addition to the requirements found in Section 16-9-2, the application must contain the following information:

- (a) Applicant name, business address, and phone number of all known occupants of the proposed mobile service support structure, including contact individual(s) for the applicant(s). The proposed structure must be designed structurally, electronically, and in all respects to accommodate collocation of both the applicant's antennas and antennas for at least two (2) additional users. The equipment compound must also be able to accommodate multiple users.

- (b) The location of the proposed mobile service support facility.
- (c) If the applicant does not own the site or the tower, the applicant must provide a lease agreement or binding lease memorandum which shows on its face:
 - (1) that it does not preclude the site owner from entering into leases on the site with other provider(s);
 - (2) that it does not preclude the tower owner from entering into leases on the tower with other provider(s);
 - (3) the legal descriptions and amount of property leased;
 - (4) in the event of abandonment, the Village reserves the right to remove the tower at the property owner's expense.
- (d) A scaled site plan which shows property lines, location of mobile service support structure, setback distances, mobile service facility, and fencing.
- (e) A sketch, concept, or rendition of the site as proposed.
- (f) An explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who is responsible over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is not technically feasible; or is economically burdensome to the mobile service provider.
- (g) A construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
- (h) A tabular and/or map inventory of all of the applicant's existing towers and antennas which are located within the county. The inventory must specify the location, antennae height, and structure type of each of the applicant's existing mobile service support facilities. The inventory must also specify whether such towers are currently in operation and indicate the ability of the existing structures to accommodate additional collocation antennas.
- (i) A report by a structural engineer licensed by the State of Wisconsin certifying the structural design and its ability to accommodate additional antennas.
- (j) Evidence that the applicant has informed local airport owners and operators about any permit application for structures above two hundred (200) feet tall or within a three-mile radius of any existing public or private airport, including all landing strips.

SEC. 16-14-5 APPLICATION PROCESS – NEW MOBILE SERVICE SUPPORT STRUCTURES.

- (a) If an applicant submits to the Village an application to engage in an activity described in this section, which contains all of the information required under this Chapter, the Village must consider the application complete. If the Village does not believe that the application is complete, the Village must notify the applicant in writing, within ten (10) days of receiving the application, that the application is not complete. The written notification must specify in detail the required information that was incomplete. The applicant may resubmit an application as often as necessary until it is complete.

- (b) Within ninety (90) days of its receipt of a completed application, the Village must complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the ninety (90) day period:
 - (1) Review the application to determine whether it complies with all applicable aspects of the zoning ordinance and limitations of this Chapter;
 - (2) The Village Board must make a final decision whether to approve or deny the application, after receiving a recommendation of the Plan Commission;
 - (3) The Village must notify the applicant in writing of the final decision;
 - (4) If the application is approved, the Zoning Administrator will issue the applicant a zoning permit;
 - (5) If the decision is to deny the application, the Village must include with the written notification substantial evidence which supports that decision.
- (c) The Village may deny an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and does not provide the sworn statement described in Section 16-14-4(f).
- (d) If an applicant provides the Village with an engineering certification showing that the proposed mobile service support structure is designed to collapse within a smaller area than the setback or fall zone area required in the specified zoning district, that zoning setback does not apply to the proposed structure unless the Village provides the applicant with substantial evidence that the engineering certification is flawed.

SEC. 16-14-6 TECHNICAL REVIEW.

In the event the Plan Commission determines that it is necessary to consult with a third party in considering a permit, all reasonable costs and expenses, excluding travel expenses, associated with such consultation shall be borne by the applicant. Failure to pay such costs and expenses or to provide information requested by the Plan Commission shall be grounds for denial or revocation of a conditional use permit. The applicant may provide to the Plan Commission the names of consultants believed by the applicant to be qualified to assist in resolving the issues before the Plan Commission.

SEC. 16-14-7 ABANDONMENT.

- (a) Any mobile service support structure and facilities not in operation for a continuous period of twelve (12) months shall be considered abandoned. In such circumstances, the owner of the mobile service support structure and facility of the property where the structure and facility are located must remove the support structure and all supporting equipment, buildings, and foundations to a depth of five (5) feet, and must restore the location to its natural condition (except any grading may remain in the after-condition as determined by the zoning administrator) within ninety (90) days of receipt of notice from the zoning administrator. If removal and restoration to the satisfaction of the zoning administrator does not occur within the said ninety (90) days, the zoning administrator may remove and salvage said mobile service support structure and facility and restore the site at the expense of the mobile service provider or property owner.

- (b) The applicant must submit a copy of a signed agreement, which may be the lease agreement, between the property owner and the owner of the mobile service facility detailing requirements for abandonment and subsequent removal based on the provisions of Section 16-14-7(a). Said agreement must also identify that the agreement must be binding on future property owner(s) and future owner(s) of the mobile service support structure and facility.
- (c) The mobile service support structure and facility must be recorded in the Register of Deed's Office and a copy of the deed must be filed with the Zoning Administrator.

SEC. 16-14-8 SECURITY FOR REMOVAL.

The applicant shall provide to the Village, prior to the issuance of the permit, a performance bond in the amount of twenty thousand dollars (\$20,000.00) to guarantee that the tower and all supporting equipment, buildings and foundations will be removed when no longer in operation. The Village must be named as obligee in the bond, and it must approve the bonding company. The face of the bond must reflect that the Village will be given notice if the bonding company cancels the bond. If, prior to the removal of the tower, tower removal rates exceed twenty thousand dollars (\$20,000.00), the Village reserves the right to require a corresponding increase in the bond amount.

SEC. 16-14-9 CONTINUED COMPLIANCE.

Upon written inquiry by the Plan Commission, the permit holder under this section shall have the burden of presenting credible evidence establishing to a reasonable degree of certainty the continued compliance with all conditions placed upon the conditional use permits. Failure to establish compliance with all conditions placed upon the conditional use will be grounds for revocation of the permit.

SEC. 16-14-10 USE OF EXISTING STRUCTURES.

A mobile service facility may locate on alternative support structures, such as clock towers, steeples, silos, light poles, buildings, water towers or similar structures, provided that the placement of the antenna will not extend more than six (6) feet from the structure. Mobile service facilities located on roofs must not occupy more than fifty (50) percent of the roof surface of a building and must be secured from the remaining area to prevent unauthorized access. The mobile service facility must be painted or otherwise treated to match the exterior of the structure. Such mobile service facility installation will be classified as either a class 1 or class 2 collocation and will require a site plan review.

SEC. 16-14-11 APPLICATION SUBMITTAL REQUIREMENTS – CLASS 1 COLLOCATIONS.

A collocation will be classified as a class 1 collocation if the following substantial modifications are added to the exiting mobile service support structure:

- (a) an increase in the overall height of the structure by more than twenty (20) feet, for structures with an overall height of two hundred (200) feet or less;
- (b) an increase in the overall height of the structure by 10% or more, for structures with an overall height of more than two hundred (200) feet;
- (c) an increase in width of the support structure by twenty (20) feet or more, measured at the level of the appurtenance added to the structure as a result of the modification;
- (d) an increase in the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

A zoning application must be completed by the applicant and submitted to the Development Services Office. In addition to the requirements found in Section 16-9-2, the application must contain the following information:

- (a) Applicant name, business address, and phone number of the contact individual(s) for the applicant(s).
- (b) The location of the existing mobile service support structure, including legal description, amount of property leased, and the height of the proposed and existing mounted antennas and/or equipment.
- (c) A construction plan which describes the proposed modifications to the mobile support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
- (d) A report by a structural engineer licensed by the State of Wisconsin certifying the structural design and its ability to accommodate additional antennas.

SEC. 16-14-12 APPLICATION PROCESS – CLASS 1 COLLOCATION.

- (a) If an applicant submits to the Village an application to engage in an activity described in this section, which contains all of the information required under this Chapter, the Village must consider the application complete. If the Village does not believe that the application is complete, the Village must notify the applicant in writing, within ten (10) days of receiving the application, that the application is not complete. The written notification must specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (b) Within ninety (90) days of its receipt of a completed application, the Village must complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the ninety (90) day period:
 - (1) Review the application to determine whether it complies with all applicable aspects of the zoning ordinance and limitations of this Chapter;
 - (2) The Village Board must make a final decision whether to approve or deny the application, after recommendation of the Plan Commission;

- (3) Notify the applicant in writing of the Village Board's final decision;
- (4) If the application is approved, issue the applicant a zoning permit;
- (5) If the decision is to deny the application, include with the written notification substantial evidence which supports that decision.

SEC. 16-14-13 APPLICATION SUBMITTAL REQUIREMENTS – CLASS 2 COLLOCATION.

A collocation will be classified as a class 2 collocation if the substantial modifications described in Section 16-14-11 are not required for service.

A zoning application must be completed by the applicant and submitted to the Zoning Administrator. In addition to the requirements found in Section 16-9-2, the application must contain the following information:

- (a) Applicant name, business address, and phone number of the contact individual(s) for the applicant(s);
- (b) The location of the existing support structure; including legal description, amount of property leased, and the height of the proposed and existing mounted antennas and/or equipment;
- (c) A report by a structural engineer licensed by the State of Wisconsin certifying the structural design and its ability to accommodate additional antennas.

SEC. 16-14-14 APPLICATION PROCESS – CLASS 2 COLLOCATION.

- (a) If an applicant submits to the Village an application to engage in an activity described in this section, which contains all of the information required under this Chapter, the Village must consider the application complete. If the Village does not believe that the application is complete, the Village must notify the applicant in writing, within five (5) days of receiving the application, that the application is not complete. The written notification must specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (b) Within forty-five (45) days of its receipt of a completed application, the Village must complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the forty-five (45) day period:
 - (1) Review the application to determine whether it complies with all applicable aspects of the zoning ordinance and limitations of this Chapter;
 - (2) The Village Board must make a final decision whether to approve or deny the application, after recommendation of the Plan Commission;
 - (3) Notify the applicant in writing of the Village Board's final decision;
 - (4) If the application is approved, issue the applicant a zoning permit;
 - (5) If the decision is to deny the application, include with the written notification substantial evidence which supports that decision.

SEC. 16-14-15 APPLICATION PROCESS – LIABILITY.

The Village does not warrant any mobile service support structure against design or structural failure. The Village does not certify that the design is adequate for any tower and the Village hereby accepts no liability through the issuance of a conditional use permit or zoning permit.

SEC. 16-14-16 SITE SPECIFICS.

- (a) As with commercial-scale wind energy facilities, mobile service support structures setbacks must not be less than the height of the tower above grade between the base of the tower and property line. The setback may be reduced if the requirements of Section 16-14-4(i) are met.
- (b) When more than one (1) tower is placed on a site, all setback and design requirements must be met by each tower.
- (c) A site with a guyed mobile support structure must provide:
 - (1) A setback of at least twenty-five (25) feet between a guy anchor and any property line abutting a residential district, public property, or street; and
 - (2) A setback equal to or exceeding the rear setback required for the adjoining property where the adjoining property is not a public property or street, nor in a residential district.
 - (3) A guy anchor may be located on an adjoining property when:
 - a. Written authorization from the adjoining property owner is provided at the time of application for conditional use approval; and
 - b. The guy anchor meets the requirement of subsections (1) and (2) above, as to all other adjoining property lines.
- (d) Mobile service facility accessory structures must be limited to fifteen (15) feet in height.
- (e) Mobile service support structures must not be illuminated except as required by the Wisconsin Division of Aeronautics or the Federal Aviation Administration.

SEC. 16-14-17 SEVERABILITY.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SEC. 16-14-18 FEES.

Application fees for new mobile service support structures, and class 1 and 2 collocations, shall be in accordance with a fee schedule set by resolution of the Village Board from time-to-time.

SEC. 16-14-19 RESERVED.

CHAPTER 15

(Ordinance 2015-04; 06/01/15)

(Note: Overlay in Ordinance Chapter Numbers. This Ordinance references Title 16, Chapter 9)

Shoreland Zoning Ordinance for the Village of Caledonia

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
	Article I. Statutory Authorization, Findings of Fact, Statement of Purpose and Title	2015-04	06/01/15
16-15-1	Statutory Authorization.		
16-15-2	Finding of Fact and Purpose.		
	Article II. General Provisions		
16-15-3	Compliance.		
16-15-4	Municipalities And State Agencies Regulated.		
16-15-5	Abrogation And Greater Restrictions.		
16-15-6	Interpretation.		
16-15-7	Severability.		
16-15-8	Applicability of Shoreland District Regulations.		
16-15-9	Setbacks from the Water.		
16-15-10	Vegetative Buffer Zone.		
16-15-11	Definitions.		

ARTICLE I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, STATEMENT OF PURPOSE AND TITLE

SEC. 16-15-1 STATUTORY AUTHORIZATION.

This ordinance is adopted pursuant to the authorization in Wis. Stat. Secs. 61.35 and 61.353.

SEC. 16-15-2 FINDING OF FACT AND PURPOSE.

Uncontrolled use of shorelands and pollution of the navigable waters of the municipality would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The Legislature of Wisconsin has delegated responsibility to all municipalities to:

- (1) Promote the public health, safety, convenience and general welfare;
- (2) Limit certain land use activities detrimental to shorelands; and
- (3) Preserve shore cover and natural beauty by controlling the location of structures in shoreland areas and restricting the removal of natural shoreland vegetation.

ARTICLE II. GENERAL PROVISIONS

SEC. 16-15-3. COMPLIANCE.

The use of shorelands within the shoreland area of the municipality shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. All permitted development shall require the issuance of a zoning permit unless otherwise expressly excluded by a provision of this ordinance.

SEC. 16-15-4. MUNICIPALITIES AND STATE AGENCIES REGULATED.

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply if Wis. Stat. Sec. 13.48(13) applies.

SEC. 16-15-5. ABROGATION AND GREATER RESTRICTIONS.

- (a) This ordinance supersedes all the provisions of any other applicable municipal ordinance except that where another municipal ordinance is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.
- (b) This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

SEC. 16-15-6. INTERPRETATION.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes or Wisconsin Constitution.

SEC. 16-15-7. SEVERABILITY.

Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SEC. 16-15-8. APPLICABILITY OF SHORELAND DISTRICT REGULATIONS.

- (a) **The Shoreland Zoning District regulations apply only to the following shorelands:**
 - (1) A shoreland that was annexed by the Village of Caledonia after May 7, 1982, and that prior to annexation was subject to a county shoreland zoning ordinance under Wis. Stat. Sec. 59.692; and

- (2) A shoreland that before incorporation by the Village of Caledonia was part of a town that was subject to a county shoreland zoning ordinance under Wis. Stat. Sec. 59.692 if the date of incorporation was after April 30, 1994.
- (b) **District Boundaries.** The Shoreland District areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the Village of Caledonia that are:
 - (1) Within 1,000 feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources Surface Water Data viewer available on the DNR website, or are shown on United States Geological Survey quadrangle maps or other zoning base maps.
 - (2) Within 300 feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.
 - (3) Determinations of navigability and ordinary highwater mark location shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the appropriate district office of the Wisconsin Department of Natural Resources for a final determination of navigability or ordinary highwater mark.
 - (4) Pursuant to Wis. Stat. Sec. 61.353, the Shoreland Zoning District does not include lands adjacent to an artificially constructed drainage ditch, pond, or retention basin if the drainage ditch, pond or retention basin is not hydrologically connected to a natural navigable water body.
- (c) **Effect Of Existing Land Division, Sanitary, Zoning And Other Regulations.** The lands within the Shoreland Zoning District are subject to all applicable provisions of the Village of Caledonia Municipal Code. Where the provisions of this ordinance are more restrictive than other regulations in the Municipal Code, the provisions of this ordinance shall apply.

SEC. 16-15-9. SETBACKS FROM THE WATER.

- (a) **Principal Building and Accessory Structures Setbacks.**
 - (1) All principal buildings and accessory structures shall be set back at least 75 feet from the ordinary high-water mark.
 - (2) Adjustment of Shore Yards. A setback less than that required by subsection A.1. may be allowed if all of the following apply:

- a. The principal building is constructed or placed on a lot or parcel of land that is immediately adjacent on each side to a lot or parcel of land containing a principal building; and
- b. The principal building is constructed or placed within a distance equal to the average setback of the principal building on the adjacent lots or 35 feet from the ordinary high-water mark, whichever distance is greater.

SEC. 16-15-10. VEGETATIVE BUFFER ZONE.

Pursuant to Wis. Stat. Sec. 61.353(3), a landowner must maintain a vegetative buffer zone, as follows:

- (1) A person who owns shoreland property that contains vegetation must maintain that vegetation in a vegetative buffer zone along the entire shoreline of the property and extending 35 feet inland from the ordinary high-water mark of the navigable water, except as provided in sub. B.
- (2) If the vegetation in a vegetative buffer zone contains invasive species or dead or diseased vegetation, the owner of the shoreland property may remove the vegetation, except that if the owner removes all of the vegetation in the vegetative buffer zone, the owner shall establish a vegetative buffer zone with new vegetation.
- (3) A person who is required to maintain or establish a vegetative buffer zone under sub. A may remove all of the vegetation in a part of that zone in order to establish a viewing or access corridor that is no greater than 30 feet wide for every 100 feet of shoreline frontage and extends no more than 35 feet inland from the ordinary high-water mark.

SEC. 16-15-11. DEFINITIONS.

In this ordinance:

- (1) “Navigable waters” shall mean Lake Michigan, all natural lakes within the state and all streams, ponds, sloughs, flowages and other waters within the territorial limits of the state, which are navigable under the laws of the state. This definition does not include lands adjacent to farm drainage ditches if:
 - (a) Such lands are not adjacent to a navigable stream or river;
 - (b) Those parts of such drainage ditches adjacent to such lands were non-navigable streams before ditching; and
 - (c) Such lands are maintained in nonstructural agricultural use.
- (2) “Principal building” means the main building or structure on a single lot or parcel of land and includes any attached garage or attached porch.
- (3) “Shorelands” has the meaning given in Wis. Stat. Sec. 59.692(1)(b).
- (4) “Shoreland setback area” has the meaning given in Wis. Stat. Sec. 59.692(1)(bn).

WHEREAS, the Village of Caledonia Legislative and Licensing Committee reviewed and discussed various studies and materials related to impacts of Adult Establishment Uses locating in a neighborhood as well as this draft ordinance on August 29, 2022, _____, 2022, and _____, 2022.

WHEREAS, the Legislative and Licensing Committee is comprised of residents of the Village as well as officials of the Village and is tasked with reviewing ordinances that impact the long term plans and growth in the Village.

WHEREAS, the Village Plan Commission reviewed and discussed various studies and materials related to the impacts of Adult Establishment Uses locating in a neighborhood as well as this draft ordinance on April 25, 2022 and held a public hearing to receive public input on _____, 2022.

WHEREAS, the Village Board reviewed and discussed various studies and materials related to the impacts of Adult Establishment Uses locating in a neighborhood as well as this draft ordinance on _____, 2022 and attended the public hearing to receive public input on _____.

TITLE 16 CHAPTER 16 ADULT ESTABLISHMENT USES (M-3)

SEC. 16-16-1 Intent and Findings of fact.

(a) Intent.

- (1) The intent of this ordinance is to regulate adult establishments and related activities to protect the health, safety, morals, and general welfare of the citizens of the Village of Caledonia, to further preserve the quality of family life as well as the rural characteristics of the Village, to prevent adverse and deleterious effects contributing to the blight and downgrading of portions of the Village, to avoid the effects of adult entertainment upon minors and the violation of the civil rights of many persons partaking in such entertainment, mitigate criminal activity and disruption of public peace associated with Adult Establishments, and also to prevent the unsanitary and unhealthful conditions associated with such establishments. This regulation will establish reasonable and uniform provisions to regulate adult establishments within the Village of Caledonia.
- (2) It is not the intent or effect to restrict or deny access by the distributors or exhibitors of sexually oriented entertainment to their intended market.
- (3) It is not the intent or effect to limit or restrict the lawful activities permitted under Wis. Stat. Ch. 125, "Alcohol Beverages" and the Municipal Code of the Village of Caledonia. By the enactment of this chapter, the Village Board does not intend to give any explicit, implicit, or tacit approval or condone any activity relating to adult entertainment.

- (4) The board intends to control the impact of the secondary effects enumerated in Sec. 16-16-1(b) in order to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods and areas.
 - (5) It is not the board's intent to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult establishments while providing an outlet for First Amendment protected activities.
 - (6) In order to minimize and control the secondary effects of adult establishments upon the Village and Racine County, it is the board's intent to prevent the concentration of adult establishments within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of adult establishments.
- (b) Findings of fact.
- (1) The board finds that adult establishments as defined in this chapter require special zoning in order to protect and preserve the health, safety, and welfare of Village.
 - (2) Based on its review of the following:
 - a. Report to the American Center for Law and Justice on the Secondary Impacts of Sexual Oriented Businesses;
 - b. The Affidavit of Richard McCleary for the case of *New Albany DVD LLC v. City of Albany*;
 - c. National Law Center Summaries of SOB Land Use Studies;
 - d. Workplace Perspectives on Erotic Dancing, a Minneapolis Minnesota Study;
 - e. The studies conducted in Newport News, Virginia, Garden Grove, California, Dallas, Texas, Houston Texas;
 - f. the Effects of Sexually Oriented Businesses by Louis F. Cormus III, which summarized studies conducted in Phoenix, Arizona; Garden Grove California; Los Angeles, California; Whittier California; Indianapolis, Indiana; Minneapolis, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; Seattle, Washington; New York City, New York (specifically, Times Square); Dallas, Texas; Environmental Research Group Report; Tucson, Arizona; Manatee County, Florida; State of Minnesota; New Hanover County, North Carolina; Town and Village of Ellicottville, New York; Islip, New York; New York City, New York; Oklahoma City, Oklahoma; Houston Texas; Newport News; and Des Moines, Washington;
 - g. The Police Memorandum dated May 1, 1990, to the Tucson, Arizona City Prosecutor.
 - h. Rural Hotspots: The Case of Adult Businesses by Dr. Richard McCleary
 - i. The findings incorporated in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Colman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50

(1976), Association of Club Executives of Dallas, Inc., et al. v. City of Dallas, 22-CV-00177 (N.D. Tex. May 24, 2022).

The board finds that there is convincing evidence that the secondary effects of adult establishments include an increased risk of:

- a. Prostitution,
- b. High-risk sexual behavior and sexually transmitted diseases,
- c. Human Trafficking
- d. Crime, especially sex-related crimes, and
- e. Other deleterious effects upon existing business and surrounding residential areas, and decreased property values.

(3) Based on its review of "Playing for Keeps," 2002 Racine County Economic Development Study, the 2010 Racine County Economic Development Plan, Village 2035 Comprehensive Plan, and the Tax Incremental Financing District #4 Project Plan dated July 21, 2014, the board finds that Interstate 94 corridor is an area that is very important to the economic development of the Village and Racine County and should be protected from the secondary effects of adult establishments for the benefit of the health, safety and welfare of the community.

(4) Based on its review of the Commercial district Economic Development Playbook for Caledonia Study conducted by the Community Land Use and Economic Group, LLC, the Board finds that the Douglas Avenue Corridor and its proximity to the most populated areas of the Village and its need for redevelopment is very important to the economic development of the Village and should be protected from the secondary effects of adult establishments for the benefit of the health, safety and welfare of the community.

SEC. 16-16-2 Uses.

- (a) *Principal Uses.* The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that adult establishments, as defined in this chapter, are entitled to certain protections, including the opportunity to locate in villages governed by the zoning code. Therefore, an adult establishment shall be an allowed principal use in the M-3 zoning districts and shall be a prohibited use in any other zoning district. The adult establishment may locate in the specified district only if an adult establishment license has been granted by a Village and all the requirements of this Chapter and the applicable zoning district's regulations are met.
- (b) *Accessory uses.* Any accessory use authorized by the underlying zoning district may be an accessory use to an adult establishment. In no case shall an adult establishment be an accessory use to any principal use designed by any section of this Chapter.

SEC. 16-16-3 Regulations applicable to all adult establishments.

- (a) *Location requirement.* No permit shall be granted where the public entrance of the proposed adult establishment is within one thousand (1,000) feet of a residential use, residential district, house of worship, school, day care center, playground, public park, recreation area, library, museum, Interstate 94, or Douglas Avenue, or immediately adjacent to a bar or tavern that serves alcoholic beverages. In the case of an area zoned residential, the distance shall be measured from the nearest point on the residential district zoning boundary line. From an area not zoned residential but used for residential purposes, the measurement shall be taken from the public entrance of the adult establishment to the nearest entrance of the building in residential use. From schools, houses of worship, day care centers, libraries, and museums, the distance shall be measured from the public entrance of the adult establishment to the main public entrance of the protected use. From playgrounds, public parks, recreation areas, and schools, houses of worship and day care centers with playgrounds or recreation areas, the distance shall be measured from the public entrance of the adult establishment to the nearest property line of the playground, public park, or recreation area. Along Interstate 94, or Douglas Avenue, this distance is measured from the outside highway right-of-way line, including frontage road(s).
- (b) *Hours of operation.* No adult establishment shall be open for business at any time between the hours of 2:00 a.m. and 12:00 noon.
- (c) *Animals.* No animals, except only for seeing-eye dogs required to assist the blind, shall be permitted at any time at or in any adult establishment or permitted premises.
- (d) *Restricted access.* No adult establishment patron shall be permitted at any time to enter into any of the non-public portions of any adult establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of adult establishment employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the permitted premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.
- (e) *Exterior display.* No adult establishment shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material, or any entertainment depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," from any sidewalk, public or private right-of-way, or any property other than the lot on which the permitted premises is located. No portion of the exterior of an adult establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed by this chapter with regard to signs. This subsection shall apply to any advertisement, display, promotional material, decoration, or sign; to any performance or show; and to any window, door, or other opening.
- (f) *Sign limitations.* All signs for adult establishments shall be flat wall signs. The business may have only one (1) non-flashing business sign which may only indicate the name of the business and identify it as an adult establishment and which shall not be larger than four

- (4) feet by four (4) feet. Temporary signs shall not be permitted in connection with any adult establishment.
- (g) *Noise.* No loudspeakers or sound equipment audible beyond the adult establishment shall be used at any time.
- (h) *Manager's stations.* Each adult establishment shall have one (1) or more manager's stations. The interior of each adult establishment shall be configured in such a manner that there is a direct and substantially unobstructed view from at least one (1) manager's station to every part of each area, except restrooms, of the establishment to which any adult establishment patron is permitted access for any purpose. The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.
- (i) *Adult booths prohibited.* Adult booths shall be prohibited in all adult establishments.
- (j) *No loitering policy.* The adult establishment shall clearly post and enforce a no loitering policy.
- (k) *Age limit restrictions.* The adult establishment shall clearly post and enforce age-limit restrictions. A one-square-foot sign shall be placed on each public entrance which shall state "Admittance to adults only" and may include other pertinent business information.
- (l) *Measuring disbursement distances.* The distances in this section shall be measured by following a straight line, without regard to intervening structures, from the public entrance (existing or proposed) of an adult establishment to the nearest point of the protected use as described below.
- (m) *Adequate parking.* One (1) parking space per one hundred fifty (150) square feet of total gross floor area shall be provided in a lighted area on the permitted premises of an adult establishment.
- (n) *Spacing requirement.* No more than one (1) adult establishment may be located on any one (1) parcel and the location of any one (1) adult establishment shall be at least one thousand (1,000) feet from the establishment of any other adult establishment. This distance shall be measured from the public entrance of one (1) adult establishment to the public entrance of the other adult establishment.
- (o) *Display windows prohibited.* All points of access into structures containing adult establishments and all windows or other openings shall be located, constructed, covered, or screened in a manner which will prevent a view into the interior.
- (p) *Residential quarters not allowed.* No residential quarters shall be allowed on a premises with an adult establishment.

- (q) *Stages.* All live performers in an adult establishment shall perform only on a stage elevated no less than thirty-six (36) inches above floor level. There shall be a metal railing attached to the floor by bolts surrounding the stage which shall keep patrons at least forty-eight (48) inches from the stage. There shall also be a metal railing attached to the floor by bolts at the end of the stage

SEC. 16-16-4 Required information and documents.

(a) *Demographics.*

(1) *Individuals.*

- a. Applicant's legal name, all of the applicant's aliases, and the applicant's age;
- b. Applicant's business address.

(2) *Corporations.*

- a. Applicant corporation's complete name and official business address;
- b. Legal names, all aliases, the ages, and business addresses of all of the directors, officers, and managers of the corporation and of every person owning or controlling more than twenty-five (25) percent of the voting shares of the corporation;
- c. Applicant corporation's date and place of incorporation and the objective for which it was formed;
- d. Proof that the corporation is a corporation in good standing and authorized to conduct business in the State of Wisconsin;
- e. Name of the registered corporate agent and the address of the registered office for service of process.

(3) Partnerships (general or limited), joint ventures, or any other type of organization where two (2) or more persons share in the profits and liabilities of the organization.

- a. Applicant organization's complete name and official business address;
- b. Legal name, all aliases, the ages, and business addresses of each partner (other than limited partners) or any other person entitled to share in the profits of the organization, whether or not any such person is also obligated to share in the liabilities of the organization.

(4) *Land trusts.*

- a. Applicant land trust's complete name;
 - b. Legal name, all aliases, and the business address of the trustee of the land trust;
 - c. Legal name, all aliases, the ages, and business addresses of each beneficiary of the land trust and the specific interest of each such beneficiary in the land trust;
 - d. The interest, if any, that the land trust holds in the permitted premises.
- (b) If a corporation or partnership is an interest holder that shall be disclosed pursuant to subsections (a)(2) and (3), then such interest holders shall disclose the information required in said subsections with respect to their interest holders.
- (c) The general character and nature of the applicant's business.
- (d) The length of time that the applicant has been in the business of the character specified in response to subsection (c) above.
- (e) The location (including street address and legal description) and telephone number of the premises for which the adult establishment permit is sought.
- (f) The specific name of the business that is to be operated under the adult establishment permit.
- (g) The identity of each fee simple owner of the permitted premises.
- (h) A diagram showing the internal and external configuration of the permitted premises, including all doors, windows, entrances, exits, the fixed structural internal features of the permitted premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms.
- Note: A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six (6) inches and sufficient to show clearly the various interior dimensions of all areas of the permitted premises and to demonstrate compliance with the provisions of this chapter. The approval or use of the diagram required pursuant to this subsection shall not be deemed to be, and may not be interpreted or construed to constitute, any other Village approval otherwise required pursuant to applicable Village ordinances and regulations.
- (i) The specific type(s) of adult establishment(s) that the applicant proposes to operate on the permitted premises.

- (j) A copy of each adult establishment's permit, liquor license, and gaming license currently held by the applicant, or any of the individuals identified in the application pursuant to subsection (a) or (b) above.
- (k) The name of the individual(s) who shall be the day-to-day, on-site manager(s) of the proposed adult establishment.
- (l) The application fee, site plan review fee, and zoning permit fee in the amount as adopted by resolution or in the annual Village budget.
- (m) Any other information the zoning administrator may reasonably require to apply the requirements of this chapter.
- (n) The zoning administrator reserves the right to require a survey from a surveyor licensed by the State of Wisconsin to determine the spacing requirements under this chapter.
- (o) A site plan, landscaping plan, zoning permit application, and letter of agent status, if necessary, as required by site plan review application requirements adopted by the planning and development department.

SEC. 16-16-5 Incomplete applications returned.

Any application for an adult establishment that does not include all of the information and documents required pursuant to this chapter, as well as the required fees, shall be deemed to be incomplete and shall not be acted on by the zoning administrator who shall give the applicant a written notification and explanation of such action pursuant to this section.

SEC. 16-16-6 Applicant cooperation required.

An applicant for an adult establishment permit shall cooperate fully in the inspections and investigations conducted by the Village of Caledonia. The applicant's failure or refusal to:

- (1) Give any information reasonably relevant to the investigation of the application;
 - (2) Allow the permitted premises to be inspected;
 - (3) Appear at any reasonable time and place, or
 - (4) Otherwise cooperate with the investigation and inspection required by this chapter;
- shall constitute an admission by the applicant that the applicant is ineligible for an adult establishment permit and shall be grounds for denial of the permit by the zoning administrator.

SEC. 16-16-7 Time for issuance or denial.

The zoning administrator shall, within thirty (30) days after submittal of a completed application, or within such other period of time as the Village and the applicant shall otherwise agree, either issue or deny an adult establishment permit pursuant to the provisions of this chapter.

SEC. 16-16-8 Standards for issuance or denial of permit.

- (a) *Issuance:* The zoning administrator shall issue an adult establishment permit to an applicant if the zoning administrator finds and determines all of the following:
- (1) All information and documents required by this chapter for issuance of an adult establishment permit have been properly provided.
 - (2) No person identified in the application may:
 - a. Have been denied an adult establishment permit within twelve (12) months immediately preceding the date of the application;
 - b. Be a person whose adult establishment permit has been revoked within twelve (12) months immediately preceding the date of the application; or
 - c. Be a person whose adult establishment permit is under suspension at the time of application.
 - (3) The adult establishment and the permitted premises comply with all requirements under this chapter and the applicant has obtained a license required for the adult establishment by the village, if any.
 - (4) The applicant has signed the permit he or she has received indicating his or her acceptance of the conditions of the permit.
- (b) *Denial:* If the zoning administrator determines that the applicant has not met any one (1) or more of the conditions set forth in this section, then the zoning administrator shall deny issuance of the adult establishment permit and shall give the applicant a written notification and explanation of such denial.
- (c) *License deemed to be issued:* If the zoning administrator does not issue or deny the adult establishment permit within thirty (30) days after the properly completed application is submitted, then the adult establishment permit applied for shall be deemed to have been issued.

SEC. 16-16-9 Enforcement.

- (a) A violation of any conditions or an adult establishment permit is a violation of this chapter.
- (b) Notwithstanding any other remedy, a violation of any conditions or an adult establishment permit shall be grounds for revocation of the adult establishment permit.

SEC. 16-16-10 Continued conforming status.

An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of the adult establishment permit, if a protected use is located within one thousand (1,000) feet of the adult establishment.

SEC. 16-16-11 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. This ordinance shall take effect and be in force from and after its passage and publication, as provided by law.

Affidavit of Richard McCleary, Ph.D. for the case of
New Albany DVD LLC v. City of Albany, Indiana

Dr. Richard McCleary is a professor at the University of California, Irvine and holds positions in three departments: Environmental Health Science, Criminology, and Planning. He also has training in statistics and has applied skills in measuring site-specific safety hazards, including public safety hazards associated with sexually oriented businesses.

Dr. Richard McCleary opines that it is a scientific fact that sexually oriented businesses pose serious ambient public safety hazards. Dr. McCleary further states that the effects that the studies relied upon by the City of New Albany show are not unexpected and that these effects are a consequence of the normal commercial activities of the business. The secondary effects of adult oriented businesses have been observed in a great number of locations, although the magnitude and nature of the observed effects varies from case to case.

Dr. Richard McCleary addresses a report offered in the case by a Dr. Linz that expresses the contrary opinion. Dr. McCleary differs in opinion from Dr. Linz on the principles of scientific method. Dr. Linz relies on four principles that he asserts are related to the *Daubert*¹ principles, but Dr. McCleary has concerns that the principles set forth by Dr. Linz are not clearly derived from *Daubert* and therefore do not have any precedent or authority. Dr. Linz's principles are "commonsense" but that runs contrary to one of the functions of the scientific method: to counteract commonsense impressions. Moreover, the Linz principles are difficult to apply in all circumstances.

Dr. McCleary notes that his analysis of Dr. Linz's critiques should not imply that scientific methods are the only means of demonstrating a secondary effect. Crime related secondary effects can be demonstrated by methods that, while empirical, do not rely on formal scientific structures such as before-after contrasts, cross sectional control comparisons, etc. Even anecdotal or other non-scientific data can be used to demonstrate secondary effects and legislatures can rely on them per *Center for Fair Public Policy v. Maricopa County*.

He then explores case studies cited and critiqued by Dr. Linz and demonstrates how those case studies are accurate and follow the scientific method. Dr. McCleary specifically works through the City of Phoenix, Arizona, study and the Garden Grove, California study. In the City of Phoenix study, Dr. McCleary worked closely with the city employees who conducted the research in this study during his time as a professor at Arizona State University. The study was based on comparing the rates of property crimes, personal crimes, and sexual crimes in areas with adult businesses to those in "control" areas without adult businesses. The researchers then calculated a "secondary effect" percentage by comparing the crime rates. The secondary effects were extraordinarily high. The secondary effects on property crime were 139.8%, personal crime was 113.7%, and sexual crime was 580.2%. Dr. McCleary, in response to Dr. Linz's critique that the neighborhoods were different, explains that while the control neighborhoods and the neighborhoods with sexually oriented businesses will be at least slightly different, the question is whether the neighborhoods are significantly different and whether those differences are large

¹ "*Daubert* principles" refers to *Daubert v. Merrell Dow Pharmaceuticals* 509 US 579 (1993). The four *Daubert* criteria are (1) testability, (2) known error rates, (3) peer review, and (4) general acceptance in the scientific community. These criteria are applicable to legislative fact-finding; *Daubert* does not hold that these criteria are necessary of sufficient.

Summaries of Adult Oriented Business Studies

enough to bias the secondary effect estimate. Here, he concludes that none of the differences between the adult business areas and control areas are statistically significant, so the differences between the neighborhoods is not significant. The differences were marked by number of households, estimated 1997 population, racial demographics, age demographics, divorce statistics, median household income, and the number of households with a female head of household.

Dr. Linz critiqued the study, again, under his “one-time fluke” test, where he states that since the study only used the crime rates for a one-year period that the study was inaccurate. Dr. McCleary retorts that this test makes no sense when it is applied, and does not have established parameters (i.e., how many years’ worth of data is needed to make a study accurate?), which make the test impractical. More data is always better than less, but at some point, a researcher has to determine when they have seen enough data and calculate the statistical confidence of the study. Here, the statistical confidence is .999, which indicates that the results being a “one-time fluke” are improbable.

The Garden Grove, California study was done by Dr. McCleary and a colleague in the 1990s and is one the most scientifically rigorous, valid studies of crime related secondary effects in the literature. This study examined the changes to the level of ambient crime before an adult business opened in a community, after that adult business opened to the public, and after the adult business closed. The study concluded that when an adult business opened its doors, ambient crime rose and when it closed its doors, ambient crime fell. The study was a before-after comparison based on the premise that if a sexually oriented business has secondary effects, one expects to see a rise in the crime rate when an adult business opens in a neighborhood and if a before-after difference is observed, there is a secondary effect attributed to the business. Other plausible explanations of crime rate rising over time were debunked by watching the crime rates in all other neighborhoods with sexually oriented businesses in Garden Grove. If the rise in crime rates was not observed elsewhere, then the rise in crime rates was due to the arrival of an adult oriented business.

Dr. Linz critiqued the Garden Grove study as failing his “compared to what” test, but, by definition, a before-after comparison passes the “compared to what” test and the other factors that could have influenced crime rates were accounted for. The study addressed the question of whether sexually oriented businesses have secondary effects, while Dr. Linz expected the study to address a completely different question that was unable to be addressed by a study with the same goal as the Garden Grove study had: whether the secondary effects of sexually oriented businesses are larger than those related to the opening of any other business. The study cannot be designed to address both questions and still do so accurately. Additionally, if every other business generated the same secondary effects that the study found adult businesses to generate, then Garden Grove would have the highest crime rate in the region, and it does not.

The garden grove study found that when a tavern opened less than 500 feet from a sexually oriented business, the crime in the vicinity rose significantly, but that the use of video booths vs. renting videos for off premise viewing did not significantly raise the secondary effect crime rates.

Modern criminological theory holds that the victimization risk at a site is determined by three factors: (1) the number of potential victims at the site; (2) the “hardness” of the site’s targets; and (3) the number of potential offenders at the site. This three-factor criminological

Summaries of Adult Oriented Business Studies

theory predicts that adult bookstores, video arcades, peepshows, nude dancing clubs, and other types of adult entertainment venues will generate large, significant crime risks driven by the “victim” factor. Adult businesses draw relatively large numbers of potential victims to a common site and this density of victims attracts predatory criminals to the site. Also, common business practices such as advertising and sales attract new customers to the site which increases the risk of crime. This is not a factor exclusive to adult businesses, however the customers attracted to adult businesses have characteristics that make them attractive targets, such as the desire for anonymity impacting the victims’ likelihood to go to the police after being victimized.

The qualities of the patrons of adult-businesses make them soft targets for predatory criminals: if alcohol is involved, targets become “softer;” many travel long distances to the site and are therefore strangers; their desire for anonymity drives them to carry cash to pay with and are less likely to go to the police when victimized. The characteristics of the properties can also be described as soft. There are relatively few security measures to deter crime, the structural features of the sites that hide or obscure actor and activities also aggravate ambient risk by either being used to obscure criminal activities or making the area more difficult to be effectively patrolled by local police. These two risk factors attract criminals to the site.

Alcohol makes targets softer, which may contribute to the higher incidence of crime when an adult establishment is coupled with a tavern or other alcohol serving establishment. Alcohol lowers inhibitions and clouds judgment, which makes drunk patrons more vulnerable to criminals. Additionally, the presence of targets softened by alcohol draws criminals.

The expected crimes that take place at an adult establishment are predicted by criminological theory. There are primarily predatory crimes (robbery, mugging, etc.), “victimless” crimes (drugs, lewd behavior, prostitution), and crimes of opportunity (vandalism, theft, and burglaries outside the victims’ presence). Additionally, the criminals who are attracted to sexually oriented businesses by the quantity and quality of victims are often “professional criminals,” who have no other means of financial gain and devote much of their time to these criminal activities.

By increasing regulation in these sites, the softness of the targets will cease to be as big of a draw for criminals because of the risk of getting caught by the regulatory tactics, such as increased police presence, increased security measures at the site, and regulations that change the target softness.

Non sexually oriented businesses, as predicted by criminological theory, will have “trivially small” secondary effects for many reasons. These non-sexually oriented businesses do not draw large numbers of soft target customers to their establishments, the customers only spend minutes on site, and otherwise lack characteristics that make sexually oriented business customers soft targets.

Dr. McCleary clarifies that the secondary effects of a sexually oriented business do not depend on whether the establishment sells or rents products only for off premises use or solely on premises use. The risks posed are generally the same because the sexually oriented business will still draw the same type of soft, regional targets that facilitate criminal activity. “The implicit interests of these customers make them attractive targets to prostitutes and predatory criminals.”

Dr. Linz critiqued the City of Austin study for selecting adult entertainment venues that would produce results of secondary effects and eliminated half the sites in the area because they would not produce favorable results. However, it is common in the scientific world to exclude

Summaries of Adult Oriented Business Studies

cases from analysis on the grounds of inferential validity. In fact, if this was not done, there would be a serious threat to the validity of a study. Dr. Linz also criticizes two studies on the grounds that the researchers have repudiated their studies. Dr. Linz fails to account for the general style of these social studies; the researchers themselves are always conservative in stating their findings, and often attempt to account for other factors and note when other factors could not be eliminated. When the studies found a large secondary effect from an adult business, the researchers would often note that “not all” of the secondary effect can be attributed to a sexually oriented business, but this qualification does not imply that none of the secondary effect is due to the sexually oriented businesses.

“Dr. Linz shows some bias when he dismisses all of the studies and then criticizes the City of New Albany for not using a study prepared by him and his colleagues. There were several reasons the city might have not used the study prepared by Dr. Linz. These reasons include the relative newness of the study, obscure, the study was commissioned by the sexually oriented business industry to be used in a legal challenge, and its validity is unknown and untested. The studies the city chose are time tested and valid studies, used hundreds of times over by many municipalities. Additionally, Dr. Linz other studies improperly analyzed data, and claimed that statistically significant changes in crime rate were insignificant and resulted in a secondary effect of “zero.” Dr. Linz’s study also failed to account for the relative danger of bar and nighttime establishment closing periods that lead to a higher incidence of police calls for service that are not related to a lack of secondary effect for not having high call for service volume between the hours of 2 a.m. and 6 a.m. Additionally, Dr. Linz also fails his own “one time fluke” test when his studies encounter false negatives for secondary effects.

Dr. McCleary concludes that the body of studies that the City of New Albany relied on in writing their sexually oriented business ordinance are sufficient to establish the likelihood that sexually oriented businesses generate large, significant crime related secondary effects.

Summaries of Adult Oriented Business Studies

City of Garden Grove, California Study

This study was commenced in 1990, at the request of Garden Grove, California. They had recently adopted an ordinance restricting the density and location of adult businesses in the city and, in order to withstand potential challenges, the City needed to show that the restrictions were based on the secondary effects on the business' surroundings, not on the content or moral offensiveness of the businesses themselves. This study was designed to focus on the following questions:

- (1) Does crime increase in the vicinity of an adult business? If so, is the increase statistically significant and does it constitute a public safety hazard?
- (2) Can the public safety hazard be ameliorated by requiring a minimum distance between adult businesses? What is the required minimum distance?
- (3) Are there any other practical zoning restrictions that would ameliorate the public safety hazard?
- (4) Are adult businesses associated with a decrease in property values?
- (5) Are adult businesses associated with declining quality of neighborhood?

The study used crime reports and other police data from 1981-1990 downloaded into a statistical analysis system, where the researchers then measured the absolute and relative distances between crime events. The distances were eventually able to be measured within 40 feet of the crime occurrence for a subset of 34,079 crimes. The results of the study show that:

- (1) Crime rises whenever an adult business opens or expands its operations and the change in crime is statistically significant.
 - a. Violent crimes rose most often (assault, robbery, burglary, and theft)
 - b. "Victimless crimes" (drug and alcohol use and sex offenses) was also significant, but less consistent
- (2) The relationship between density and crime cannot be determined because no new adult entertainment establishments have moved into the studied area since 1981.
- (3) The architectural devices designed to ameliorate the nuisance of adult businesses have no significant impact on crime (such as partitions, walls to shield the business from view from the street, etc.)
- (4) When an adult business opens within 1000 feet of a tavern, the impact on crime is substantially higher.

Questionnaires were developed and a sample of real estate professionals were surveyed. Only 15% of the real estate professionals surveyed responded. These results show that:

- (1) Real estate professionals agree that close proximity of adult businesses are associated with a decrease in property values for commercial, single-family, and multiple family residential properties; and
- (2) Real estate professionals associate the close proximity of adult businesses with increased crime and other negative impacts on the quality of the neighborhood.

A random sample of households near an adult establishment were surveyed with the following results:

Summaries of Adult Oriented Business Studies

- (1) Residents who live near adult businesses associate adult businesses with increased crime and other negative neighborhood impacts.
- (2) A large proportion of residents who live near adult businesses report personal negative experiences that are attributed to these businesses.
- (3) Public support for regulation of adult businesses is overwhelming, with homeowners and women being the strongest supporters.

Based on these results, the researchers recommend that:

- (1) Lacking any conclusive evidence on the relationship between spatial density and crime, there is no reason to change the minimum spacing requirement to be larger or smaller than 1000 feet.
- (2) No adult businesses should operate within 1000 feet of a residence due to the serious public safety hazards.
- (3) Conditional use permit processes should be used to ameliorate the public safety hazard and police departments should be fully involved with the process.
- (4) No tavern should be allowed to operate within 1000 feet of an adult business because of the "interaction effect."
- (5) the evidence supports a city ordinance demonstrating the presence of negative secondary effects associated with location and density of adult businesses.

Report to: American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses

This report was conducted to review the current state of knowledge about the secondary impacts of sexually oriented businesses upon the immediate neighborhood. This report deals with the secondary impacts on residential, commercial, educational, recreational, and religious facilities with a focus on smaller municipalities. Historically, the clientele (mostly young, single, transient/mobile males) and the premise of sexually oriented businesses has not changed. The same can be said for the presence of secondary effects. These effects were present as early as the 19th century, as evidenced by eyewitness accounts of criminals acting as “bouncers,” illicit gambling, prostitution, robbery of assaulted individuals, and drug use. These establishments were less regulated, historically, so the secondary effects were closely tied to the establishment itself. Now, where these establishments are closely regulated, the illicit activity moves to less regulated areas of the municipality, thus, regulation has, in its own way, made the impacts upon the public of these establishments less clear but broader in scope.

The major points of this report, as supported by several studies, are:

- (1) sex oriented businesses provide a potential center for illicit and undesirable activities by providing a place of contact for numerous potential customers for prostitution, pandering, and other activities.
- (2) Sex oriented businesses, in combination with taverns or other sex businesses, increase the quantity of undesirable activities that occur.
- (3) There are undesirable results of the facilitation effect on illicit behavior.
 - a. Adjacent uses, such as educational, religious, or residential areas, where children are exposed to inappropriate models of behavior which they are unprepared to digest or respond effectively to
 - b. Children, the elderly, and women are disproportionately impacted in opportunistic personal crimes.
- (4) Sex oriented businesses set the context for interpreting pedestrian presence in the area.
 - a. Leads to propositioning of passersby who have nothing to do with the sex business.
 - b. Unwanted attention towards women, children, or the elderly makes it intimidating for these populations to be on the street.
- (5) A strong tendency for inappropriate activities to spill over into the surrounding neighborhood.
 - a. Prostitution or other illicit activities may start occurring in little used parks, parking lots, garages, alleyways and other often empty spaces.
 - i. The sexually oriented business does not create these activities but provides a “facilitating” setting for supporting these activities and provides a legitimizing reason for the perpetrators of crimes to be present.
- (6) Sex oriented businesses have a negative impact on residential and commercial property values within three blocks of the location of the sex oriented business.
 - a. Supported by “the preponderance of research.”

Summaries of Adult Oriented Business Studies

- i. Lenders and real estate appraisers consider the presence of a sexually oriented business to be evidence of neighborhood decline and decay.
- ii. Other research provides that areas with sexually oriented businesses experience lower rates of appreciation in property values and/or higher turnover in properties in comparison to comparable areas without sexually oriented businesses.

National Law Center Summary of the American Center for Law and Justice Land Use Study

This report reviews the current state of knowledge about the impact of sexually oriented businesses upon nearby residential and commercial uses with a focus on the effects on smaller municipalities. Although this is not a new problem, this report seeks to centralize evidence of the secondary effects of sexually oriented businesses. This report finds:

- (1) Sexually oriented businesses support a detrimental activities within the communities that are incompatible with the activities of a residential neighborhood.
- (2) Sexually oriented businesses have a negative effect on local businesses,
- (3) When a sexually oriented business is coupled with an establishment that sells alcohol for consumption on its premises, the detrimental impact on the surrounding area increases.

This study starts with a historical overview of the issues of sexually oriented businesses and their effects dating back to the late 18th century. The “tableau vivant” and “concert saloon,” grew into the “topless bars” of modern times in response to the pressures of the young, working male. The customers that frequent sexually oriented businesses has not changed much from the past and are mostly young, single, transient males. The impact of sexually oriented businesses has gotten broader over time as these establishments were better regulated and patrolled for illicit activities.

This report reiterates the findings of the Garden Grove, California study (discussed earlier in these summaries) and the City of Indianapolis study. The City of Indianapolis study found a 77% higher incidence of serious crime in an area with multiple sexually oriented businesses compared to the control area. The control area and study area were matched for demographics characteristics, building type, and other attributes. The study indicated that sexually oriented businesses helped create conditions that brought outsiders to the area and provided venues for opportunistic crimes. Additionally, sex crimes were 4 times higher in residential areas near a sexually oriented business than in commercial areas near a sexually oriented business. Similar findings were made in studies conducted in Minnesota, the City of Austin, Los Angeles, and Hollywood.

Public spaces and their questionable ownership furthers the opportunity for crime to occur there and when a sexually oriented business exists near a public place, the public places are often used for illicit activities. These illicit activities drive away legitimate users. The report states that a when a public place is devoid of women or the elderly, then it is generally a less safe space because these two groups are most likely to be victimized by criminals. It follows that when women and the elderly avoid a place, it is because they are afraid that they will become victimized by criminals. This is the “climate of fear” that the report talks about. The climate leads them to avoid the space altogether and may even contribute to declining property values in the area.

The City of Indianapolis study was the most detailed when it came to the secondary effects on property values in commercial and residential properties. Seventy-five percent of the real estate professionals who responded to the survey they sent our indicated that there was a significant negative impact on property values when sexually oriented businesses are located nearby. They also concluded that no other facility had such a negative impact on property values in the surrounding area; not even drug rehab centers effected property values in this way.

Summaries of Adult Oriented Business Studies

Additionally, the City of Austin study concluded that the presence of a sexually oriented business in a neighborhood leads mortgage lenders to the conclusion that the area is in decline.

A license plate study conducted in Washington showed that the majority of the cars present in the parking lot of a sexually oriented business were from other towns or other states. This study concluded that the regional customer base, as opposed to a neighborhood customer base, makes the owners of sexually oriented businesses less responsive to neighborhood problems.

This study also indicates that the negative secondary effects of a sexually oriented business will likely be more magnified in a small town than in a large city due to

- (1) The compact nature of the surrounding residential areas to a central downtown in small municipalities increases the reach that those harmful secondary effects would have on the municipality.
- (2) Smaller populations and shorter business hours result in lighter use of public, semi-private, uncontrolled spaces and therefore provides much greater potential for illicit activity in areas surrounding sexually oriented businesses.
- (3) Small municipalities typically experience more economic stress than larger cities and this is aggravated when sexually oriented businesses located to the downtown business district of a small town.

Summaries of Adult Oriented Business Studies

Newport News, Virginia Adult Use Study

This study summarizes court cases striking down adult business restrictions for the following reasons:

- (1) The ordinances were enacted because of a distaste for the speech itself, not the desire to eliminate adverse effects.
- (2) The ordinances were not based on factual information that proved the existence of negative impacts on surrounding areas
- (3) The ordinances severely restricted First Amendment rights
- (4) The ordinances placed arbitrary restrictions on legitimate businesses
- (5) The licensing processes were confusing, and high licensing fees were punitive and had little relation to the cost to the public for allowing the use.

Cities have been successful in defending adult regulations when they use their police powers under zoning to develop performance related standards. These standards are set forth in the Detroit, Michigan ordinance and the Boston, Massachusetts ordinance.

The Detroit, Michigan, ordinance was challenged and upheld by the Supreme Court in 1976 (*Young v. American Mini Theaters*). The Supreme Court held in this case that the First Amendment protects sexually explicit activities from total suppression, but “the State may legitimately use the content from these materials as a basis for placing them in a different classification...” The Detroit approach disperses adult establishments from one another, keeps adult establishments separate from residential areas, and limits them to commercial and industrial zones. The ordinance also provides buffers: no adult uses permitted within 500 feet of a residentially zoned area or within 1000 feet of any two other adult uses.

The Boston approach is used when there are already adult uses clustered together within a city (*City of Renton v. Playtime Theaters, Inc.*). The city created an “adult entertainment zone” and provided urban renewal funding to upgrade the area. The goal of this ordinance was to concentrate the uses to a single, small area of the city and prevent their spread to other parts of the city with a special emphasis on avoiding spread to residential areas.

The proposed Newport News ordinance disperses adult uses along major highway corridors in the city with clusters downtown. Adult uses are relegated to commercial zones only. This ordinance regulates adult uses through a conditional use permit to limit adverse impacts on surrounding areas and encourages the dispersal of adult businesses, except in downtown where concentrations are permitted. Outside of downtown, the ordinance ensures that there is adequate separation between adult uses and residential areas, churches, libraries, parks, playgrounds, schools, and other adult uses. It also features a section that grandfatheres in any existing adult uses in Newport News.

This study summarizes other studies done throughout the U.S. The first study referenced in the 1984 Indianapolis study, which found that the average annual rate for major crimes in areas with adult uses was 23% higher than the corresponding rate for control areas and the average annual rate for sex related crimes was 77% higher in the study area than the control area. The Los Angeles, California, study concluded that major crimes increased 7.6% in the Hollywood area following the opening of adult businesses, which was double the citywide rate. Street robberies increased by 94%, minor crimes increased 46 % in the Hollywood area but only increased 3% citywide. Prostitution arrests in Hollywood increased 372%.

Summaries of Adult Oriented Business Studies

The Austin, Texas study found that sex related crimes were 2-5 times the citywide average and 66% higher in study areas than control areas. The major crimes rate was also higher in the study areas than control areas and much higher than the citywide average. Other studies completed in Amarillo, Texas, Los Angeles County, California, and Phoenix; Arizona indicated that the crime rates were higher near adult businesses.

Newport News' study of their own city identified that the 31 adult uses had 425 police calls between January 1, 1994, and October 31, 1995. Adult entertainment establishments had the most police call for service, averaging 23 calls per business. This number may not seem large, but that is more than double the total number of calls that the police received from restaurants with ABC licenses over the same period. Therefore, adult uses had a higher rate of police calls for service than non-adult establishments. All of the control areas were matched with study areas with a similar population, demographic, housing unit density, poverty level and median household income.

The study then summarizes the effects on the surrounding neighborhoods that was uncovered by other studies. In the Indianapolis study, residential properties in study areas appreciated in value at $\frac{1}{2}$ the rate of control areas and appraisers felt there was a negative impact on both residential and commercial properties within one block of an adult use, however, residential uses felt most of the negative impact. The further the distance from the adult use, the less the impact was felt. In the Los Angeles study, a survey was sent out to real estate professionals. 88% of the responding real estate professionals felt that a concentration of adult businesses would decrease the market value of business properties located in the vicinity. 68% of respondents felt the concentration would decrease rental values of business property and 59% felt that the concentration would decrease the rentability/salability of business property nearby. 90% felt that the concentration of adult uses nearby would decrease the market value of residential property and 90% also felt that this would decrease the rentability or salability of a residential property within 1000 feet. A St. Paul, Minnesota study indicated there was a correlation between deteriorating housing values, crime rates, and the location of adult businesses. Lastly, an Austin, Texas, survey of real estate appraisers and lender found the 88% of the respondents believed an adult bookstore would decrease property values within one block, noting that this adult use would make homes less attractive to families, which reduces demand and property values.

In Newport News' study, several groups have made their concerns about the deterioration of their neighborhoods and commercial areas known. Realtors in the area have estimated that adult uses nearby can reduce the number of people interested in occupying a property by 20-30% and will hurt property values and the resale of property in adjacent residential neighborhoods. The realtor's comments and opinions were in line with the other studies discussed.

Workplace Perspectives on Erotic Dancing – Minneapolis, Minnesota Study (2017)

This study was conducted by the University of Minnesota's Urban Research and Outreach-Engagement Center in a partnership with the Minneapolis Health Department and The Women's Foundation of Minnesota. The methods used were a Community Advisory Group Confidential Interviews, and Anonymous Online Surveys. The purpose of this study is to document the workplace experiences of entertainers within strip clubs in Minneapolis from a lens of workplace health and safety. This study is relevant to our discussion of adult establishments because of the discussions about harassment and assault that are prevalent inside these establishments.

Harassment and assault are prevalent in strip clubs, especially in VIP rooms, but it is normalized as a part of the industry. The onus is placed on the performers themselves to police the boundaries and behavior of customers instead of having harassment policies that are enforced. The owners of clubs do not do much to stop harassment or assault because it is such a normal part of the business of adult entertainment. The study has a lot of quotes from entertainers that describe the conditions

Analysis of the Effects of Sex Oriented Businesses on the Surrounding Neighborhoods in Dallas, Texas as of April, 1997

This study was originally conducted in 1984, and was updated in 1994, and was updated with findings for 1997. This study uses a “study area” where an adult business is open in and a “control area” where no adult businesses are currently in operation. The control area and study area are matched for demographics, population, similar land uses, and traffic patterns. There was also a survey of real estate representatives at properties around the study area that were up for lease or sale conducted. These surveys asked about the length of time on the market, the experience the representative has with that property regarding price and offers received, and whether they could compare this property to a similar property in a different neighborhood, and whether, in their opinion, the presence of a sexually oriented business in the neighborhood had any impact on the property they were trying to sell or on the neighborhood as a whole.

This study found that sexually oriented businesses were a major source of police calls for service. Some sexually oriented businesses in this area averaged more than 1 call per day during the four-year period between 1993 and 1996. These calls lead to a number of sex crimes arrests such as for prostitution, commercial vice, and rape. There was an increase in sex crime arrests and disturbances requiring police presence around sexually oriented businesses and significantly more crime when there is a concentration of sexually oriented businesses in one area.

This study also surveyed other municipalities’ ordinances restricting sexually oriented businesses. In most cases, sexually oriented businesses are restricted from locating in all but a few zoning districts and had minimum distance requirements between other sexually oriented businesses and residential, religious, educational, or recreational uses.

This study found and corroborated the presence of the “concentration effect,” in which multiple sexually oriented businesses in one neighborhood can have a major negative impact on the neighborhood. The presence of multiple sexually oriented businesses contributes to crime, driving away family-oriented businesses, and impacts nearby residential neighborhoods. These concentrations of sexually oriented businesses compete with each other for customers by using increasingly aggressive advertising. These concentrations also appear to attract other dangerous businesses like pawn shops, gun stores, liquor stores, check cashing storefronts, and late-night restaurants which all contribute to increased crime.

The impact on surrounding properties is great. The presence of a sexually oriented business can limit the uses of nearby property as commercial and residential uses seek to distance themselves from the adult use. This can often lead to vacant buildings and storefronts, which can create other dangers to the community. The presence of a sexually oriented business can also turn residential properties into strict rentals because of how difficult it is to sell the properties once an adult business has moved into the area.

Lastly, the negative perceptions of adult uses can lead to disinvestment in residential neighborhoods and lead to economic decline from lack of commercial development in the area. Other resident and non-resident opinions of sexually oriented businesses drive market factors as much if not more than the mere presence of a sexually oriented business. These attitudes reflect social ideals of the area and drive homeowners and businesses to an area or away from an area. The effects of these attitudes are difficult to measure, however the effect is included in the study.

Houston City Council: Sexually Oriented Business Ordinance Revision Committee Legislative Report (1997)

This report's purpose was to review the current ordinance for strengths and weaknesses and to supplement the prior reports issued in 1983, 1986, and 1991. The 1986 report addressed the effects of sexually oriented businesses on establishments that serve alcohol. The 1991 report addressed the addition of adult bookstores and movie theaters as regulated enterprises within the ordinance's land use controls.

The committee was re-established in the summer of 1996 to review ideas on strengthening the current ordinance and conduct public meetings where the public could voice their concerns and ideas for the revised ordinance. Many citizens also addressed written correspondence to the committee, voicing their opinions in favor of strengthening and enforcing the current ordinance. Many cited First Amendment concerns, but these letters also urged for industry cooperation and licensing procedures. The findings of the committee, based on public input and reviewing studies are as follows.

The committee found that licensing all sexually oriented businesses would establish a foundation for documenting those owners who have previous convictions for prostitution, public lewdness, and other offenses. Licensing would also eliminate the possibility of underage entertainers being hired in these establishments due to strictly enforced age requirements.

There was a serious breakdown in the enforcement of prostitution, public lewdness, indecent exposure and other criminal activities due to increased caution from performers when a non-participating customer is in the room under the suspicion that the non-participating customer is a police officer working undercover.

The committee has been made aware of the danger of "glory holes," which are special booths in which participants engage in anonymous sex with sex workers. These promote anonymous sex and can lead to the spread of sexually transmitted diseases.

Since public parks are a natural area of criminal spillover from areas like sexually oriented businesses, expert and public testimony urged the committee to find that public parks should be included in a distance requirement.

The community also desired notice to be given to anyone near an area where there is a pending sexually oriented business permit so the public is aware that the neighborhood is changing.

Sexually oriented businesses that did not have clear lines of vision encouraged lewd behavior and illicit sexual contact. For example, high back chairs are used as barricades to shield illicit behavior and private, secluded, dimly lit areas have the same effect. Testimony revealed that once a performer was comfortable with a patron and had decided that he was not an undercover officer, they would move the patron to a secluded area where illicit activities would take place. To that point, adequate lighting would facilitate managers and police officers patrolling or monitoring sexually oriented businesses.

Instead of grandfathering, the current ordinance uses "amortization," under which a non-conforming adult use is given 6 months from the date of the ordinance passing to come into compliance. If that is too short of a time for the business, it can apply for an extension, to which a hearing is performed, and a balancing of interests is done. The factors considered are: (1) the amount of the owner's investment in the existing enterprise through the date of passage and approval of the Ordinance; (2) the amount of such investment that has been or will be realized

Summaries of Adult Oriented Business Studies

through the 180th day following the effective date of the Ordinance; (3) the life expectancy of the existing enterprise; and (4) the existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of such leases. The committee determined this is a better process than the grandfathering process, which would allow the indefinite continuance of a non-conforming adult use and a continued threat to any residential or commercial use this adult use is near.

The study then reviews the entire ordinance of the City of Houston for revisions that are being proposed and changes that are being made.

Summaries of Adult Oriented Business Studies

Effects of Sexually Oriented Businesses by Louis F. Comus III

This compilation summarizes various studies done by municipalities around the country. This report summarizes the following studies:

Phoenix, Arizona (1979)
Garden Grove, California (1991)
Los Angeles, California (1977)
Whittier California (1978)
Indianapolis, Indiana (1984)
Minneapolis, Minnesota (1980)
Cleveland, Ohio (1977)
Oklahoma City, Oklahoma (1986)
Amarillo, Texas (1977)
Austin, Texas (1986)
Beaumont, Texas (1982)
Houston, Texas (1983)
Seattle, Washington (1989)
New York City, New York (specifically, Times Square) (1994)
Dallas, Texas (1997)
Environmental Research Group Report (1996)
Tucson, Arizona (1990)
Manatee County, Florida (1987)
State of Minnesota, Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (1989)
New Hanover County, North Carolina (1989)
Town and Village of Ellicottville, New York (1998)
Islip, New York (1980)
New York City, New York (1994)
Oklahoma City, Oklahoma (1992)
Houston Texas (1997)
Newport News (1996)
Des Moines, Washington (1984-1987)
St. Croix County, Wisconsin (1993)

The studies summarized had similar findings. These studies concluded that there were many negative secondary effects associated with the presence of sexually oriented businesses. Generally, crime increased in the areas immediately surrounding a sexually oriented business. Property values depreciated and selling/leasing properties within blocks of a sexually oriented business became difficult and resident turnover was higher in areas with sexually oriented businesses than control areas without sexually oriented businesses, which suggests more homes becoming rental properties. These buildings were more likely to sit vacant because of the negative perception of sexually oriented businesses influencing market forces. These studies also found that the negative effects of the sexually oriented business were lessened when there was a buffer zone between the adult use and commercial, residential, educational, religious, and

Summaries of Adult Oriented Business Studies

other neighborhood uses. Adult uses and their effects compound when there is a concentration of adult uses in one place. Additionally, those that reported not having many negative impacts were generally found in areas with isolated sex businesses. A few of the studies cited public health concerns with establishments that used VIP rooms or booths. Some studies recommended licensing procedures to curb some of the secondary effects. Some studies found that these secondary effects were aggravated by the presence of taverns or other establishments that sell alcohol. Amortization was a common solution to the grandfathering problem when municipalities contemplated an ordinance in their studies.

A few of the studies conducted research on the number of calls to police that are attributed to adult uses. The general consensus was that sexually oriented businesses account for an increase in calls to the police for service. Some studies found that the number of calls to police were nearly twice as high for adult uses than for other commercial businesses. Many studies included surveys of real estate professionals who opined that property values decreased around sexually oriented businesses in both residential and commercial capacities. The real estate professional surveys tended to conclude that citizen fear of the secondary effects of sexually oriented businesses led to consumers avoiding areas where sex businesses operate and contributes to the deleterious effects of the presence of a sexually oriented business.

Police Memorandum Dated May 1, 1990

This memorandum was prepared by the Tucson, Arizona Police Department for the City Prosecutor in relation to an adult entertainment ordinance. This report details the “events and activities” that occur in adult establishments and bookstores that prompted the ordinance revision.

The police department reported that they had received numerous complaints of illegal sexual activity and unsanitary conditions in the adult uses in the city. The illicit activities were primarily taking place between prostitutes and customers, between entertainers and customers, and sometimes between customers themselves. Through investigation, the officers found that many of the entertainers were also prostitutes and were offering “private shows” where illicit sexual activities would occur. The entertainers would encourage customer participation in their sexual acts, and it was found that “nearly all” of the dancers engaged in sexually explicit conversations with customers. The amount of sexual contact allowed by the dancers depended heavily on the amount of money the customer paid to the dancer. Sometimes these acts occurred with the knowledge of management. Arrests for sexually explicit sex shows and prostitution were common among all the City’s adult establishments.

There were also a number of underage dancers that had been hired to dance nude. The underage dancers were commonly in possession of fake IDs, which older dancers and sometimes management, helped them to obtain. A number of sanitation concerns with booths that encouraged anonymous sexual activities were raised, including residual bodily fluids, anonymous sex, and solicitation of sex, which can lead to sexually transmitted diseases. The health department investigated the adult establishments in the area and concluded that many of the sanitary concerns could be rectified by removing the doors on booths. This incited an industry wide cleaning and remodeling operation to show that adult establishments were not dirty and unsanitary and to fight to keep the doors on the booths.

This ordinance revision was caused by a lawsuit brought against the City for enacting an ordinance that required the licensure of employees and established regulations regarding the operation and location of adult entertainment establishments. This lawsuit was primarily concerned with whether the doors on booths were to stay on or come off. The plaintiff adult establishments were concerned with non-paying customers congregating around a paying customer’s booth while viewing is taking place and proposed that the doors be raised to a height where the feet of the customer can be seen, and management can be sure that there is only one person in the booth at a time. The Attorney for the adult establishments agreed to raise the bottom of the door 30 inches from the floor and that the booth cannot be modified, nor can a chair be used that will circumvent the intent of raising the door. The memo concludes by confirming that the proposed ordinance will not adversely affect these business establishments and that the police department recommends the ordinance be adopted in its present form.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ASSOCIATION OF CLUB EXECUTIVES
OF DALLAS, INC., et al.,

Plaintiffs,

v.

CITY OF DALLAS, TEXAS,

Defendant.

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Civil Action No. 3:22-cv-00177-M

MEMORANDUM OPINION AND ORDER

Before the Court is the Motion for Preliminary Injunction (ECF No. 3) and the Motion for Leave to Amend (ECF No. 34), filed by Plaintiffs the Association of Club Executives of Dallas, Inc.; AVM-AUS, Ltd. d/b/a New Fine Arts Shiloh; Nick’s Mainstage, Inc.–Dallas PT’s, d/b/a PT’s Men’s Club; Fine Dining Club, Inc., d/b/a Silver City; 11000 Reeder, LLC, d/b/a Bucks Wild; and TMCD Corporation, d/b/a The Dallas Men’s Club (collectively, “Plaintiffs”). Also pending is the Motion to Dismiss for Failure to State a Claim (ECF No. 17), filed by Defendant the City of Dallas (the “City”). For the following reasons, the Motion for Preliminary Injunction is **GRANTED**, the Motion for Leave to Amend is **GRANTED**, and the Motion to Dismiss is **DENIED AS MOOT**.

I. BACKGROUND

In Chapter 41A of the City of Dallas’s Code of Ordinances, the City promulgates numerous regulatory obligations and restrictions on sexually oriented businesses (“SOBs”)¹

¹ The Code defines a SOB as “an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.” Dall. City Code § 41A-2(31).

operating within City limits. On January 26, 2022, following a public hearing, the Dallas City Council unanimously voted to adopt Ordinance No. 32125 to amend Chapter 41A and add, *inter alia*, § 41A-14.3, a provision restricting SOBs from operating between the hours of 2 a.m. and 6 a.m.² ECF No. 19-1 at 2–6 (the “Ordinance”).

The Ordinance states the Council’s finding that the operation of SOBs between 2 a.m. and 6 a.m. is “detrimental to public health, safety, and general welfare,” citing various data in support, including crime data purporting to show an increase in violent crime and drug and gun arrests at or near SOBs between 2 a.m. and 6 a.m.; data from the Dallas Fire-Rescue Department showing an increase in the number of calls for service at SOBs between 2 a.m. and 6 a.m.; a 2012 research study by McCord and Tewksbery,³ analyzing SOBs in Louisville, Kentucky; a 2008 study by McCleary, showing that crime increases when SOBs operate in rural communities; a 2012 study by Weinstein and McCleary, associating SOBs with a higher incidence of crime, regardless of location; and a report from the cities of Beaumont and Amarillo, showing that SOBs promote certain criminal activity, have a deleterious effect on adjacent areas, and increase crime. Ordinance at 1–2.

The Ordinance also references a Dallas Police Department task force (the “Task Force”) created in March 2021, at the Council’s request, following shootings and other violent crimes that occurred at or near SOBs. Ordinance at 2. On January 5, 2022, the Police Department presented to the Council the Task Force’s conclusions, and recommended that SOBs’ hours of operation be reduced to decrease criminal activity, improve safety, and reduce demand on City

² Specifically, the Ordinance adopted by the City Council proposed amending §§ 41A-9, -16, -17, and -20 of the Code, and adding § 41A-14.3, the new section restricting SOBs’ hours of operation. ECF No. 19-1 at 2.

³ The Ordinance references “a 2021 research study by McCord and *Tewksbery*,” but the study attached to the City’s Motion to Dismiss is authored by Richard Tewksbury. *See* ECF No. 19-1, at 70.

services. *See* ECF No. 19-1, at COD-35 (“SOB Briefing”).⁴ On January 14, 2022, the Police Department submitted to the Council a “detailed analysis” of data relating to SOBs, including a list of licensed SOBs, graphs displaying data related to violent crime and associated arrests and emergency calls, and graphs displaying data related to all offenses, arrests, and calls for service. Resp. to Mot. for Preliminary Injunction, Ex. 2 (ECF No. 10 at 46) (“Task Force Report”).⁵

On January 26, 2022, to advance its stated goal “to reduce crime and conserve police and fire-rescue resources by requiring [SOBs] to be closed for business between the hours of 2:00 a.m. and 6:00 a.m.,” the City Council unanimously approved of the Ordinance. Ordinance at 2; Item 36, Dall. City Council Meeting (January 26, 2022), <https://dallastx.swagit.com/play/01262022-1031>. That same day, Plaintiffs filed a Complaint against the City, and moved for a temporary restraining order and preliminary injunction, asserting that the Ordinance violates Plaintiffs’ First Amendment right to freedom of expression. ECF Nos. 1 (“Compl.”), 3 (“Mot.”). Plaintiffs consist of four adult cabaret businesses and one adult bookstore that qualify as SOBs under the City Code, and a non-for-profit trade association whose members are SOBs and include adult bookstores, arcades, and cabarets located in the City of Dallas. The Complaint alleges that the Ordinance is an unconstitutional content-based restriction of protected expression, does not withstand strict or intermediary scrutiny, and that the data and information relied on by the City in passing the Ordinance is invalid, flawed, and shoddy. Compl. ¶ 48.

On January 28, 2022, the Court denied Plaintiffs’ request for a temporary restraining order based on the City’s representation that it would not enforce the Ordinance before the Motion for Preliminary Injunction was decided. ECF No. 11. On February 18, 2022, the City moved to dismiss under Rule 12(b)(6), attaching the Task Force Report, the Police Department’s

⁴ This presentation was admitted into evidence during the preliminary injunction hearing as Plaintiffs’ Exhibit 2.

⁵ This report was admitted into evidence during the preliminary injunction hearing as Plaintiffs’ Exhibit 3.

SOB Briefing to the Council, and the research studies referenced in the Ordinance. ECF Nos. 17, 19. On March 7, March 23, and April 6, 2022, the Court held evidentiary hearings in connection with Plaintiffs' Motion for Preliminary Injunction. On March 31, 2022, Plaintiffs moved for leave to file an amended complaint. ECF No. 34. On April 28, 2022, the Court received supplemental briefing on the recently decided case of *City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022).

II. DISCUSSION

The Court will first address the City's Motion to Dismiss and Plaintiffs' Motion for Leave to File an Amended Complaint. ECF Nos. 17, 34. The Court will then address Plaintiffs' Motion for Preliminary Injunction.

A. Motion to Dismiss and Motion for Leave to Amend

The City moves to dismiss under Rule 12(b)(6), arguing that the Complaint does not contain facts plausibly alleging that the City's data was flawed, nor that the Ordinance was not narrowly tailored to achieve a compelling government interest, as required to allege a First Amendment violation. *See* ECF No. 17 at 6–10. In response, Plaintiffs seek leave to amend their pleadings to include additional factual allegations to support their claim that the challenged Ordinance is unconstitutional, in part incorporating evidence gathered in discovery and proffered during the preliminary injunction hearing. ECF No. 34. The City opposes on the grounds that Plaintiffs' amendments do not satisfy Rule 8 and are futile, and that the City objects to some of the material attached to the proposed Amended Complaint, including the testimony and report of Plaintiffs' expert, Dr. Daniel Linz. ECF No. 37.

Under Federal Rule of Civil Procedure 15, the Court should “freely give leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). Here, the Court determines that the

proposed amendments are not futile, and that justice requires granting Plaintiffs leave to amend the Complaint. The Court has already ruled on most of the City's objections to materials attached to the Amended Complaint during the hearings, and to the extent other objections remain, they are hereby **OVERRULED**. Accordingly, Plaintiffs' Motion for Leave to Amend is **GRANTED**, and the City's Motion to Dismiss is **DENIED AS MOOT**.

B. Motion for Preliminary Injunction

Plaintiffs move for a preliminary injunction enjoining the enforcement of the Ordinance's restriction of hours of operation of SOBs. To be entitled to a preliminary injunction, the movant must demonstrate: (1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interest. *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015).

As a preliminary matter, the Court need not analyze factors (2) and (4), threat of irreparable injury and whether an injunction would be in the public interest, respectively; because Plaintiffs allege a First Amendment violation, these factors are presumed and weigh in favor of an injunction. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013) ("Injunctions protecting First Amendment freedoms are always in the public interest."). Accordingly, the Court addresses only whether Plaintiffs have shown a likelihood of success on the merits and the balance of hardships. Based on the evidentiary record before the Court and for the reasons stated below, the Court concludes that Plaintiffs have established a reasonable

likelihood of success on the merits, and the balance of hardships weighs in favor of an injunction.

1. Likelihood of Success on the Merits

Plaintiffs contend that the Ordinance's restriction on the hours of operation of SOBs is a content-based law which regulates protected speech, and is unconstitutional under both strict and intermediate scrutiny. The City responds that because the Ordinance regulates SOBs, it is evaluated under the standards established in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 49 (1986), and *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002) (plurality opinion); under *Renton*, the City maintains, the Ordinance is content neutral, because it is aimed at addressing the secondary effects of SOBs, and survives intermediate scrutiny as a reasonable time, place, and manner restriction. ECF No. 10 at 8.

In analyzing a First Amendment claim, the Court first determines whether the targeted speech is protected, and, if so, what level of scrutiny applies; and second, determines whether the Ordinance survives the appropriate level of scrutiny. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 557 (2011). Nude dancing is expressive conduct protected by the First Amendment. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (O'Connor, J., plurality) (“[N]ude dancing . . . is expressive conduct, although we think that it falls only within the outer ambit of the First Amendment's protection.”). Similarly, regulations targeting businesses that purvey sexually explicit materials are subject to scrutiny under the First Amendment. *E.g.*, *Renton*, 475 U.S. at 49–50; *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 70 (1976). Accordingly, the speech targeted by the Ordinance—nude dancing and materials sold at adult bookstores—is protected.

Here, the Court concludes that it need not determine as a final matter which level of scrutiny applies, because regardless of the standard under which the Ordinance is evaluated, it

does not pass muster, and therefore must be enjoined. Accordingly, this factor weighs in favor of an injunction.

a. The governing law is unclear as to whether strict or intermediate scrutiny applies here.

Laws that regulate speech are presumptively unconstitutional because, under the First Amendment, a government has “no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002)). Laws that target speech based on its “communicative content”—*i.e.*, content-based laws—are subject to strict scrutiny, and may only be justified by a showing that the law is narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). In contrast, time, place, and manner restrictions that are content neutral and “designed to serve a substantial governmental interest and not unreasonably limit alternative avenues of communication” are afforded intermediate scrutiny. *Renton*, 475 U.S. at 41.

Accordingly, whether a law is content based or content neutral determines the scrutiny under which it is evaluated. A law is content based if the regulation, on its face, “draws distinctions based on the message a speaker conveys.” *Reed*, 576 U.S. at 163. “Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose.” *Id.* at 163–64. For example, the Supreme Court in *Reed* considered an ordinance limiting the size, duration, and location of temporary signs to be content based on its face, because the communicative content of the signs had to be read and interpreted—specifically, to determine whether the sign was directional, political, or ideological—to know whether certain restrictions applied. *Id.* at 164 (“The restrictions in the Sign Code that apply to any given sign thus depend

entirely on the communicative content of the sign.”). Here, because the Ordinance regulates SOBs, which are defined in the Dallas City Code by the content of the entertainment or services purveyed, the Ordinance is content based. *See* Dall. City Code § 41A-2(31) (defining an SOB as a business providing services or items “intended to provide sexual stimulation or sexual gratification to the customer”).

Here, the City acknowledges that the Ordinance restricting SOBs is content based, but argues that under *Renton*, regulations addressing SOBs fall into an exception to the normal content-based approach, and are not subject to strict scrutiny. ECF No. 10 at 5 (arguing that, “*despite* their content-based nature,” regulations restricting SOBs “are *excepted* from the general neutrality rule” because they address secondary effects, as opposed to the dissemination of speech). In *Renton*, the Supreme Court applied what is often referred to as the “secondary effects doctrine” in the SOB context, which treats certain content-based regulations as content-neutral regulations subject to decreased scrutiny, in instances where it appears that the “predominate concerns” of the body enacting the regulation were to address the “secondary effects” of the speech, as opposed to its content. 475 U.S. at 47; *see also Alameda Books*, 535 U.S. at 445 (Kennedy, J., concurring) (“The purpose and effect of a zoning ordinance must be to reduce secondary effects and not to reduce speech.”). Secondary effects can include an increased crime rate, diminution of property value, and the adverse impact on the quality of neighborhoods. *Alameda Books*, 535 U.S. at 434 (O’Connor, J., plurality). Here, because the Ordinance states it was approved by the City Council, at least in part to reduce crime, the City contends that the Ordinance is subject to intermediate scrutiny, by application of the secondary effects doctrine.

Plaintiffs contend that the secondary effects doctrine no longer applies, citing the Supreme Court’s decision in *Reed* and the Fifth Circuit’s subsequent abrogation of at least some secondary effects doctrine cases. In *Reed*, the Supreme Court held a law that is content based on its face “is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” 576 U.S. at 165. Accordingly, a court must consider whether the challenged law is content based or content neutral “*before* turning to the law’s justification or purpose.” *Id.* at 166. As discussed, *Reed* concerned sign laws, and the majority did not expressly address the secondary effects doctrine, SOBs, or the implication of *Reed* on *Renton* or *Alameda Books*.⁶

In *Reagan National Advertising of Austin, Inc. v. City of Austin*, 972 F.3d 696, 702–04 (5th Cir. 2020), *reversed and remanded*, *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022),⁷ the Fifth Circuit applied *Reed* to a regulatory sign provision concerning the digitalization of signs. The Code at issue in *Reagan* regulated “on-premises” and “off-premises” signs. An off-premises sign is one “advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.” 972 F.3d at 700. The Code permitted on-premises sign owners to install digital signs, but off-premises sign owners could not. *Id.* at 704. Following *Reed*, the Fifth Circuit concluded that because determining whether the sign was “off-premises” under the Code required reading the sign—to determine whether it advertised something located elsewhere or directed someone to a different location—the Code was content based, and subject

⁶ The only reference this Court found in *Reed* to the regulation of SOBs is in Justice Kagan’s concurrence, in which she acknowledges that prior Supreme Court cases “have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws,” citing *Renton* in her discussion. See *Reed*, 576 U.S. at 183 (Kagan, J., concurring).

⁷ This opinion uses “*Reagan*” to refer to the Fifth Circuit’s decision in *Reagan National Advertising of Austin, Inc. v. City of Austin*, 972 F.3d 696 (5th Cir. 2020), and “*City of Austin*,” to refer to the Supreme Court’s decision overturning the Fifth Circuit in *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022).

to strict scrutiny. *Id.* at 707. The Fifth Circuit in *Reagan* applied *Reed*'s reasoning that "a distinction can be facially content based if it defines regulated speech by its function or purpose," and concluded that because the regulation defined off-premises signs by their purpose of advertising a business elsewhere or directing attention to something at a different location, the regulation was content based. *Id.* at 706.

In reaching its holding, the Fifth Circuit in *Reagan* acknowledged that *Reed* constituted a "sea change" in First Amendment jurisprudence, and that *Reed* abrogated the Fifth Circuit's prior holding that "[c]ontent-neutrality . . . [is] defined by the justification of the law or regulation." *Id.* at 703 (quoting *Asgeirsson v. Abbott*, 696 F.3d 454, 459–60 (5th Cir. 2012), *abrogated by Reagan*, 972 F.3d at 703). In footnote 3 of *Reagan*, the Fifth Circuit specifically identified a number of cases it was abrogating based on *Reed*, including four cases that had upheld ordinances relating to SOBs under the secondary effects doctrine. *Id.* at 703 n.3 (citing *Illusions–Dall. Priv. Club, Inc. v. Steen*, 482 F.3d 299, 303 (5th Cir. 2007) (prohibiting SOBs from serving alcohol); *Fantasy Ranch Inc. v. City of Arlington, Tex.*, 459 F.3d 546, 550 (5th Cir. 2006) (restricting proximity from the stage, requiring plexiglass barriers, and regulating tipping); *N.W. Enterprises Inc. v. City of Hous.*, 352 F.3d 162, 172 (5th Cir. 2003) (restricting SOB location, design, and employee licensing); *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288, 290 (5th Cir. 2003) (prohibiting SOBs within 1,000 feet of residential areas). By abrogating these SOB cases in footnote 3 of its opinion in *Reagan*, the Fifth Circuit implicitly applied *Reed*'s holding that a content-based law is subject to strict scrutiny regardless of the government's content-neutral justification, so as to abrogate the secondary effects doctrine in the SOB context. In doing so, however, the Fifth Circuit in *Reagan* did not name the secondary

effects doctrine, nor expressly discuss the impact of *Reed* on *Renton* or the Supreme Court’s more recent secondary effects case, *Alameda Books*.⁸

Plaintiffs contend that under the Fifth Circuit’s decision in *Reagan*, the Council’s stated aim of reducing crime as a secondary effect of SOBs cannot be considered when determining if strict scrutiny applies. In response, the City maintains that the Fifth Circuit’s decision in *Reagan* did not disturb the applicability of the standards articulated in *Renton* and *Alameda Books* in the SOB context, and accordingly, argues that this Court must consider whether the City enacted the Ordinance to address secondary effects of SOBs in deciding the scrutiny level. The City points to the case of *Texas Entertainment Association, Inc. v. Hegar*, 10 F.4th 495 (5th Cir. 2021), as establishing the continued viability of the secondary effects doctrine in the SOB context, post-*Reagan*. In *Hegar*, the Fifth Circuit applied the secondary effects doctrine articulated by the Supreme Court in *Renton* and *Alameda Books* to assess whether a rule regulating nude dancing in SOBs was subject to intermediate or strict scrutiny; the Fifth Circuit noted that to determine whether the rule was content based or content neutral, it “must look to its purpose as substantiated by the record.” *Id.* at 510. The panel went on to apply strict scrutiny because the record contained no evidence of secondary effects, and accordingly, did not apply the secondary effects doctrine, and the rule was deemed content based. *Id.* at 510–12. Despite being fully

⁸ Apart from the cases cited in footnote 3, the authorities relied on by the Fifth Circuit in *Reagan* either do not address the secondary effects doctrine or the regulation of SOBs, do not reach the issue, or conclude that *Reed* did not impact the secondary effects doctrine. See e.g., *Free Speech Coal., Inc. v. Att’y Gen. United States*, 825 F.3d 149, 161 (3d Cir. 2016) (“We need not reach the issue of whether the secondary effects doctrine survives *Reed* because this is not a secondary effects case.”); *Free Speech Doctrine After Reed v. Town of Gilbert*, 129 Harv. L. Rev. 1981, 1996 & n.11 (2016) (“Early evidence also suggests that the secondary effects doctrine—another categorical carveout from unitary application of content analysis—also survived *Reed*. The secondary effects doctrine allows ‘intermediate rather than strict scrutiny’ for zoning ordinances that are facially content based (especially so after *Reed*) but are ‘designed to decrease secondary effects and not speech.’ The doctrine is a contested exception to content analysis that has largely been limited to the context of sexually explicit speech.” (citations omitted)).

briefed, argued, and decided after the Fifth Circuit decided *Reagan*, neither the briefs nor the opinion in *Hegar* cites to *Reagan*.

This Court acknowledges the apparent tension between the Fifth Circuit’s decisions in *Reagan* and *Hegar*. Despite *Reagan*’s seeming abrogation, in footnote 3, of its pre-*Reed* content-neutrality analysis of SOBs under the secondary effects doctrine, *Hegar* references and employs that same purportedly rejected framework, without providing guidance on how to read the two cases harmoniously. Put differently, it is unclear whether, as the City argues, SOBs were implicitly carved out of the Fifth Circuit’s acknowledgment of the “sea change” wrought in First Amendment jurisprudence by *Reed*. Nor is it clear how this Court should apply *Reagan* and *Hegar* in light of the Fifth Circuit’s rule of orderliness, which provides that when the Fifth Circuit issues a decision that resolves a legal question, absent an intervening change in law or en banc or Supreme Court decision, a subsequent panel “may not overrule a prior panel opinion and the earlier precedent controls.” *United States v. Walker*, 302 F.3d 322, 325 (5th Cir. 2002); *see also Arnold v. U.S. Dep’t of Interior*, 213 F.3d 193, 196 n.4 (5th Cir. 2000) (“[U]nder the rule of orderliness, to the extent that a more recent case contradicts an older case, the newer language has no effect.”).

Further complicating matters is the fact that, on April 21, 2022, the Supreme Court issued its opinion in *City of Austin v. Reagan National Advertising of Austin, LLC*, reversing the Fifth Circuit’s decision in *Reagan* and thereby perhaps calling into question the Fifth Circuit’s abrogation of the secondary effects doctrine in SOB cases therein.⁹ 142 S. Ct. at 1470–71. Specifically, in *City of Austin*, the Supreme Court disagreed with the Fifth Circuit’s conclusion that the regulation targeting off-premises signs was content based simply because the sign’s

⁹ This Court ordered the parties to submit briefing on the impact on this case of the Supreme Court’s decision in *City of Austin*, and they did so. ECF Nos. 38, 39, 40.

contents must be read to determine whether it qualified as off-premises. *Id.* at 1471–72. Instead, the Supreme Court concluded the Code was a content-neutral, location-based regulation, because “[a] given sign is treated differently based solely on whether it is located on the same premises as the thing being discussed or not,” and “[t]he message on the sign matters only to the extent that it informs the sign’s relative location.” *Id.* at 1472–73. In so holding, the Supreme Court acknowledged “restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral,” and reversed the judgment of the Fifth Circuit and remanded for further proceedings.¹⁰ *Id.* at 1473, 1476.

Thus, although it is clear that the Fifth Circuit erred in classifying the off-premises/on-premises regulation at issue as content based, the viability of the remainder of the Fifth Circuit’s holdings in *Reagan* is unknown. The Supreme Court’s decision in *City of Austin* does not address the Fifth Circuit’s abrogation of its pre-*Reed* secondary effects cases, including those SOB cases discussed in footnote 3; given that the Fifth Circuit’s reasoning there relied on *Reed*, and is arguably not implicated by the Supreme Court’s *City of Austin* opinion, that portion of *Reagan* may have survived. On the other hand, the Supreme Court in *City of Austin* arguably pushes back against the Fifth Circuit’s “broad” characterization of *Reed*, characterizing it as, at least in parts, an “extreme” interpretation. 142 S. Ct. at 1471 (“The Court of Appeals interpreted *Reed* to mean that if ‘[a] reader must ask: who is the speaker and what is the speaker saying’ to apply a regulation, then the regulation is automatically content based. This rule . . . is too extreme an interpretation of this Court’s precedent.” (citation omitted)). The majority also clarified the scope of *Reed*’s holding, reigning in the scope of its potential impact on earlier

¹⁰ Specifically, the Supreme Court remanded for the lower courts to determine whether the regulation survived intermediate scrutiny, and to consider whether there was evidence that an impermissible purpose or justification underpinned the off-premises regulation, such that the facially content-neutral restriction could be considered content based. *City of Austin*, 142 S. Ct. at 1476.

precedent. *E.g., id.* at 1474 (“That does not mean that any classification that considers function or purpose is always content based. Such a reading . . . would contravene numerous precedents, *Reed* did not purport to cast doubt on these cases.”); *id.* (“Nor did *Reed* cast doubt on the Nation’s history of regulating off-premises signs.”); *id.* at 1475 (“Nor do we cast doubt on any of our precedents recognizing examples of topic or subject-matter discrimination as content based.”); *see also id.* at 1487 (Thomas, J., dissenting) (“The majority’s holding that some rules based on content are not, as it turns out, content based nullifies *Reed*’s clear test.”). Admittedly, this commentary arises in the context of whether the off-premises sign regulation was facially content neutral, and not in determining whether an undisputedly content-based restriction can otherwise be subject to intermediate scrutiny under the secondary effects doctrine. However, the salient point is that these cabining assessments of *Reed* by a majority of the Supreme Court at least cast doubt on the Fifth Circuit’s expansive application of *Reed* so as to seemingly vitiate the secondary effects doctrine in SOB cases, as Plaintiffs purport is mandated by footnote 3 of *Reagan*.

In the absence of clear guidance that the Fifth Circuit’s abrogation of secondary effects cases in footnote 3 remains good law, the silence of *Reed*, *Reagan*, and *City of Austin* regarding the secondary effects doctrine—not to mention SOB cases such as *Renton* and *Alameda Books*—renders Plaintiffs’ position that the secondary effects doctrine has been abrogated harder to sustain. In the Supreme Court’s most recent secondary effects case, *Alameda Books*, a plurality held that a local zoning ordinance that applied only to adult establishments was content neutral under the secondary effects doctrine because its purpose was to reduce crime, not to suppress speech. 535 U.S. at 436. No intervening Supreme Court case expressly overturned *Alameda Books*, and no Fifth Circuit case distinguished *Alameda Books*. Without clear instruction from

the Supreme Court or the Fifth Circuit otherwise, this Court is reluctant to interpret *Reed*, a sign case, as implicitly making sweeping changes to the law governing SOBs, particularly as the Supreme Court has long characterized businesses that offer sexually explicit entertainment as falling within the “outer ambit” of the First Amendment’s protection. *See City of Erie*, 529 U.S. at 289; *Young*, 427 U.S. at 70 (“[I]t is manifest that society’s interest in protecting this type of [sexually explicit] expression is of a wholly different, and lesser, magnitude than the interest in untrammelled political debate”); *see also BBL, Inc. v. City of Angola*, 809 F.3d 317, 326 n.1 (7th Cir. 2015) (“We don’t think *Reed* upends established doctrine for evaluating regulation of businesses that offer sexually explicit entertainment, a category the Court has said occupies the outer fringes of First Amendment protection.”).

In sum, the Court is confronted with two outstanding questions regarding the correct scrutiny to apply to the Ordinance at issue here: first, the continued viability of *Reagan*’s abrogation, in footnote 3, of pre-*Reed* Fifth Circuit SOB secondary effects cases in light of *City of Austin*; and second, to the extent footnote 3 of *Reagan* remains good law, how it can be reconciled with the seemingly contrary teachings of *Hegar*. Fortunately, the Court concludes that it need not resolve the question of the continued viability of the secondary effects doctrine in the Fifth Circuit because, as discussed below, the Ordinance does not survive regardless of the scrutiny applied. Accordingly, the Court does not expressly decide whether the Ordinance is subject to strict or intermediate scrutiny.

b. Regardless of the scrutiny applied, the Ordinance is unconstitutional.

In light of its stated purpose and the evidence presented by the parties, the Court concludes the Ordinance’s restriction on Plaintiffs’ protected expression does not survive strict or intermediate scrutiny, and is thus unconstitutional.

Accordingly, having heard the evidence presented, the Court first considers whether the Ordinance passes strict scrutiny. Laws analyzed under strict scrutiny must be narrowly tailored to serve a compelling state interest. *Reagan*, 972 F.3d at 709. Narrow tailoring requires that an ordinance must be the “least restrictive” means of achieving the compelling state interest. *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). The tailoring requirement does not permit the government to take efficiency into consideration. *See id.* at 486.

The City states that it adopted the Ordinance to reduce crime and conserve police and fire rescue resources, by restricting SOBs from operating between the hours of 2 a.m. and 6 a.m. *See* Ordinance at 2. However, even assuming that the stated aim constitutes a compelling government interest, no evidence was presented that the City considered less restrictive means of achieving its stated interest of lowering crime, such as, for example, requiring heightened security, escorts of customers to their vehicles, or better lighting, before it decided to prohibit the operation of SOBs between the hours of 2 a.m. and 6 a.m. Dallas Police Department Major Samuel Sarmiento testified that members of the Police Department met with certain SOBs to make recommendations for how to make their businesses safer, such as adding more lights and cameras for surveillance, but there is no evidence suggesting that the City considered making those recommendations mandatory prior to imposing the Ordinance. *See* Tr. Vol. 1, at 245:20–247:14 (Mar. 7, 2022). Nor did the City consider whether any shorter or alternative time periods could achieve the City’s interest, such as whether closing SOBs between 2 a.m. and 4 a.m., or only on weekends, could achieve the desired reduction in crime.¹¹

¹¹ As will be discussed, the testimony presented in this case reveals that many of the SOBs affected by the Ordinance are not even open until 6 a.m. during the week, exposing the City’s failure to consider a less restrictive means. *E.g.*, Tr. Vol. 1, at 182:13–16.

In addition, Major Sarmiento testified that SOBs cannot hire off-duty members of the Dallas Police Department to work security, although officers are permitted to work off-duty security details for other types of businesses. *Id.* at 241:18–25. To the extent the Ordinance was intended to preserve police resources, permitting police officers to work security at SOBs while off-duty would be a less restrictive approach to achieving the City’s stated interest of conserving resources. Accordingly, because restricting protected speech is not the least restrictive means available to the City to combat crime and conserve resources, the Court concludes that the Ordinance does not pass strict scrutiny.

The Court also concludes that the Ordinance fails to pass intermediate scrutiny. To survive intermediate scrutiny, a content-neutral law regulating expression must be “narrowly tailored to serve a significant governmental interest, and . . . leave open ample alternative channels for communication of the information.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). If secondary effects are considered, “a city must advance some basis to show that its regulation has the purpose and effect of suppressing secondary effects, while leaving the quantity and accessibility of speech substantially intact.” *Alameda Books*, 535 U.S. at 449 (Kennedy, J., concurring). To satisfy intermediate scrutiny, the City must show that the Ordinance targets the “noxious side effects” of SOBs, rather than the expressive activity, and “may not assert that it will reduce secondary effects by reducing speech in the same proportion.” *Id.* at 446–47, 449.

The City may rely on “any evidence that is ‘reasonably believed to be relevant’ for demonstrating a connection between speech and a substantial, independent government interest,” but cannot “get away with shoddy data or reasoning.” *Id.* at 438 (O’Connor, plurality) (quoting *Renton*, 475 U.S. at 51–52). The City’s evidence must “fairly support” its rationale for the Ordinance. *Id.* Plaintiffs can cast doubt on this rationale, either by demonstrating that the City’s

evidence does not support its rationale or by furnishing evidence that disputes the City’s factual findings. *Id.* If Plaintiffs succeed in casting doubt on the City’s rationale, the burden shifts back to the City to supplement the record “with evidence renewing support for a theory that justifies its [O]rdinance.” *See id.*

As discussed, the Council approved the Ordinance which restricts protected speech at SOBs between the hours of 2:00 a.m. and 6:00 a.m. to advance its stated goal “to reduce crime and conserve police and fire-rescue resources.” Ordinance at 2. Accordingly, the City must provide evidence demonstrating a connection between SOBs and its government interest of reducing crime and conserving police resources. In support of its Ordinance, the City submitted evidence including certain crime data; testimony from law enforcement officers, namely Lieutenant Stephen Bishopp, Deputy Chief Rick Watson, Major Devon Palk, and Major Samuel Sarmiento; and three research studies referenced in the Ordinance purportedly connecting SOBs with increased crime.¹²

The Court begins with the crime data presented. In passing the Ordinance, the City Council relied on the January 5, 2022, SOB Briefing to the City Council, and the January 14, 2022, Task Force Report, both of which contain crime data relating to SOBs from 2019 to 2021.¹³ During the preliminary injunction hearing, the City also submitted Exhibit 18 and elicited testimony regarding Exhibit 18-D, which contains raw crime data for 2018 through 2021

¹² Richard McCleary, *Rural Hotspots: The Case of Adult Businesses*, 19 *Crim. Just. Pol’y Rev.* 153 (2008); Erin S. McCord & R. Tewksbury, *Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? Examination Using Spatial Analyses*, 59 *Crime & Delinquency* 1108–25 (2012); Alan C. Weinstein & Richard McCleary, *The Association of Adult Businesses with Secondary Effects: Legal Doctrine Social Theory, and Empirical Evidence*, 29 *Cardozo Arts & Ent. L.J.* 565 (2011).

¹³ The record also contains Defendant’s Exhibit 5, a December 6, 2021, presentation to the City Council by Chief of Police Eddie Garcia, entitled “Sexually Oriented Businesses, Regulations and Public Hearing,” and Defendant’s Exhibit 6, a December 13, 2021, presentation to the Public Safety Committee by Chief Garcia entitled “Sexually Oriented Businesses (SOBs), Age Change and Hours of Operation.” Testimony was provided during the hearing that Defendant’s Exhibits 5 and 6 contain similar crime data information as in the January 5, 2022, SOB Briefing to the City Council. *See Tr. Vol. 1*, at 227:14–228:12.

regarding calls for service to SOBs or locations within 500 feet of SOBs.¹⁴ There is no indication that Exhibit 18 was available to or relied on by the City Council prior to passing the Ordinance.¹⁵

The materials that were before the City Council indicate that, as of January 14, 2022, there were 35 licensed SOBs in the City, consisting of 9 adult bookstores/arcades/theaters, 10 topless cabarets, 9 fully nude cabarets, and 7 “not operating” establishments.¹⁶ Task Force Report, at COD-040. Lieutenant Stephen Bishopp, who collected and organized the Dallas police data that was presented to the City Council, testified that when assessing whether there was an increase in crime at SOBs, he collected data for three different metrics: arrests, crimes or offenses reported, and calls for service. Tr. Vol. 2, at 105:22–107:7. He focused on two different timeframes, 10 p.m. to 2 a.m., and 2 a.m. to 6 a.m., and collected data from locations within a 500-foot radius of each of the licensed SOBs. *Id.*

The SOB Briefing provided to the City Council summarized Lieutenant Bishopp’s findings. Regarding arrests, Lieutenant Bishopp focused on aggravated assaults, robberies, prostitution, and gun- and drug-related arrests from 2019 to 2021. SOB Briefing, at COD-019. The data collected showed that during that three-year period, there were 2,082 total custodial arrests¹⁷ at SOB locations,¹⁸ including 831 arrests between 10 p.m. and 2 a.m., and 772 arrests

¹⁴ No testimony or argument was given during the hearing regarding Exhibit 18-A, -B, -C-, or -E, each of which consist of lengthy spreadsheets containing data of unknown significance.

¹⁵ The record also contains Plaintiffs’ Exhibit 9, which appears to break out crime data occurring at SOBs by type of crime. However, no testimony or argument was given regarding Exhibit 9, nor did the City Council appear to rely on Exhibit 9 in passing the Ordinance.

¹⁶ During his deposition, Lieutenant Bishopp testified that the businesses listed as “not operating” had a license to operate as an SOB, but were not operating as an SOB. Tr. Vol. 1, at 70:6–12. Lieutenant Bishopp testified that this could mean the business was closed or open, but was not operating as an SOB. *Id.*

¹⁷ A “custodial arrest” is any arrest for which someone is taken into custody, including, for example, violent crime, property crime, and arrests for driving while intoxicated. Tr. Vol. 2, at 130:1–11. It does not necessarily mean that the crime occurred at or near the arrest site.

¹⁸ References to “at SOBs” or “at SOB locations” in this summary of the data includes data associated with locations within a 500-foot radius of each of the licensed SOBs.

between 2 a.m. and 6 a.m. *Id.* at COD-025. Gun- and drug-related arrests comprised 58% of all arrests at SOBs between 10 p.m. and 2 a.m., and 63% of all arrests at SOBs between 2 a.m. and 6 a.m. *Id.* at COD-019. In 2021, more total arrests occurred at SOBs between 2 a.m. and 6 a.m. than 10 p.m. and 2 a.m.—94 versus 83, respectively—but Lieutenant Bishopp did not look at whether that difference was statistically significant. SOB Briefing, at COD-019; Tr. Vol. 2, at 114:16–20 (Mar. 23, 2022).

Regarding reported crime, for 2019 through 2021, less reported crime—both violent and property—occurred at SOBs in the hours of operation from 2 a.m. to 6 a.m., compared to 10 p.m. to 2 a.m. SOB Briefing, at COD-022. However, the data differs when violent crime is segregated from property crime. Nearly 67.16% of reported violent crime¹⁹ in the data collected²⁰ for SOBs occurred during the 2 a.m. to 6 a.m. period; for 2021, the 2 a.m. to 6 a.m. period had 76 % of all reported violent crime at SOBs. *Id.* at COD-020. Across all three years, violent crime at SOBs decreased by 29% during the 10 p.m. to 2 a.m. period, but increased by 80% during the 2 a.m. to 6 a.m. period. *Id.* In contrast, the data reflected that property crime²¹ occurred more frequently from 10 p.m. to 2 a.m. (59%), compared to 2 a.m. to 6 a.m. (41%). *Id.* at COD-021.

¹⁹ Under the Uniform Crime Reports categorization system, “violent crimes” include aggravated assault, rape, robbery, and murder. SOB Briefing, at COD-020; Tr. Vol. 1, at 34:5–10.

²⁰ The Court notes that because Lieutenant Bishopp only collected crime data covering the 10 p.m. to 6 a.m. time frame, the relative magnitude of the data is exaggerated when expressed as a percentage, as it is in the SOB Briefing to the City Council. For example, the SOB Briefing states that the 2 a.m. to 6 a.m. time period comprises nearly 67.17% of “all” reported violent crime at SOBs, when in fact, the 2 a.m. to 6 a.m. period comprises 67.17% of violent crimes reported in the 10 p.m. to 6 a.m. window, not the entire 24-hour day. *See* SOB Briefing, at COD-020; *see also* Tr. Vol. 2, at 117:17–20 (testimony of Lieutenant Bishopp) (“[W]hen I say ‘all,’ it’s all that’s within the data set, the SOB crime data sets.”). For violent crime offenses, the Task Force Report similarly indicates that from 2019 to 2021, there were a total of 200 violent crime offenses reported, with 65 occurring from 10 p.m. to 2 a.m., and 135 from 2 a.m. to 6 a.m. Task Force Report, at COD-041. The 6 a.m. to 10 p.m. time period was not analyzed.

²¹ “Property crime” is defined as including burglary, theft, and motor vehicle theft. SOB Briefing, at COD-021.

Regarding calls for service,²² the data collected showed that between 2019 and 2021, 11,999 calls for service were generated at or within 500 feet of SOB locations, which included 2,171 calls between 10 p.m. and 2 a.m. (of which 165 were Priority 1), and 2,396 calls between 2 a.m. and 6 a.m. (of which 215 were Priority 1).²³ *Id.* at COD-028.

The SOB Briefing also contained charts comparing SOBs and five entertainment districts in Dallas,²⁴ which were created by researchers at the University of Texas at San Antonio using data supplied by the Dallas Police Department. *See id.* at COD-023, -024, -027, -030; Tr. Vol. 2, at 104:20–25, 120:9–22. These materials were prompted by a request from the City Council to review crime in Deep Ellum in Dallas to see if the crime occurring there in those time periods could be compared to crime occurring at SOBs. Tr. Vol. 2, at 120:13–22; Tr. Vol. 3, at 43:15–47:13 (Apr. 6, 2022). Instead of providing information on Deep Ellum, data was gathered on five entertainment districts in Dallas, and analyzed collectively in a way that would not allow Deep Ellum, which reportedly has a problem with crimes of violence in the early morning hours,²⁵ to be studied separately. Tr. Vol. 3, at 43:15–47:13. The charts comparing SOBs and

²² Calls for service refer to an individual dialing 911 for emergency assistance. They are ranked by priority, with “Priority 1” calls, also referred to as “Code 3” calls, considered the most urgent, requiring an emergency immediate response. Tr. Vol. 2, at 133:1–21. Priority 1 calls would involve shootings, stabbings, aggravated robberies in progress, disturbances, armed encounters, and major accidents on the freeway. *Id.* Priority 2 calls are disturbances that do not meet the criteria for Priority 1, and include domestic disturbances or suspicious persons, prowler calls, and burglar alarms. *Id.* Priority 3 calls, “General Service,” refer to situations in which police service is needed but there is no urgent need or threat of injury. *Id.* For example, a Priority 3 call could consist of someone calling to report a burglary, criminal mischief, or damage to property. *Id.*

²³ The SOB Briefing also includes a slide discussing “Calls for Service – Fire,” which Lieutenant Bishop testified was based on data collected from the Fire Department. SOB Briefing, at COD-031; Tr. Vol. 2, at 139:23–140:8. That data indicates that between 2019 and 2021, 1,317 calls for service for fire services were generated at SOB locations, and of those, there were 270 calls for service between 10 p.m. and 2 a.m., and 405 calls for service between 2 a.m. and 6 a.m. SOB Briefing, at COD-031. However, Lieutenant Bishop conceded he did not know whether the data reflecting information collected by the Fire Department was based solely on the location of SOBs, or included data reflecting locations within a 500 foot radius of SOBs. Tr. Vol. 2 at 139:23–140:8.

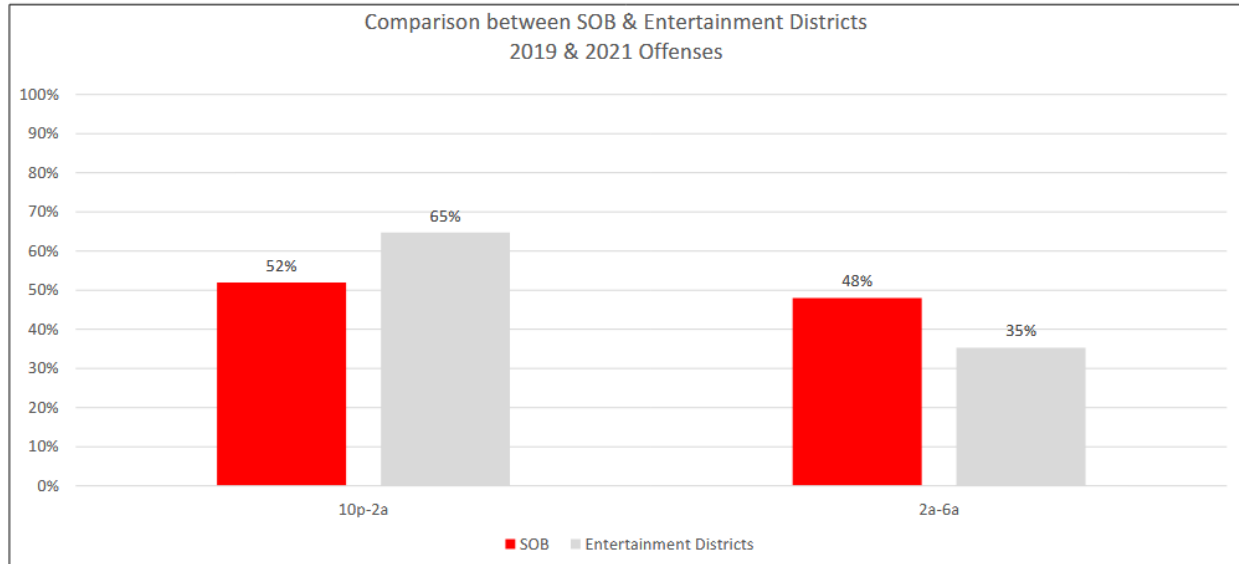
²⁴ The five entertainment districts considered as a single total were Lower Greenville, Uptown, Deep Ellum, Bishop Arts, and Trinity Groves. Tr. Vol. 3, at 40:23–41:10.

²⁵ *See, e.g.,* Kelli Smith, *Man Arrested on Murder Charge in Deep Ellum Gunfire Exchange that Killed 2, Wounded 4, in September*, Dallas Morning News (Nov. 19, 2021) (describing a shooting in Deep Ellum occurring at 12:40 a.m.), available at <https://www.dallasnews.com/news/crime/2021/11/19/man-arrested-on-murder-charge-in-deep-ellum-gunfire-that-killed-2-wounded-4-others-in-september/>. In referencing Deep Ellum’s reported association

entertainment districts differ from Lieutenant Bishopp's analysis, in that the researchers excluded all data from 2020 in their analysis, to avoid incorporating reduced crime rates attributable to the effect of COVID-related shutdowns and quarantining into the results. *See id.* at 123:6–125:5.

These charts compare SOBs and entertainment districts based on four different metrics: all offenses, violent offenses, total arrests, and total calls for service. SOB Briefing, at COD-023, -024, -027, -030. Taking the chart showing all offenses as an example, the researchers aggregated all crimes occurring in 2019 and 2021 between 10 p.m. and 6 a.m. for SOBs and entertainment districts, respectively, and then used percentages to show how much of the crime for each group (SOB or entertainment district) occurred between 10 p.m. and 2 a.m., and between 2 a.m. and 6 a.m. *Id.* at COD-023. Thus, as shown in the chart below included for illustrative purposes, of offenses occurring at SOBs between 10 p.m. and 6 a.m. in 2019 and 2021, 52% occurred between 10 p.m. and 2 a.m., and 48% occurred between 2 a.m. and 6 a.m.; for entertainment districts, 65% of offenses occurring between 10 p.m. and 6 a.m. occurred in the earlier 10 p.m. to 2 a.m. window, while 35% occurred from 2 a.m. to 6 a.m.:

with crime, the Court is not making any factual findings regarding the relative rate of crime in Deep Ellum, but instead cites a possible motivation for the City Council's request for crime data for Deep Ellum.



Id.

The chart comparing SOBs and the entertainment districts based on 2019 and 2021 violent crime show that, for SOBs, 67% of violent crime occurring between 10 p.m. and 6 a.m. occurred in the 2 a.m. to 6 a.m. window, whereas only 55% of violent crime occurred in that later window for the entertainment districts. *Id.* at COD-024. For arrests made in 2019 and 2021 between 10 p.m. and 6 a.m., the chart indicates that SOBs and entertainment districts had a similar proportion of arrests taking place during the relevant time period: 46% of arrests at SOBs and 47% of arrests at entertainment districts occurred between 2 a.m. and 6 a.m. *Id.* at COD-027. Finally, regarding calls for service, SOBs 52% of calls for service originating between 10 p.m. and 6 a.m. occurring within the 2 a.m. to 6 a.m. window, compared to only 39% for the entertainment districts. *Id.* at COD-030.

The Task Force Report, submitted to the City Council after the SOB Briefing, includes graphs showing the raw crime numbers supporting Lieutenant Bishopp's analysis, along with charts comparing the race of crime victims and arrested persons. The Task Force Report contains the raw data crime statistics for six different crime metrics—violent crime offenses,

violent crime arrests, Priority 1 calls, all offenses, all arrests, and all calls—for the three-year period of 2019 through 2021, broken down by the type of SOB, *i.e.*, bookstores/arcades/theaters, topless cabarets, fully nude cabarets, and not operational SOBs, and the time of the incident, either 10 p.m. to 2 a.m., or 2 a.m. to 6 a.m. Task Force Report, at COD-040–046. For example, for violent crime arrests, the Task Force Report shows that, for the three-year period of 2019–2021, at bookstores, there were 5 arrests for violent crimes between 10 p.m. and 2 a.m., and 2 arrests between 2 a.m. and 6 a.m.; for fully nude cabarets, 6 and 11 arrests, respectively; for topless cabarets, 6 and 2 arrests, respectively; and for non-operational SOBs, 1 arrest in each of the 10 p.m. to 2 a.m., and 2 a.m. to 6 a.m. time periods. *Id.* at COD-042. The Task Force Report also contains information for violent offenses, Priority 1 calls, and total offenses, arrests, and calls.

Based on its review of the admitted exhibits, the testimony provided at the hearing, and the arguments made by both sides, the Court concludes that the City’s evidence does not fairly support its stated rationale for the Ordinance. Because the City could not reasonably believe that the evidence shows the requisite connection between the protected speech and harmful secondary effects, the Ordinance is not narrowly tailored. *See H & A Land Corp.*, 480 F.3d at 339.

The Court will first address crime data, starting with the quality of the data. The Court notes that to carry its burden under the secondary effects doctrine, the City was not required to “conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relied upon is reasonably believed to be relevant to the problem that the city addresses.” *Renton*, 475 U.S. at 51–52; *see also Baby Dolls Topless Saloons, Inc. v. City of Dallas, Tex.*, 295 F.3d 471, 481 (5th Cir. 2002) (“We must determine whether, under this reasonable belief standard, the City’s evidence demonstrates a link between

its interest in combating secondary effects and the Ordinance.”). Nor is there a requirement that the City conduct a rigorous statistical inquiry or use control groups, so as to quantitatively justify the Ordinance with any particular degree of reliability. However, while the Court does not fault the City for not conducting a statistical study, the data it relies on is flawed such that it is not probative as to the secondary effects the City sought to address, so that the City could not have reasonably relied on it to justify the Ordinance.

The Court finds at least four issues relating to the crime data relied on by the City to justify the Ordinance. First, the inclusion of data relating to closed or non-operational SOBs renders the City’s reliance on it unreasonable. Lieutenant Bishopp testified that the City’s data includes crime statistics for locations which hold a license to operate as an SOB, but are not currently operating—or never operated—as an SOB. Tr. Vol. 1, at 33:20–34:5. Some of these locations are empty buildings or vacant parking lots, while others are operating in a non-SOB capacity, such as a poker house. Tr. Vol. 2, at 22:2–24:16. Thus, the City’s data purports to identify adverse secondary effects associated with SOBs, but includes multiple locations where it concedes there are no SOBs operating. As Plaintiffs’ expert, Dr. Daniel Linz, testified, including non-operating businesses introduces “tremendous error” into the City’s crime statistics. Tr. Vol. 1, at 106:6. The Court agrees; by commingling non-operational SOBs with operational cabarets and bookstores, it is impossible to tell whether any increased crime rate observed is a result of SOBs, or some other factor, such as, for example, the general potential for parking lots to attract criminal activity. *E.g.*, Tr. Vol. 2, at 40:22–41:3 (testimony of Major Palk acknowledging no “material difference between crime in the parking lots of establishments in entertainment districts as compared to parking lots of [SOBs]”). Indeed, the City’s data indicates that, from

2019 through 2021, non-operational SOBs accounted for more violent crime offenses occurring from 2 a.m. to 6 a.m. than SOBs operating as bookstores. Task Force Report, at COD-041.

The inclusion of crime unrelated to SOBs is likewise problematic in the second observed issue with the City's crime data, namely that by including data from crimes occurring at locations within a 500-foot radius of SOBs, the data does not necessarily reflect crime resulting from activity at the SOBs. Lieutenant Bishopp testified that, depending on the particular SOB, his data could include unrelated crime that happened to occur within 500 feet of the SOB's location. Tr. Vol. 2, at 107:22–108:6; *see also* Tr. Vol. 1, at 56:8–17 (acknowledging that arrests would include arrests based on traffic stops, outstanding warrants, and misdemeanor offenses that happened to take place within 500 feet of an SOB). For example, depending on the SOB's location vis-à-vis the parking lot, road, and neighboring businesses, the data could reflect crimes resulting from traffic stops, robberies or crimes at other businesses or locations, or unrelated calls for service. Testimony was presented that, at least for SOBs on Northwest Highway, there are businesses within 500 feet of the SOB locations that are open during the relevant time periods and may have crime associated with them. Tr. Vol. 1, at 176:22–177:9 (discussing a storage facility next to an SOB that has “homeless people breaking in”), 189:15–22 (owner of Plaintiff The Men's Club testifying that there are two 24/7 hotels, a gas station, and two late-night eateries nearby The Men's Club), 205:3–13. One SOB is apparently surrounded by four motels that fall within 500 feet of the SOB's location. *Id.* at 205:3–13. No attempt was made to segregate crime that may have actually resulted from another business or arrest that happened to occur within 500 feet of an SOB. *Id.* at 35:11–36:8; Tr. Vol. 3, 25:10–22. Accordingly, by attributing everything occurring within a 500-foot radius of an SOB to the SOB, the City's data inaccurately

inflates the actual effect of protected sexual expression on rates of crime, arrests, and calls for service.

Third, because not all of the SOBs included in the City's data are open twenty-four hours a day, seven days a week, the time periods studied—10 p.m. to 2 a.m., and 2 a.m. to 6 a.m.—do not necessarily reflect crime that is attributable to the SOBs. Specifically, although SOBs operating as bookstores are typically open 24 hours per day, *see* Tr. Vol. 1, at 201:16–17, testimony at the hearing indicated that, for Sunday through Thursday, several of the topless and fully nude cabaret SOBs included in the City's data close at 2 a.m. or 4 a.m., and are open later only on weekends.²⁶ *E.g.*, Tr. Vol. 1, at 156:12–16 (Bucks Wilds closes at 4 a.m. except on Saturdays (5 a.m.) and Sundays (6 a.m.)); *id.* at 162:11–18, 182:13–16 (Bucks Cabaret and The Men's Club close at 2 a.m., except on Fridays and Saturdays (4 a.m.)); Tr. Vol. 2, 46:7–12 (testimony of Major Palk, agreeing that he knew of several TABC-licensed SOBs that close around 2 a.m.). However, because the City's data does not account for whether the SOB in question was open when the crime, arrest, or call for service occurred, crime unrelated to the expression of protected speech is improperly attributed to SOBs. *See* Tr. Vol. 3, at 14:13–20 (testimony of Lieutenant Bishopp, agreeing that the statistics he provided do not reflect whether the SOBs in question were open at the time the criminal activity occurred). For example, if an arrest for a violent crime occurred at 5 a.m. at a location 495 feet away from a closed SOB, that arrest would be attributed to the SOB in the City's crime data. Accordingly, the City's crime

²⁶ Testimony was presented establishing that several of the SOB Plaintiffs are licensed by the Texas Alcoholic Beverage Commission ("TABC") to serve alcohol, whereas others operate as "BYOB" establishments, in which patrons bring their own alcohol to consume on the SOB's premises. Fully nude cabarets cannot receive a TABC license to serve alcohol. Tr. Vol. 2, at 41:19–42:2. The testimony presented was that all SOBs, regardless of whether they serve alcohol or are BYOB, prohibit the serving or consumption of alcohol after 2 a.m. *Id.* at 42:24–43:13.

data overstates the amount of criminal activity and need for police resources attributable to SOBs during the 2 a.m. to 6 a.m. window and, by extension, protected speech.

Fourth, the Court notes that the crime data attributed to SOBs in the City's analysis was inflated due to the presence of resources generated by the creation of the Task Force created by the Dallas Police Department in March 2021. *See* SOB Briefing, at COD-015. The Task Force consisted of eight officers and one sergeant posted at or near SOBs, starting at midnight on Thursday, Friday, and Saturday evenings. According to the testimony of Major Sarmiento, Task Force officers were instructed to have a high visibility police presence and saturate the area, and use "probable cause to do traffic stops and what not." Tr. Vol. 1, at 223:20–224:2. Accordingly, the presence of the Task Force enlarged the amount of reported crime and arrests beyond that which would have otherwise been attributable to SOBs. *Id.* at 224:4–6 ("[T]he people that are there committing some violations or what not are going to be caught because I have police presence there."); Tr. Vol. 2, 129:22–24 (Lieutenant Bishopp testifying that arrest data includes "proactive enforcement; officers seeing things occur because they're out there"). Indeed, Deputy Chief Watson agreed during his deposition that, for any given area at any of time day, if eight additional officers were on patrol, additional police stops would necessarily take place by virtue of the additional enforcement that comes with increased police presence. Tr. Vol. 1, 85:13–18. Deputy Chief Watson also testified that the "vast majority" of citations and arrests associated with the Task Force's work were the result of traffic stops, such as going through a red light, turning right without stopping, expired license plates, checking for outstanding warrants, etc. *Id.* at 83:17–85:23, 88:13–23. He also agreed that many of the individuals associated with the traffic stops had nothing to do with the SOBs. *Id.* Accordingly, the implementation of the Task Force resources not only increased the amount of reported crime and arrests associated with the

SOBs during the relevant time periods, but also increased reports of crime, such as traffic stops, that were wholly unrelated to SOBs or any protected expression.

In sum, the Court concludes that the data relied on by the City Council does not fairly support the City's stated rationale for the Ordinance of reducing crime, because the data artificially enhances crime data associated with SOBs, and in doing so, unfairly attributes adverse secondary effects to SOBs. The City's data does not reasonably link the regulated activity—protected expression at SOBs—to the adverse secondary effects, namely increased reports of crime, arrests, and calls for service. *See Alameda Books*, 535 U.S. at 437 (O'Connor, J., plurality) (“[T]he city certainly bears the burden of providing evidence that supports a link between concentrations of adult operations and asserted secondary effects”); *G.M. Enters. v. Town of St. Joseph*, 350 F.3d 631, 639 (7th Cir. 2003) (“The plurality [in *Alameda Books*] did not require that a regulating body rely on research that targeted the exact activity it wished to regulate, so long as the research it relied upon *reasonably linked* the regulated activity to adverse secondary effects.” (emphasis added)). At minimum, Plaintiffs have successfully cast doubt on the City's evidence, and by extension, the City's rationale for the Ordinance. *See Alameda Books*, 535 U.S. at 438.

Notwithstanding the problems with the City's data described herein, the Court further finds that the City's evidence does not reasonably show that the Ordinance has the purpose and effect of suppressing the claimed secondary effects of increased crime and use of limited police and fire resources. *See id.* at 449 (Kennedy, J., concurring). In other words, even if the Court assumes that the City's data accurately reflects the criminal offenses, arrests, and calls for service resulting from SOBs—which, as discussed, it does not—the Court finds that the City's evidence,

taken collectively, does not demonstrate a link between its interest in combating secondary effects and the Ordinance. *See Baby Dolls*, 295 F.3d at 481.

As an initial matter, the evidence does not clearly establish that there are more adverse secondary effects at SOBs from 2 a.m. to 6 a.m., the time period covered by the Ordinance, so as to justify a complete restriction on protected speech. In the three-year period of 2019 to 2021, when considering both violent and property crime occurring at SOBs, there was less crime reported during the relevant time period of 2 a.m. to 6 a.m., compared to 10 p.m. to 2 a.m. SOB Briefing, at COD-022. And while the data does show more reports of violent crime from 2 a.m. to 6 a.m., compared to 10 p.m. to 2 a.m., in the same 2019 to 2021 period, there were only 21 total arrests for violent crimes at SOBs from 2 a.m. to 6 a.m., compared to 18 arrests during the 10 p.m. to 2 a.m. window. Task Force Report, at COD-042. An additional three arrests for violent crime over three years—*i.e.*, one additional arrest per year, distributed across approximately 28 active SOBs—does not demonstrate a reasonable link between violent crime and SOBs so as to justify a complete restriction of protected speech at all SOBs from 2 a.m. to 6 a.m. *See Alameda Books*, 535 U.S. at 449–50 (“The rationale of the ordinance must be that it will suppress secondary effects—and not by suppressing speech.”). Moreover, Lieutenant Bishop testified that he had not considered whether the difference in 2021 in total arrests between 2 a.m. and 6 a.m. compared to 10 p.m. and 2 a.m. was statistically significant, further undermining the data’s probative value.

The data is weakest when considering the SOBs operating as bookstores. The Ordinance is a blanket restriction on all SOBs, so arcades and bookstores are treated the same as topless and fully nude cabarets. However, the data shows that from 2019 to 2021, bookstores experienced less arrests and less violent crime arrests from 2 a.m. to 6 a.m., compared to 10 p.m. to 2 a.m.

Task Force Report, at COD-042, -045. Bookstores likewise had almost the same number of total reported offenses across the two time periods (51 vs. 52, for 10 p.m. to 2 a.m., and 2 a.m. to 6 a.m., respectively), and comparable number of total calls for service (513 vs. 530). *Id.* at COD-044, -046. Major Palk described a shooting that occurred in the parking lot of a bookstore, but testified that it occurred at 10 a.m., and thus is irrelevant to justifying a prohibition on bookstores operating in the middle of the night. Tr. Vol. 2, at 64:9–25, 65:20–22.

No reasonable effort was made to explain how the City’s justification of reducing crime and conserving resources applies to the bookstores, for which there is no support in the data.²⁷ Accordingly, because the Ordinance encompasses bookstores, despite not being shown to be associated with any adverse secondary effects, the Ordinance is not narrowly tailored to the City’s stated governmental interest. *Renton*, 475 U.S. at 52 (“[T]he *Renton* ordinance is ‘narrowly tailored’ to affect only that category of theaters shown to produce the unwanted secondary effects”); *see also Annex Books, Inc. v. City of Indianapolis, Ind.*, 581 F.3d 460, 463 (7th Cir. 2009) (“If there is more misconduct at a bar than at an adult emporium, how would that justify greater legal restrictions on the bookstore—much of whose stock in trade is constitutionally protected in a way that beer and liquor are not.”).

The Ordinance is not narrowly tailored, and thus fails intermediate scrutiny, for an additional significant reason. The City provides data comparing reported crimes, arrests, and

²⁷ During closing arguments, the City attempted to justify the Ordinance’s application to bookstores on the grounds that the calls for service emanating from bookstores places a significant burden on the police and fire departments during a time period when there are fewer police officers working. Tr. Vol. 3, at 142:21–143:17. However, the Court notes that the City’s data reveals that there were only an additional 17 calls for service at bookstores during the 2 a.m. to 6 a.m. time period, compared to the 10 p.m. to 2 a.m. time period. Task Force Report, at COD-046 (depicting 513 calls for service from 10 p.m. to 2 a.m., and 530 calls for service from 2 a.m. to 6 a.m.). When considered across all 9 bookstores considered in the City’s data, and the fact that the data was collected over the three-year period of 2019 to 2021, this results in, at most, one additional call per bookstore per year, which the Court concludes is not a sufficient adverse secondary effect to justify the complete restriction on speech mandated by the Ordinance. In addition, as will be discussed, the Court concludes that the City cannot reasonably justify the Ordinance based on calls for service without comparing SOBs to non-SOB locations.

calls for service occurring at SOBs during different time periods, but provides no evidence from which the Court can conclude that the secondary effects are linked to the SOBs, as opposed to some other, unrelated factor. Because protected speech occurs at SOBs regardless of the time of day, the City's evidence is, at best, probative only as to which particular four-hour window has more or less crime, arrests, or calls at locations within 500 feet of SOBs, but is silent as to whether protected speech at SOBs—the unchanging constant in the City's data—caused the observed variations. The failure to include information about non-SOBs renders the City's reliance on this evidence unreasonable. *See H & A Land Corp.*, 480 F.3d at 339 (“[The municipality] Kennedale cannot reasonably believe its evidence is relevant unless it sufficiently segregates data attributable to off-site establishments from the data attributable to on-site establishments.”); *Baby Dolls*, 295 F.3d at 481 (upholding ordinance based on criminal data studies showing that sex crime arrests were three to five times more frequent in the study area compared to a control area).

Lieutenant Bishopp testified that he did not consider crime statistics associated with non-SOB businesses open during the deep hours of the night, such as non-SOB dance halls or nightclubs, 24/7 convenience stores and drugstores, all-night eateries, gas stations, or motels and hotels. Tr. Vol. 2, at 165:16–166:7. However, the crime and police resource concerns associated with SOBs must also be associated with other late-night establishments, including nightclubs. For example, Major Sarmiento testified that the parking lots of SOBs create a public safety and policing concern, due to a large number of intoxicated individuals congregating with easy access to firearms that are kept in vehicles, and that almost all of the shootings which prompted the

formation of the Task Force occurred in parking lots of nightclubs or SOBs.²⁸ Tr. Vol. 2, at 32:21–33:22, 39:20–40:7. However, he also testified that there is no difference, with regard to the capacity for violent crime, between parking lots of SOBs and other types of late-night establishments in entertainment districts. *Id.* at 40:14–41:3. Similarly, Major Sarmiento testified that a major concern with crime at SOBs is the inability to access crime scenes due to traffic, which results in large crime scenes and the need for additional officers for crowd control, but also acknowledged that police officers experience similar difficulty with ingress and egress whenever confronted with traffic and full parking lots. Tr. Vol. 1, at 225:25–226:15; Tr. Vol. 2, at 78:14–79:4. Major Sarmiento also testified that while strip clubs are attractive to individuals involved in narcotics trafficking and organized crimes as locations at which to conduct business, in his experience as a narcotics detective, he had also observed many drug transactions or gang activity occurring at late-night eateries. *Id.* at 36:18–37:15.

Accordingly, the evidence indicates that some of the secondary effects the City sought to address with the Ordinance—namely, drug- and gang-related crimes, and crimes occurring in parking lots requiring substantial police resources—are not limited to SOBs. Without additional data, it is impossible to tell whether these secondary effects are the result of the SOBs, or some other, unrelated variable, such that the City is merely using the Ordinance to “reduce secondary effects by reducing speech in the same proportion,” *i.e.*, by closing SOBs. *Alameda Books*, 535 U.S. at 1742 (Kennedy, J., concurring).

The City’s charts purportedly comparing SOBs to the entertainment districts do not warrant a different outcome. As discussed, that data compared various metrics based on time

²⁸ Major Sarmiento testified about several murders that prompted the creation of the Task Force focused on SOBs, but acknowledged that at least two of them occurred at nightclubs that are not SOBs. Tr. Vol. 1, at 220:13–223:3 (describing murders at the Kalua Club and Pryme Bar, neither of which are SOBs).

period by percentage, but did not provide the raw numbers underlying the statistics. For example, the charts showed that of calls for service occurring between 10 p.m. and 6 a.m., for SOBs, 48% occurred in the 10 p.m. to 2 a.m. window and 52% in the 2 a.m. to 6 a.m. window; for entertainment districts, 61% occurred in 10 p.m. to 2 a.m. window, and 39% in the 2 a.m. to 6 a.m. window. SOB Briefing, at COD-030. However, without the raw figures underlying these percentages—*i.e.*, the actual number of calls for service that occurred at each location during each of the respective time periods—the data cannot be meaningfully compared. Indeed, it is impossible to know whether the SOBs received an astronomically high number of calls as compared to the entertainment districts, or vice versa, because all that is being compared is the relative proportion of calls at SOBs, and entertainment districts, based on when they occurred. For example, SOBs could have generated only 100 calls for service during 2019 and 2021, and the entertainment districts 10,000 calls during the same time period, but that relative difference in the total number of calls is not reflected in the data.²⁹

The absence of meaningful non-SOB comparison data becomes more stark when considering the City's other stated justification for the Ordinance, to conserve police resources by reducing calls for service. Major Sarmiento testified that the Ordinance is necessary to help with staffing, in that he would prefer to use officers to respond to 911 calls as opposed to staffing large crime scenes such as murders. Tr. Vol. 1, at 235:6–236:20. Lieutenant Bishopp testified that there are fewer officers working the overnight shift than during the day, resulting in greater strain on individual officers and resources to address incoming calls. Tr. Vol. 2, at 127:16–23.

²⁹ The Court further notes that the City Council requested information from the Police Department specifically comparing Deep Ellum, an entertainment district, with SOBs. Tr. Vol. 3, at 43:15–47:13. Instead, the Police Department provided to the Council collective data on five different entertainment districts, and did not analyze any entertainment district singularly. *Id.* Lieutenant Bishopp agreed that Deep Ellum could have been compared with SOBs to determine which of the two had more crime, but that analysis was not performed. *Id.* at 46:15–22. He further testified that he would not have chosen the entertainment districts relied on as a comparison group, because “methodologically, it didn’t make a lot of sense.” *Id.* at 47:20–22.

However, even assuming that a high number of police calls constitutes an adverse secondary effect capable of justifying a restriction on protected speech,³⁰ the lack of evidence regarding non-SOBs dooms this stated rationale because it is impossible to tell whether reducing calls for service at SOB's would actually conserve resources in a way so as to meaningfully target the alleged side effect of the speech, as opposed to the speech itself. *See Alameda Books*, 535 U.S. at 446–47 (Kennedy, J., concurring). For example, consider again the City's evidence comparing calls for service at SOB's and the entertainment districts. Each call for service reflects a drain on police resources. However, because the actual numbers of calls for service related to SOB's as compared to the entertainment districts are not provided, the relative significance of decreasing calls for service at SOB's—in the context of the entertainment districts and the city writ large—is unknown. Hypothetically, for purposes of example, imagine that closing SOB's under the Ordinance from 2 a.m. to 6 a.m. results in 100 less calls for service annually. Taken in isolation, without context, it is impossible to know whether that reduction in calls for service actually conserves resources, or whether the Ordinance instead targets speech without achieving its stated purpose of conserving resources. If the City had provided data showing that the City typically receives 1,000 calls for service annually during that time period, evidence showing that reducing calls by 10%, *i.e.*, by 100 calls, could plausibly justify and support a restriction of speech; if it receives 10,000 calls for service, that 1% reduction might not. No such evidence is in the record, nor was it apparently provided to the City Council.

³⁰ During closing arguments, the City's counsel conceded that calls for service, unrelated to an increase in crime, could not justify closure of a business protected by the First Amendment. Tr. Vol. 3, at 145:11–16. The Court agrees; because no evidence was presented that the expression of protected speech can cause, in and of itself, an increase in the number of calls for police or fire service, any issues with the City's resource allocation is not a result of the protected speech occurring at SOB's. To the extent the City argues that SOB's increase crime rate, which then in turn overburdens the City's resources because there are insufficient officers on duty to handle the calls for service, this appears to be a resulting consequence of the secondary effect of increased crime, which would be, at best, a tertiary—not secondary—effect of the speech.

Because the City provided no non-SOB comparison data indicating that the problems of which the City complains are particularly associated with SOBs, the Ordinance amounts to a targeted and unjustified restriction on protected speech. The Court is further concerned by what appears to be the Ordinance's bare restriction on speech in light of the City's failure to consider whether forcing SOBs to close at 2 a.m. could potentially result in more alcohol-related crime—and, by extension, more calls for service and need for police resources—resulting from customers being forced to leave immediately upon cessation of alcohol service at the SOBs without time to sober up, despite those concerns being readily apparent. Specifically, Major Sarmiento agreed that patrons tend to escalate drinking as 2 a.m. approaches, and expressed concern that, if SOBs are forced to close at 2 a.m., more inebriated people will be getting on the road. Tr. Vol. 2 at 85:6–86:18. He also acknowledged that, to the extent crime occurs in the parking lots of SOBs, it is generally people who have just left the business, and thus those parking-lot escalations could occur at any time of night. *Id.* However, despite recognizing that there are criminogenic concerns associated with closing SOBs at 2 a.m., as mandated by the Ordinance, these concerns were not considered by the City when adopting the Ordinance and, in particular, at the time periods under which SOBs cannot operate. *Id.*

In sum, the Court finds that the City's stated rationale for the Ordinance is not fairly supported by the evidence, and accordingly, the Ordinance is not narrowly tailored to serve a substantial governmental interest. In addition, the Court finds that the Ordinance's prohibition on SOBs operating between the hours of 2 a.m. and 6 a.m. does not leave the quantity and accessibility of speech intact. *See Alameda Books*, 535 U.S. at 451. Clearly, the Ordinance is overbroad as to bookstores; it limits speech during hours where the evidence shows no secondary effects are occurring, and thus disproportionately restricts speech. *See Rock Against Racism*, 491

U.S. at 799 (“Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.”). Evidence was also presented indicating that, for certain dancers and patrons, restricting speech from 2 a.m. to 6 a.m. substantially decreases the accessibility of the protected speech in question. Specifically, Plaintiffs presented testimony that a substantial number of patrons visit SOBs after 2 a.m.; that clubs, including Plaintiffs, earn a significant portion of their revenue after that time; and that many of the dancers employed by Plaintiffs work other jobs or have child care obligations, which means they can only perform overnight, including after 2 a.m. *E.g.*, Tr. Vol. 1, at 188:13–21; Tr. Vol. 2, at 77:7–24. Accordingly, restricting SOBs from operating from 2 a.m. to 6 a.m. does not leave a substantial quantity of speech intact or accessible, in that closing the SOBs during this period would deprive numerous people access to protected speech.

Finally, the Court finds that the research studies cited by the City do not reasonably justify the Ordinance. McCleary’s article, *Rural Hotspots: The Case of Adult Businesses*, 19 *Crim. Just. Pol’y Rev.* 153 (2008), examines rural areas, not urban cities like Dallas, and shows that crime rates tend to increase around SOBs, but does not show increasing crime rates associated with the late-night hours. Similarly, the other two articles provided suggest that SOBs are associated with an increase in overall crime, without addressing any particular time of day. *See* Erin S. McCord & R. Tewksbury, *Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? Examination Using Spatial Analyses*, 59 *Crime & Delinquency* 1108–25 (2012); Alan C. Weinstein & Richard McCleary, *The Association of Adult Businesses with Secondary Effects: Legal Doctrine Social Theory, and Empirical Evidence*, 29 *Cardozo Arts & Ent. L.J.* 565 (2011). The City could not reasonably rely on these studies to justify the Ordinance with respect to curtailing particular hours of operation.

In sum, the Court concludes that Plaintiffs have successfully cast doubt on the evidence relied on by the City in justifying the Ordinance. Absent any evidence to reasonably link the complained-of secondary effects and the protected speech, the Ordinance amounts to an unjustified restriction on protected expression, and does not survive intermediate scrutiny.

Because the Court concludes that the Ordinance does not pass strict or intermediate scrutiny, Plaintiffs have shown a likelihood of success on the merits, weighing in favor of an injunction.

2. Balance of Hardships

The Court next considers the remaining factor of the preliminary injunction inquiry: the balance of hardships, *i.e.*, whether the harm of not granting an injunction outweighs the harm of granting it. The Court concludes that this factor weighs in favor of an injunction.

Should the preliminary injunction be denied, the injury to Plaintiffs for a violation of their First Amendment rights is presumptively great. As stated, the violation of Plaintiffs' First Amendment rights constitutes an irreparable injury. *See, e.g., Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F.Supp.3d 511, 529 (S.D. Tex. 2020) ("It has repeatedly been recognized by the federal courts at all levels that violation of constitutional rights constitutes irreparable harm as a matter of law."). The Court finds that the burden on Plaintiffs' First Amendment right to free speech and expression outweighs the City's burden in dealing with increased crime and a drain on resources, if any, associated with SOBs. Moreover, if the injunction is entered, the City will be deprived solely of the opportunity to enforce a law that violates the First Amendment, which the Fifth Circuit has acknowledged is "no harm at all." *See McDonald v. Longley*, 4 F.4th 229, 255 (5th Cir. 2021).

III. CONCLUSION

The Court concludes that Plaintiffs have established they are entitled to a preliminary injunction. For the above reasons, Plaintiffs' Motion for Preliminary Injunction is **GRANTED**. Plaintiffs' Motion for Leave to Amend is **GRANTED**. The Motion to Dismiss is **DENIED AS MOOT**.

SO ORDERED.

May 24, 2022.



BARBARA M. G. LYNN
CHIEF JUDGE

CHAPTER 17

Changes and Amendments

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-17-1	Authority		
16-17-2	General Amendment Procedure		
16-17-3	Amendments in Shoreland mapping & Text		

Sec. 16-17-1 AUTHORITY

- (a) Pursuant to the provisions of Section 62.23 (7) of the Wisconsin Statutes the Village Board may, after first submitting the proposal to the Plan Commission for report and recommendation and after notice and public hearing as hereinafter provided, amend the regulations of this ordinance or change the district boundaries.

Sec. 16-17-2 GENERAL AMENDMENT PROCEDURE

- (a) INITIATION
- (1) A petition to amend the text or change the district mapping of this ordinance may be initiated by the Village Board on its own motion, by recommendation of the Plan Commission, or by petition of one or more property owners as to the property owned by such person(s).
- (b) FILING OF PETITION
- (1) A petition for change or amendment submitted by a private property owner or the Village shall be prepared on printed or electronic forms provided by the Village for the purpose and filed with the Village and shall be accompanied by a fee, as from time to time established by the Village Board, to defray the cost of giving notice, investigation and other administrative processing. If such petition for change or amendment is initiated by the Village Board, all fees shall be waived.
- (2) All petitions for a change in district mapping shall follow parcel boundary lines and encompass the entire legal description of property or right-of-way lines as applicable
- (c) DATA REQUIRED
- (1) In addition to all information required on the petition form, the petitioner of a change in district mapping shall supply the following:
- a. A plot map drawn to a scale no smaller than 100 feet to the inch for tracts of less than ten (10) acres and no smaller than 200 feet to the inch for tracts of ten (10) acres or more, showing the land in question, its location, the length and direction of each boundary thereof, the location and the existing use of all buildings on such land and the principal use of all properties within 300 feet of such land;
 - b. The physical address and the legal description of such property;
 - c. The names and addresses of the owners of all properties within 300 feet of any part of the land included in the proposed change.
 - d. Any further information which may be required by the Zoning Administrator or Plan Commission to facilitate the making of a recommendation to the Village Board.
- (d) OFFICIAL HEARING & PLAN COMMISSION REVIEW/RECOMMENDATION
- (1) The Zoning Administrator shall transmit of such petition to the Plan Commission. The

Village Plan Commission shall hold a public hearing upon each proposed change or amendment, giving notice of the time and place of such hearing including a description of the property affected by any change or amendment by publication in the Village recognized newspaper of a class 2 notice, under Ch. 985 of the Wisconsin Statutes and indicating that a map may be obtained from the Village Clerk. A copy of each such notice shall be sent to the clerk of contiguous municipalities as required by Sec. 62.23, Wis. Stat. The Village Plan Commission shall make a recommendation on the change or amendment to grant as requested, modify or deny to the Village Board on each proposed change or amendment after the public hearing is held and prior to action by the Village Board. If the change includes a planned unit development overlay, the Plan Commission shall make a recommendation on the conditions for such planned unit development prior to action by the Village Board as set forth in Sec. 16-7. If the Plan Commission determines that the services of a professional planning consultant are required to determine the feasibility of a zoning change, the fees incurred for such study shall be the responsibility of the petitioner.

(e) ACTION

- (1) after such public hearing, and Plan Commission recommendation, the Village Board shall act to approve, modify and approve, or disapprove the proposed change or amendments.
- (2) The Village Board shall not take action without first having Plan Commission review the proposed change or amendments and make a recommendation on such change or amendment.
- (3) An approved change shall be by appropriate ordinance, and necessary changes in the Zoning Map or text shall thereafter be made by the Village in a timely manner.

(f) MATERIAL DEFECT

When it is determined by the Village Plan Commission, in consultation with the Zoning Administrator and/or Village Attorney, that there is a material defect in the rezoning petition, or when the Plan Commission determines that insufficient/inadequate notice was provided for a public hearing, the Plan Commission reserves the right to require a new public hearing. Such determination shall be made within ninety (90) days of the initial hearing. Costs for the second hearing are the responsibility of the petitioner.

16-18-1 AMENDMENTS IN SHORELAND WETLAND MAPPING & TEXT

- (a) In accordance with Sec. 16-15, written notice of the public hearing to be held on a proposed shoreland or shoreland-wetland amendment shall be sent to the Wisconsin Department of Natural Resources ("DNR") district office at least ten (10) days prior to the hearing. A copy of the Village Board's decision on each proposed amendment shall be forwarded to the DNR district office within ten (10) days after the decision is issued.

CHAPTER 18 Definitions

[Back to Table of Contents](#)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
18-1-1	Definitions		

16-8-1 DEFINITIONS

- (a) For the purpose of this chapter, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meanings or are intended to be interpreted to have a specific meaning. Words used in the present tense in this Chapter include the future. The word “person” includes a firm, association, partnership, trust, company, or corporations as well as an individual. The word “he” includes the word “she” The word “shall” is mandatory, the would “should” is advisory, and the word “may” is permissive. Any words not defined in this section shall be presumed to have their customary dictionary definitions.

A zones shall mean those areas show[n] on the official floodplain zoning map which would be inundated by the regional flood. These areas may be numbered or un-numbered A zones may or may not be reflective of flood profiles, depending on the availability of data for a given area.

Access and viewing corridor shall mean a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

Accessory structure or use shall mean a facility, structure, building or use which is accessory to or incidental to the principle use of a property, structure, or building.

Adult bath houses shall mean an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the state and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities."

Adult body painting studios shall mean an establishment or business wherein patrons are afforded an opportunity to paint images on a "specified anatomical area." For purposes of this chapter, the adult body painting studio shall not be deemed to include a tattoo parlor.

Adult bookstore shall mean an establishment or business having as at least twenty-five (25) percent of its: (1) retail floor space used for display of adult products; or (2) stock in trade consisting of adult products; or c) weekly revenue derived from adult products. For purposes of this definition, the phrase adult products means books, films, magazines, motion pictures, periodicals, or other printed matter, or photographs, video cassettes, Compact Disks (CDs), DVDs, Blu-Ray Discs, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas." For purposes of this definition, the phrase adult products also means any device designed or marketed as useful primarily for the stimulation of human genital organs, or for sadomasochistic use or abuse. Such devices shall include, but are not limited

to, bather restraints, body piercings implements (excluding earrings or other decorative jewelry), chains, dildos, muzzles, non-medical enema kits, phallic shaped vibrators, racks, whips and other tools of sadomasochistic abuse.

Adult cabaret shall mean any nightclub, bar, theatre, restaurant, or similar commercial establishment which features:

- (1) Live performances by bottomless and/or topless dancers, exotic dancers, go-go dancers, strippers or similar entertainers where such performances which are characterized or distinguished by an emphasis on specified sexual activities or by the exposure of "specified anatomical areas" or the removal of articles of clothing; or
- (2) Films, motion pictures, video cassettes, digital video disks, CDs, DVDs, Blu-Ray Discs, or other photographic and/or, video reproductions, slides or other visual presentations which are distinguished or characterized by depicting or describing "specified sexual activities" or "specified anatomical areas" for observation by patrons; or
- (3) Persons who engage in exotic dancing or performances that are intended for the sexual interests or titillation of an audience or customer.

Adult drive-in theatre shall mean an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of films, motion pictures, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons. **Adult establishments** shall mean an adult bookstore, adult cabaret, adult drive-in theatre, adult live entertainment arcade, adult mini-motion pictures theatre, adult motel, adult motion picture arcade, adult motion picture theatre, or adult services establishment.

Adult live entertainment arcade shall mean any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed, screened area, or booth a series of live dance routines or strip performances or other gyrational choreography, which choreography, performances, or routines are distinguished or characterized by an emphasis on specified sexual activities or by exposure to specified anatomical areas.

Adult massage parlor shall mean an establishment or business with or without sleeping accommodations which provides services including any method of rubbing, pressing, stroking, kneading, tapping, pounding, vibrating or stimulating a "specified anatomical area" with the hands or with any instruments, heat and light treatments of the body, and all forms and methods of physiotherapy not operated by a medical practitioner or professional physical therapist licensed by the state.

Adult mini-motion picture theater shall mean an enclosed building with a capacity of more than five (5) but less than fifty (50) persons used for presenting films, motion pictures, slides, video cassettes, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult modeling studio shall mean any establishment or business where a person who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Adult modeling studios shall not include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (2) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- (3) Where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

Adult motel shall mean a hotel, motel, or similar establishment offering public accommodations, for any form of consideration, that offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours and that provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, slides, video cassettes, or other photographic reproduction that are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult motion picture arcade shall mean any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

Adult motion picture theatre shall mean an enclosed building with a capacity of fifty (50) or more persons used for presenting films, motion pictures, slides, video cassettes, CDs, DVDs, Blu-Ray Discs, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult motion picture theater (outdoor) shall mean a parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activity" or "specified anatomical areas."

Adult novelty shop shall mean an establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on or designed for "specified sexual activity" or stimulating such activity.

Adult service establishment shall mean any building, premises, structure or other facility, or part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities, display of specified anatomical areas, or massage of specified anatomical areas, not performed or operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin.

Adult theater shall mean a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Adult video store shall mean an establishment or business having as a substantial or significant portion of its stock and trade for sale or rental of motion pictures or other visual media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

Advertising sign shall mean a sign pertaining to goods sold or manufactured or services rendered on the premises upon which the sign is located.

AH zone. See "Area of shallow flooding."

Alley shall mean a special public right-of-way affording only secondary access to abutting properties.

Alteration shall mean an enhancement, upgrading or substantial change or modifications other than an addition or repair to a dwelling or to electrical, plumbing, heating, ventilating, air conditioning and other systems within a structure.

Animal unit shall have the meaning that was given in NR 243.03(3) as of April 27, 2004.

Animated sign shall mean any sign or part of a sign that changes physical position or light intensity by any movement or rotation or that gives the visual impression of such movement or rotation.

Antenna means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

AO zone. See "Area of shallow flooding."

Area of shallow flooding shall mean a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's flood insurance rate map (FIRM) with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flood may be evident. Such flooding is characterized by ponding or sheet flow.

Arterial street shall mean a public street or highway used or intended to be used primarily for fast or heavy through traffic. Arterial streets and highways shall include freeways and expressways as well as arterial streets, highways and parkways.

Back-to-back, side-by-side, bottom-on-top, and V-shaped sign shall mean signs that are physically contiguous and share a common structure, in whole or in part, or are located not more than fifteen (15) feet apart at their nearest point in cases of "back-to-back" or "V-shaped."

Balcony shall mean a platform that projects from the wall of a building four (4) feet or less, is surrounded by a railing or balustrade, is open and roofless, and which is suspended or cantilevered from, or supported solely by, the structure to which it is attached.

Banner shall mean any sign of lightweight fabric, plastic, coated paper, or similar material not enclosed in a rigid frame that is mounted to a pole or a structure at one (1) or more edges. Flags or pennants are not considered banners.

Base flood shall mean the flood having a one (1) percent chance of being equaled or exceeded in

any given year, as published by FEMA as part of a FIS and depicted on a FIRM.

Basement shall mean any enclosed area of a building having its floor sub-grade (i.e., below ground level, on all sides).

Beacon (search light) shall mean any light with one (1) or more beams that rotate or move or any light with one (1) or more beams directed into the atmosphere or directed at one (1) or more points not on the same lot as the light source.

Bed and breakfast (B and B) shall mean a private owner-occupied residence that offers sleeping accommodations to not more than a total of twenty (20) tourists or transients in eight (8) or fewer rooms which provides no meals other than breakfast and provides breakfast only to renters of the place.

Billboard shall mean a sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located, except for section 20-1380 (c), section 20-1380 (l), section 20-1381 (a), section 20-1402(a), and section 20-1407(a).

Bluff shall mean the often steeply sloped land area located to the landward side of the Lake Michigan beach. The edge of the bluff is shown on the county topographic maps as "Edge of Cliff" at a scale of one (1) inch equals two hundred (200) feet.

Bluff recession rate shall mean the rate at which the bluff recedes because of erosion by the waters of Lake Michigan and because of unstable slope conditions.

Boardinghouse shall mean a building other than a hotel or restaurant where meals or lodging are regularly furnished by prearrangement for compensation for four (4) or more persons not members of a family, but not exceeding twelve (12) persons and not open to transient customers.

Boathouse shall mean a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

Brew pub shall mean a restaurant that manufactures up to five thousand (5,000) barrels of fermented malt beverages per year on premises for either consumption on premises or sale in hand-capped or sealed containers in quantities up to one-half (½) barrel or fifteen and one-half (15½) gallons sold directly to the consumer.

Building shall mean a structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals, equipment, machinery or materials.

Building area shall mean the total living area bounded by the exterior walls of a building at the floor levels, but not including basement, utility rooms, garages, porches, breezeways and unfinished attics.

Building envelope shall mean the three-dimensional space within a structure is built.

Building height shall mean the vertical distance measured from the mean elevation of the finished lot grade along the street yard face of the structure to the highest point of flat roofs; to the mean height level between the eaves and ridges of gable, gambrel, hip and pitch roofs; or to the deck line of mansard roofs.

Bulkhead line shall mean a geographic line along a reach of navigable water that has been adopted by a municipal ordinance and approved by the department pursuant to [W.S.A.] § 30.11, and which

allows limited filling between this bulkhead line and the original ordinary high-water mark, except where such filling is prohibited by the floodway provisions of this article.

Bus shelter shall mean a small, roofed structure, usually having three (3) walls, located near a street and designed primarily for the protection and convenience of bus passengers.

Campground shall mean any parcel of land which is designed, maintained, intended, or used for the purpose of providing sites for nonpermanent overnight use by four (4) or more camping units, or which is advertised or represented as a camping area.

Camping unit shall mean any portable device, no more than four hundred (400) square feet in area, used as a temporary shelter, including but not limited to, a camping trailer, motor home, bus, van, pick-up truck, tent or other mobile recreational vehicle.

Canopy sign (awning sign) shall mean any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover. A marquee is not a canopy. The overhead protective cover used for fuel pumps is considered a canopy.

Certificate of compliance shall mean a certification that the construction and the use of land or a building, the elevation of fill or the lowest floor of a structure is in compliance with all of the provisions of this article.

Changeable copy sign shall mean a sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign not more than once every eight (8) seconds or the minimum standards set by the Federal Highway Administration, whichever is longer. Each change of message shall be accomplished in one second or less. A sign on which the only copy that changes is an electronic or mechanical indication of time, date, or temperature is considered a "time and temperature" portion of a sign and not a changeable copy sign or traveling message sign.

Channel shall mean a natural or artificial watercourse with definite bed and banks to confine and conduct normal flow of water.

Class 1 collocation means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free-standing support structure for the facility but does need to engage in substantial modification.

Class 2 collocation means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free-standing support structure for the facility but does not need to engage in substantial modification.

Clear cutting shall mean the removal of an entire stand or area of trees or shrubs.

Clothing repair shops shall mean shops where clothing is repaired, such as shoe repair shops, seamstress, tailor shops, shoe shine shops, clothes pressing shops, but none employing over five (5) persons.

Clothing stores shall mean retail stores where clothing is sold, such as department stores, dry goods and shoe stores, dress, hosiery and millinery shops.

Cluster development shall mean a development design technique that concentrates buildings in specific areas on a site to allow remaining lands to be used for recreation, common open space, or

the preservation of historically, agriculturally or environmentally sensitive features. The size of individual lots may be reduced to gain such common open space.

Commercial day care center shall mean an establishment providing care and supervision for four (4) or more persons under the age of seven (7) and licensed by the State of Wisconsin pursuant to W.S.A., § 48.65.

Commercial-scale wind energy facility shall mean an electricity generating facility consisting of one or more wind turbines under common ownership or operating control and includes substations, MET towers, cables/wires, and other buildings accessory to such facility whose main purpose is to supply electricity to off-site customer(s) provided that such a system shall only include a wind turbine with both a total height greater than one hundred seventy (170) feet and name-plate capacity greater than one hundred (100) kilowatts/one (1) megawatt.

Conditional use shall mean a use which is permitted by this chapter provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the economic development and land use planning committee or county board.

Conservation standards shall mean guidelines and specifications for soil and water conservation practices and management enumerated in the Technical Guide prepared by the U.S. Department of Agriculture, Soil Conservation Service, for the county, adopted by the county soil and water conservation district supervisors, and containing suitable alternatives for the use and treatment of land based upon its capabilities, from which the landowner selects that alternative which best meets his needs in developing his soil and water conservation plan.

Core area of living space shall mean that area or space within a dwelling unit, devoted to the principal residential use of the structure, excluding attached garages, porches, sheds, decks, carports, and other appurtenances.

Corner lot shall mean a lot abutting two (2) or more streets at their intersections provided that the corner of such intersection shall have an angle of one hundred thirty-five (135) degrees or less, measured on the lot side.

Crawlways or crawlspace shall mean an enclosed area below the first usable floor of a building, generally less than five (5) feet in height, used for limited access to plumbing and electrical utilities.

DATCP shall mean the state department of agriculture, trade and consumer protection.

Day care center. See "Family day care home" and "Commercial day care center."

Decibel shall mean a unit for measuring the relative loudness of a sound (abbreviated dB) measured on an "A" weighted decibel scale.

Deck shall mean an unenclosed exterior structure that has no roof or sides, but has a permeable floor which allows the infiltration of precipitation.

Density bonus shall mean the allocation of development rights that allow a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned or beyond the net density established in the adopted town land use plan, usually in exchange for the provision or preservation of an amenity at the same site or at another location.

Density, net shall mean the numerical value obtained by dividing the total number of dwelling units in a development by the area of the actual tract of land (in acres) upon which the dwelling units are proposed to be located and including common open space and associated recreational facilities within the area; the result being the number of dwelling units per net residential acres of land. Net density calculations exclude all or a portion of the area occupied by rights-of-way of publicly dedicated streets and private streets, floodplains, wetlands, and water.

Department shall mean the state department of natural resources (DNR).

Development shall mean any artificial change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or alterations to buildings, structures or accessory structures; the repair of any damaged structure or the improvement or renovation of any structure, regardless of percentage of damage or improvement; the placement of buildings or structures; subdivision layout and site preparation; mining, dredging, filling, grading, paving, excavation or drilling operations; the storage, deposition or extraction of materials or equipment; and the installation, repair or removal of public or private sewage disposal systems or water supply facilities.

Development Regulations. Those portions of this Ordinance pertaining to lot area, lot width, structure size, yard/setback, frontage, height, parking, loading, or separation distance requirements.

Directional sign shall mean any auxiliary sign that is limited to directional messages principally for assisting in the flow of pedestrian or vehicular traffic, such as enter, exit, and one way. Directory sign shall mean a sign listing the tenants or occupants of a building or group of buildings and that may indicate their respective professions or business activities.

Displaced threshold shall mean a horizontal line on a runway, perpendicular to the runway centerline. Departing aircraft must be airborne before crossing the displaced threshold. Incoming aircraft may not touch down before crossing the displaced threshold.

District, basic use, shall mean a part or parts of the county for which the regulations of this chapter governing the use and location and land and buildings are uniform (such as the residential, business, industrial, or farming district classifications).

District, overlay, shall provide for the possibility of superimposing certain additional requirements upon a basic use zoning district without disturbing the requirements of the basic use district. In the instance of conflicting requirements, the more strict of the conflicting requirement shall apply.

Drainage system shall mean one (1) or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

Dryland access shall mean a vehicular access route which is above the regional flood elevation and which connects land located in the floodplain to land outside the floodplain, such as a road with its surface above regional flood elevation and wide enough for wheeled rescue and relief vehicles.

Dwelling shall mean a detached building designed or used exclusively as a residence or sleeping place, but does not include boardinghouses or lodging houses, motels, hotels, tenements, cabins, or mobile homes.

Efficiency shall mean a dwelling unit consisting of one (1) principal room with no separate sleeping rooms.

Egg production, commercial shall mean an animal confinement facility used or designed for the raising of poultry for egg production having a capacity of two hundred (200) or more animal units.

Elevation shall mean the height in feet above National Geodetic Datum of 1929, also known as mean sea level datum.

Emergency shelter shall mean public or private enclosures designed to protect people from aerial, radiological, biological or chemical warfare, fire, flood, windstorm, riots and invasions.

Encroachment shall mean any fill, structure, building, use, or development in the floodway.

Enlargement (pertaining to adult establishment only) shall mean an increase in size of the building, structure or premises in which the adult establishment is conducted by either construction or use of an adjacent building or any portion thereof whether located on the same or an adjacent lot or parcel of land.

Equipment compound means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

Essential services shall mean services provided by public and private utilities, necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, stormwater drainage and communication systems and accessories thereto, such as poles, tower, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations and hydrants, but not including buildings used or intended to be used for human habitation.

Establishing an adult establishment shall mean and include any of the following:

- (1) The opening or commencement of any such business as a new business;
- (2) The conversion of an existing business, whether or not an adult establishment, to any of the adult establishments defined herein;
- (3) The relocation of any such business.

Existing development pattern shall mean that principal structures exist within two hundred and fifty (250) feet of a proposed principal structure in both directions along the shoreline.

Existing manufactured home park or subdivision shall mean a parcel of land, divided into two (2) or more manufactured home lots for rent or sale, on which the construction of facilities for servicing the lots is completed before the effective date of this article. At a minimum, this would include the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

Existing structure means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a county or municipality.

Expanded livestock facility shall mean the entire livestock facility that is created by the expansion, after May 1, 2006. Expanded livestock facility includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.

Expansion shall mean (for livestock siting purposes) an increase in the largest number of animal units kept at a livestock facility on at least ninety (90) days in any twelve-month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an "expansion" unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least ninety (90) days in any twelve-month period.

Expansion to existing manufactured home park shall mean the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed. This includes installation of utilities, construction of streets and either final site grading, or the pouring of concrete pads.

Expressway shall mean a divided arterial street or highway with full or partial control of access and with or without grade separated intersections.

Family shall mean any number of persons related by blood, adoption or marriage, or not to exceed four (4) persons not so related, living together in one (1) dwelling as a single housekeeping entity.

FAA shall mean the Federal Aviation Administration.

Face shall mean the surface of a sign upon which the message is displayed. One (1) sign structure may have more than one (1) face.

Fall zone means the area over which a mobile support structure is designed to collapse.

Family day care home shall mean a dwelling licensed as a day care center by the State of Wisconsin pursuant to W.S.A., § 48.65, where care is provided for not more than eight (8) children under the age of seven (7) years for less than twenty-four (24) hours per day.

Family foster home shall mean the primary domicile of a foster parent which houses four (4) or fewer foster children and which is licensed pursuant to W.S.A., § 48.62.

Federal emergency management agency (FEMA) shall mean the federal agency that administers the national flood insurance program.

Flag shall mean any fabric or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision, school, or to indicate membership in a non-profit organization.

Flashing sign shall mean any directly or indirectly illuminated sign on which the natural or artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use. This definition includes parts that move while the light remains constant, giving the impression of changing or flashing lights. Intermittent signs only providing information such as time, date, and temperature and changeable copy signs as defined herein are not considered "flashing signs."

Flood or flooding shall mean a general and temporary condition of partial or complete inundation of normally dry land areas caused by one of the following:

- (1) The overflow or rise of inland waters;
- (2) The rapid accumulation of runoff of surface waters from any source;
- (3) The inundation caused by waves or currents of water exceeding anticipated cyclical levels along the shore of Lake Michigan or Lake Superior; or
- (4) The sudden increase caused by an unusually high water level in a natural body of water, accompanied by a sever storm, or by an unanticipated force of nature, such as a seiche, or by some similarly unusual event.

Flood frequency shall mean the probability of a flood occurrence. A flood frequency is generally determined from statistical analysis. The frequency of a particular flood event is usually expressed as occurring, on the average, once in a specified number of years or as a percent chance of occurring in any given year.

Flood insurance rate map (FIRM) shall mean a map of a community on which the Federal Insurance Administration has delineated both the floodplain and the risk premium zones applicable to the community. This map can only be amended by the Federal Emergency Management Agency.

Flood insurance study shall mean a technical engineering examination, evaluation, and determination of the local flood hazard areas. It provides maps designating those areas affected by the regional flood and provides both flood insurance rate zones and base flood elevations and may provide floodway lines. The flood hazard areas are designated as numbered and unnumbered A zones. Flood insurance rate maps that accompany the flood insurance study form the basis for both the regulatory and the insurance aspects of the National Flood Insurance Program.

Flood hazard boundary map shall mean a map designating approximate flood hazard areas. Flood hazard areas are designated as un-numbered A zones and do not contain floodway lines or regional flood elevations. This map forms the basis for both the regulatory and insurance aspects of the National Flood Insurance Program (NFIP) until superseded by a flood insurance study and a flood insurance rate map.

Flood profile shall mean a graph or a longitudinal profile line showing the relationship of the water surface elevation of a flood event to locations of land surface elevations along a stream or river.

Flood protection elevation shall mean an elevation of two (2) feet of freeboard above the water surface profile elevation designated for the regional flood. (Also see: freeboard)

Flood stage shall mean the elevation of the floodwater surface above an officially established datum plane, which is mean sea level, 1929 adjustment, on the supplementary floodland zoning map or in any of the flood profiles cited in section 20-211 et seq.

Flood storage shall mean those floodplain areas where storage of floodwaters has been taken into account during analysis in reducing the regional flood discharge.

Floodfringe shall mean that portion of the floodplain outside of the floodway which is covered by flood waters during the regional flood and associated with standing water rather than flowing water.

Floodlands shall mean all lands contained in the "regional flood" or one-hundred-year recurrence interval flood. For the purpose of zoning regulation, the floodlands are divided into the urban

floodway district, the urban floodplain conservancy overlay district, the urban floodplain fringe overlay district and the general floodplain overlay district.

Floodplain shall mean land which has been or may be covered by flood water during the regional flood. It includes the floodway and the floodfringe, as those terms are defined in W.A.C. ch. NR 116, and may include other designated floodplain areas for regulatory purposes.

Floodplain island shall mean a natural geologic land formation within the floodplain that is surrounded, but not covered, by floodwater during the regional flood.

Floodplain management shall mean policy and procedures to ensure wise use of floodplains, including mapping and engineering, mitigation, education, and administration and enforcement of floodplain regulations.

Floodplain nonconforming structure shall mean an existing lawful structure or building which is not in conformity with the dimensional or structural requirements of this chapter for the area of the floodplain which it occupies. (For example, an existing residential structure in the floodfringe district is a conforming use. However, if the lowest floor is lower than the food protection elevation, the structure is nonconforming.)

Floodplain nonconforming use shall mean an existing lawful use or accessory use of a structure or building which is not in conformity with the provisions of this chapter for the area of the floodplain which it occupies, such as a residence in the floodway.

Floodproofing shall mean any combination of structural provisions, changes, or adjustments to properties and structures, water and sanitary facilities, and contents of buildings subject to flooding for the purposes of reducing or eliminating flood damage.

Floodway shall mean the channel of a river or stream and those portions of the floodplain adjoining the channel required to carry the regional flood discharge.

Footprint shall mean the land area covered by a structure at ground level measured on a horizontal plane. The footprint of a residence or building includes the horizontal plane bounded by the furthest exterior wall and eave if present, projected to natural grade. For structures without walls (decks, stairways, patios, carports)—a single horizontal plane bounded by the furthest portion of the structure projected to natural grade. Note: for the purposes of replacing or reconstructing a nonconforming building with walls, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves projected to natural grade. This constitutes a lateral expansion under NR 115 and would need to follow NR 115.05 (1)(g)5.

Freeboard shall mean a flood protection elevation requirement designed as a safety factor which is usually expressed in terms of a specified number of feet above a calculated flood level. Freeboard compensates for the effects of any factors that contribute to flood heights greater than those calculated. These factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology or the watershed, loss of flood storage areas due to development and aggradation of the river or streambed.

Freeway shall mean an expressway with full control of access and with fully grade separated intersections.

Frontage shall mean the smallest dimension of a lot abutting a public street measured along the street line.

General floodplain shall mean that portion of the natural one-hundred-year recurrence interval flood hazard area that is not committed to urban development. The regulations of the general floodplain overlay district are constructed in a manner to promote protection of these natural floodplains in their natural state and to prevent the encroachment of urban development and other structures.

Generally accepted forestry management practices shall mean forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

Gift stores shall mean retail stores where items such as art, antiques, jewelry, books and notions are sold.

Greenhouse shall mean a building or structure constructed chiefly of glass, glasslike or translucent material, cloth or lath, which is devoted to the protection or cultivation of flowers, shrubbery, vegetables, trees and other horticultural and floricultural products.

Greenhouse, commercial shall mean a greenhouse used for the growing of plants, all or part of which are sold at retail or wholesale.

Ground sign (monument sign) shall mean any permanent free-standing sign, other than a pole sign, in which the entire bottom is in contact with or is close to the ground and which does not exceed fifteen (15) feet in height.

Group foster home shall mean any facility operated by a person required to be licensed by the State of Wisconsin pursuant to W.S.A., § 48.62 for the care and maintenance of five (5) to eight (8) foster children.

Habitable structure shall mean any structure or portion thereof used or designed for human habitation.

Hardware stores shall mean retail stores where items such as plumbing, heating and electrical supplies, sporting goods and paints are sold.

Hearing notice shall mean a publication or posting meeting the requirements of W.S.A., ch. 985. For appeals, a Class I notice is required, published once, at least one (1) week (seven (7) days) before the public hearing. For all zoning ordinances and amendments, a class II notice is required, published twice, once each week consecutively, with the last published at least a week (seven (7) days) before the hearing. Local ordinance or bylaws may require additional notice exceeding these minimums.

High flood damage potential shall mean damage that could result from flooding that includes any danger to life or health or any significant economic loss to a structure or building and its contents.

Highest adjacent grade shall mean the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

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Historic structure shall mean any structure that is:

- Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- Individually listed on a local inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- Individually listed on a local inventory of historic places in communities with historic preservation programs which have been certified either by an approved state program as determined by the Secretary of Interior; or directly by the Secretary of Interior in states without approved programs.

Home occupation shall mean any gainful occupation or profession engaged in by an occupant of a dwelling unit which meets the criteria listed in section 20-1006 et seq.

Hub height shall mean, when referring to a wind turbine, the distance measured from ground level to the center of the turbine hub.

Impervious surface shall mean an area that releases as runoff all or a majority of the precipitation that falls on it. Impervious surface excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in W.A.C. § 340.01(54), or sidewalks as defined in W.A.C. § 340.01(58), are not considered impervious surfaces.

In-law suite shall mean a physical arrangement of a dwelling unit in such a fashion that a separate living quarters is created within a dwelling unit for the sole purpose of allowing related persons to live in the secondary living area while that owner and his or her family resides in the principal living area. The secondary living area may contain a bedroom, bathroom and kitchenette which permit a limited degree of independence, but does not create a separate housekeeping entity.

Increase in regional flood height shall mean a calculated upward rise in the regional flood elevation greater than 0.00 foot, based on a comparison of existing conditions and proposed conditions which is directly attributable to development in the floodplain but not attributable to manipulation of mathematical variables such as roughness factors, expansion and contraction coefficients and discharge.

Interchange shall mean a grade separated intersection with one (1) or more turning lanes for travel between intersection legs.

Junkyard (salvage yard) shall mean any premises on which there is an accumulation of scrap metal, paper, rags, glass, lumber, inoperable machinery, inoperable vehicles, tires, or other materials stored or customarily stored for salvage, buying, selling, exchanging, dealing, disassembling, packing, bailing, wrecking, or handling unless such accumulation shall be housed in a completely enclosed building.

Kitchen shall mean a place (such as a room) with cooking facilities including kitchen-type counters and/or cabinets, kitchen sinks, or any appliances for the preparation or preservation of food, including but not limited to, gas or electric ranges, ovens or stovetops, microwave ovens, refrigerators with more than five (5) cubic feet of capacity, or freezers.

Kitchenette shall mean a small kitchen or an alcove containing minimal cooking facilities.

Land use for floodplain management purposes shall mean any nonstructural or improved real estate.

Landscaped buffer shall mean an area of landscaping separating two (2) distinct land uses, or a land use and a public right-of-way or private road, and acts to soften or mitigate the effects of one (1) land use on the other.

Letter of map amendment (LOMA) shall mean an official notification from the Federal Emergency Management Agency (FEMA) to an individual property owner that a flood hazard boundary map or flood insurance rate map has been amended.

Letter of map revision (LOMR) shall mean an official notification from the Federal Emergency Management Agency (FEMA) that a municipality's flood hazard boundary map or flood insurance rate map has been amended. A LOMR is issued when the revised map is not republished.

Livestock shall mean domestic animals traditionally used in this state in the production of food, fiber, or other animal products. Livestock includes cattle, swine, poultry, sheep, and goats. Livestock does not include equine animals, bison, farm-raised deer, fish, captive game birds, rarities, camelids, or mink.

Livestock facility shall mean a feedlot, dairy farm, or other operation where livestock are or will be fed, confined, maintained, or stabled for a total of forty-five (45) days or more in any twelve-month period. A livestock facility includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single livestock facility for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate livestock facility.

Livestock structure shall mean a building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility. Livestock structure includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage facility. Livestock structure does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

Living rooms shall mean all rooms within a dwelling except closets, foyers, storage areas, utility rooms and bathrooms.

Loading area shall mean a completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public street or alley.

Lot shall mean a parcel of land having frontage on a public street, or other means of access that was in existence prior to the original adoption of this zoning ordinance and which has been

approved by the town, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, lot yard, parking area, and other open space provisions of this chapter.

Lot area shall mean the area of a horizontal plane bounded by the front, side, and rear lot lines of a lot, but not including the area of any land below the ordinary high-water mark of navigable waters or within the mapped right-of-way.

Lot lines and area shall mean the peripheral boundaries of a parcel of land and the total area lying within such boundaries exclusive of any highway right-of-way or road easement.

Lot width shall mean the width of a parcel of land measured at the rear of the specified street yard. On all parcels where parallel side lot lines are not perpendicular to the street right-of-way line, such lot width shall be determined by measuring along a line which is perpendicular to the side lot lines and begins at a point on the side lot line that is at the specified street yard setback distance. For parcels with non-parallel side lot lines, lot width shall be measured at the street yard setback distance along a line that is perpendicular to a line which begins at the center of the lot at a point on the street right-of-way line and is perpendicular to such right-of-way line or perpendicular to the tangent at such point in the case of a curved right-of-way.

Lowest adjacent grade shall mean the elevation of the lowest ground surface that touches any of the exterior walls of a building.

Lowest floor shall mean the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

Machine shops shall mean shops where lathes, presses, grinders, shapers and other wood and metal working machines are used, such as blacksmith, tinsmith, welding and sheet metal shops; plumbing, heating and electrical repair and overhaul shops.

Maintenance and repair shall include such activities as interior remodeling, exterior remodeling, and the replacement or enhancement of plumbing or electrical systems, insulation, windows, doors, siding, or roof within the existing building envelope.

Manufactured dwelling shall mean a dwelling structure or component thereof as is defined in the Wisconsin Administrative Code One and Two Family Uniform Dwelling Code Section ILHR 20.07(52), which bears the Wisconsin Department of Industry, Labor and Human Relations insignia certifying that it has been inspected and found to be in compliance with Subchapter V of said Uniform Dwelling Code.

Manufactured home shall mean a dwelling structure or component thereof fabricated in an off-site manufacturing facility after June 15, 1976, for installation or assembly at the building site bearing a HUD label or insignia certifying that it is built in compliance with Federal Manufactured Housing Construction Standards. (Ref. 42 United States Code Section 5401-5406.)

Marquee shall mean any permanent roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather. Marquee sign shall mean any sign attached to, in any manner, or made a part of a marquee.

MET tower shall mean a meteorological tower used to measure wind speed.

Minimum facility setback distance shall mean a component of the structural and nonstructural setback overlay district distances which represents a setback distance measured from the regraded stable sloped bluff edge which provides a safety factor against possible failure of shore protection structures or the occurrence of higher than expected bluff recession rates, provides a buffer area which helps protect the regraded bluff edge from excessive surface runoff and from the potential bluff slope stresses resulting from the additional weight of buildings being placed close to the bluff edge, and provides an area which may be effectively utilized for surface water drainage and control.

Minor structures shall mean any small, movable accessory erection or construction such as birdhouses, tool houses, pet houses, play equipment and arbors.

Mitigation shall mean balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

Mobile home shall mean a readily transportable factory-built structure, except a manufactured dwelling or manufactured home, intended for human habitation, which by its inherent design may be moved from site to site as necessary; which may have an oversized width for normal traffic allowances and thereby require a special travel permit from state or county highway officials; and which may have its undercarriage removed to facilitate a better location on a slab, piers, or foundation. The removal of the wheels, axles, or other components of the running gear and/or the mounting of such a structure or vehicle on a foundation or over a basement shall not be deemed to change its status from that of a mobile home. A structure manufactured after June 15, 1976, which is certified and labeled as a Manufactured Home under 42 U.S. Code Sections 5401 to 5406 but which is not set on an enclosed foundation in the manner described in section 20-1020 shall be deemed to be a mobile home under this zoning ordinance. Recreational vehicles are not classified as mobile homes and may not be used as a residence.

Mobile home park shall mean any plot or plots of land designed, maintained, intended or used for the purpose of supplying a location or accommodations for two (2) or more units occupied for dwelling or sleeping purposes on a yearround basis and shall include all buildings used or intended for use as part of the equipment thereof, whether or not a charge is made for the use of the mobile home park and its facilities. Mobile home parks shall not include automobile or mobile home sales lots on which unoccupied mobile homes are parked for purposes of inspection and sale, and shall not include recreational vehicle (RV) courts/campgrounds.

Mobile recreational vehicle shall mean a vehicle which is built on a single chassis four hundred (400) square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registration is required and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. Manufactured homes

that are towed or carried onto a parcel of land, but do not remain capable of being towed or carried, including park model homes, do not fall within the definition of mobile recreational homes.

Mobile service facility means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

Mobile service provider means a person who provides mobile service as defined by federal law.

Mobile service support structure means free-standing structure that is designed to support a mobile service facility.

Model, corrected effective shall mean a hydraulic engineering model that corrects any errors that occur in the duplicate effective model, adds any additional cross sections to the duplicate effective model, or incorporates more detailed topographic information than that used in the current effective model.

Model, duplicate effective shall mean a copy of the hydraulic analysis used in the effective FIS and referred to as the effective mode.

Model, effective shall mean the hydraulic engineering model that was used to produce the current effective flood insurance study.

Model, existing (pre-project) shall mean a modification of the duplicate effective mode or corrected effective model to reflect any manmade modifications that have occurred within the floodplain since the date of the effective model, but prior to the construction of the project for which the revision is being requested. If no modification has occurred since the date of the effective mode, this model would be identical to the corrected effective model or duplicate effective model.

Model, revised (post-project) shall mean a modification of the existing or pre-project conditions model, duplicate effective model, or corrected effective model to reflect revised or post-project conditions.

Modular home shall mean a structure which is partially pre-assembled at a manufacturing plant and placed on a lot or parcel as a dwelling unit or units. Also called "pre-fabricated" or pre-cut" homes or "double-wide" units. For purposes of this chapter, the term manufactured home shall generally be used to describe this type of structure. It shall be further distinguished from the term mobile home. (See definitions of manufactured home and mobile home.)

Motel shall mean a series of attached, semiattached or detached sleeping units for the accommodation of transient guests.

Municipality or municipal shall mean the county, city, or village governmental units enacting, administering, and enforcing this zoning ordinance.

NAVD or North American Vertical Datum shall mean elevations referenced to mean sea level datum, 1988 adjustment.

NGVD or National Geodetic Vertical Datum shall mean elevations referenced to mean sea level datum, 1929 adjustment.

Navigable waters means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under W.S.A., § 281.31(2)(d), notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under W.S.A., § 59.69, and W.A.C. ch. NR115, do not apply to lands adjacent to:

- (1) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
- (2) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to the natural navigable water body.

Net stable slope distance shall mean the horizontal distance that the top of the bluff would need to be receded, or be regraded, to form a stable bluff slope, which would not likely be affected by major bluff recession processes such as slumping or sliding. The stable slope distance is one (1) component of the structural and nonstructural setback overlay district distances.

New construction, for floodplain management purposes, shall mean structures for which the start of construction commenced on or after the effective date of floodplain zoning regulations adopted by this community and includes any subsequent improvements to such structures. For the purpose of determining flood insurance rates, it includes any structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

New livestock facility shall mean a livestock facility that will be used as a livestock facility for the first time, or for the first time in at least five (5) years. New livestock facility does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding five (5) years.

Nonconforming Lot shall mean a lot, the area, dimensions, or location that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to current regulations of this Ordinance. Such nonconforming lots are also referred to as substandard lots.

Nonconforming uses or structures shall mean any structure, land or water lawfully used, occupied or erected at the time of the effective date of this chapter or amendments thereto which does not conform to the regulations of this chapter or amendments thereto. Any such structure conforming in respect to use but not in respect to frontage, width, height, area, yard, parking, loading or distance requirements shall be considered a nonconforming structure and not a nonconforming use.

Nonstructural setback overlay district distance shall mean, for Lake Michigan shoreland areas, not recommended to be protected by properly designed, constructed, and maintained shore protection structures, the distance from the existing bluff edge which is expected to be affected by shoreline erosion and bluff recession over a fifty-year period, or by regrading of the bluff slope as needed to achieve a stable slope. The nonstructural setback distance also includes a minimum facility setback distance.

Normal maintenance and repair shall mean cleaning, painting, replacing broken and vandalized non-structural parts; replacing light bulbs; and other like minor routine repairs in a manner that does not change or alter the basic copy area, design, or structure of the sign.

Obsolete sign shall mean any sign that no longer correctly directs or exhorts any person or advertises a business, service, product, tenant, or activity no longer conducted, available, or in existence on the premises where such sign is displayed.

Obstruction shall mean any structure, growth, or other object, including a mobile object, which penetrates any of the protected surfaces described in section 20-898.

Obstruction to flow shall mean any development which blocks the conveyance of flood waters such that this development alone or together with any future development will cause an increase in regional flood heights.

Off-road trail shall mean a new or existing trail made for the use of an off road vehicle(s) where a permanent and defined path has been created and/or where the landscape has been manipulated in such a manner as to create a path or ruts that may or may not include jumps, pits, hills, and/or berms.

Off-road vehicle shall mean a motorized vehicle designed for use on a variety of non-improved surfaces including but not limited to, dune buggies, four-wheel drive vehicles, snowmobiles, all-terrain vehicles (ATVs), dirt bikes, mini bikes, motor bikes, mopeds and trail bikes. Agricultural equipment (such as farm tractors, seeders, combines, cultivators, etc.) used in the operation of a farm, garden tractors and riding lawnmowers are not a type of off-road vehicle.

Official floodplain zoning map shall mean that map, adopted and made part of this article, as described in section 20-213.5, which has been approved by the WI-DNR Department and FEMA.

Official letter of map amendment shall mean official notification from the federal emergency management agency (FEMA) that a flood hazard boundary map or flood insurance rate map has been amended.

Open space use for floodplain management purposes shall mean those uses having a relatively low flood damage potential and not involving structures.

Ordinary highwater mark shall mean the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.

Overspeed control shall mean a mechanism used to limit blade rotation speed to below the design limits of the wind energy facility.

Parking lot shall mean a structure or premises containing ten (10) or more parking spaces open to the public for rent or a fee.

Parking space shall mean a graded and surfaced area of not less than one hundred eighty (180) square feet in area either enclosed or open for the parking of a motor vehicle, having adequate ingress and egress to a public street or alley.

Parties in interest shall mean and include all abutting property owners, all property owners within one hundred (100) feet, and all property owners of opposite frontages.

Pennant shall mean any lightweight plastic, fabric, or other material, whether or not it contains a message of any kind, suspended from a rope, wire, or string, usually in series that typically streams in the wind.

Pergola shall mean a structure of parallel colonnades supporting an open roof of crossing rafters or trelliswork.

Person shall mean any individual, firm, partnership, corporation, company, association or governmental entity; includes a trustee, a receiver, an assignee or a similar representative of any of them.

Pierhead line shall mean a boundary line established along any section of the shore of any navigable waters by a municipal ordinance approved by the state department of natural resources, pursuant to W.S.A., § 30.13. Piers and wharves are only permitted to the landward side of such pierhead line unless a permit has been obtained pursuant to W.S.A., § 30.12(2).

Pinwheel shall mean a wheel with vanes of paper or similar material, pinned to a stick, pole, or similar structure or device, so as to revolve in the wind.

Pond shall mean a natural or artificial (manmade) body of standing water smaller than a lake which generally retains water yearround.

Pole sign (freestanding sign, self-supporting sign) shall mean any sign that is mounted on one (1) or more poles so that the bottom of the sign is at least six (6) feet in height.

Portable sign shall mean any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including but not limited to signs designed to be transported by means of wheels; signs converted to A-or T-frames; menu and sandwich board signs; umbrellas used for advertising; and signs attached to or painted on vehicles, trailers, or equipment that are parked and readable from the street right-of-way, unless said vehicles, trailers, or equipment are used in the normal day-to-day business operations.

Principal structure shall mean a structure used or intended to be used for the principal use as permitted on such lot by the regulations of the district in which it is located.

Private sewage system shall mean a sewage treatment and disposal system serving one structure with a septic tank and soil absorption field located on the same parcel as the structure. It also shall mean an alternative sewage system approved by the department of commerce, including a substitute for the septic tank or soil absorption field, a holding tank, a system serving more than one structure or a system located on a different parcel than the structure.

Projecting sign shall mean any sign that is wholly or partly dependent upon a building for support and which projects more than twelve (12) inches from the side(s) of such building.

Pyramiding shall mean the act of obtaining or providing access to public bodies of water across private lots or lands in a manner which increases the number of families which have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore

lots or residences via a narrow parcel of land to provide access to the water. Publicly owned access point shall not fall within this definition.

Qualified nutrient management planner shall mean a person qualified under § ATCP 50.48.

Reach shall mean a longitudinal segment of a stream generally including those floodlands wherein flood stages are primarily and commonly controlled by the same manmade or natural obstructions to flow.

Rear yard shall mean a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the rear lot line and a line parallel thereto through the nearer point of the principal structure. This yard shall be opposite the street yard or one (1) of the street yards on a corner lot.

Reasonably safe from flooding shall mean base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle shall mean a vehicular unit designed as temporary living quarters for recreational, camping, or travel use which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, or motor home.

Recycling means the transfer, transporting, processing, marketing, and conversion of solid waste into usable materials or products and includes the stockpiling and disposal on non-usable portions of solid wastes, but does not include the collection of solid wastes.

Recycling center means that a facility that is not a junkyard and in which recoverable resources, such as newspapers, glassware, and metal cans, are collected, stored, flattened, crushed, or bundled, essentially by hand within a completely enclosed building.

Recycling drop-off site means a collection point for recyclable materials. Temporary storage of specific materials is permitted on each site, but no processing of such items is allowed.

Recyclable materials means waste material for which there exists a commercially demonstrated processing or manufacturing technology which uses the material as a raw material.

The following materials are "recyclable materials" under this chapter:

- (1) Batteries;
- (2) Major appliance;
- (3) Motor oil and lubricants;
- (4) Magazines and newspapers;
- (5) Plastic containers;
- (6) Glass containers;
- (7) Aluminum containers;
- (8) Polystyrene foam packaging;
- (9) Steel containers;
- (10) Waste tires, as defined in W.S.A., § 84.078(1)(b);
- (11) Carbonated or malt beverage containers made primarily of steel and aluminum;

(12) Office paper.

Recycling plant means a facility that is not a junk yard and in which recoverable resources are recycled, reprocessed and treated to return such products to a condition in which they may again be used for production.

Regional flood shall mean a flood determined to be representative of large floods known to have occurred in Wisconsin. A regional flood is a flood with a one (1) percent chance of being equaled or exceeded in any given year, and if depicted on the FIRM, the RFE is equivalent to the BFE and which may be expected to occur on a particular stream because of like physical characteristics, once in every one hundred (100) years.

Related livestock facilities shall mean livestock facilities that are owned or managed by the same person and related to each other in at least one (1) of the following ways:

(1) They are located on the same tax parcel of adjacent tax parcels of land. NOTE: A mere acquisition of a neighboring livestock facility does not constitute an "expansion" unless more animal units are added to the combined facilities.

(2) They use one or more of the same livestock structures to collect or store manure.

(3) At least a portion of their manure is applied to the same landspreading acreage.

Note: Compare definition of "animal feeding operation" under § NR 243.03(2). "Related livestock facilities" are treated as a single livestock facility for purposes of local approval, except that a "separate species facility" may be treated as a separate livestock facility.

Relocatable structure shall mean a structure or building which can be moved by a professional building moving contractor to its desired location at a cost not to exceed thirty (30) percent of the equalized value of the structure.

Roadside stand shall mean an accessory structure having a ground area of not more than three hundred (300) square feet, not closer than twenty-five (25) feet to any street right-of-way line, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed and to be used solely for the sale of farm products produced on the premises (or adjoining premises).

Roof sign shall mean any sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above any point of a building with a flat roof, the deck line of a building with a mansard roof, or the eave line of a building with a gambrel, gable, dome or hip roof.

Routine maintenance of vegetation means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

Runway shall mean any existing or planned rectangular paved surface which is specifically used for the landing and/or taking off of aircraft.

Screening shall mean a method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

Search ring means shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and demographics of the service area.

Self-service storage facility shall mean any structure designed and used for the purpose of renting or leasing individual storage spaces to tenants who are to have access to such space for the purpose of storing and removing personal property; also known as a miniwarehouse.

Sensitive land use shall mean any of the following:

- (1) Property zoned or used for residential purposes;
- (2) Property zoned or used for religious institutional purposes;
- (3) An educational institution for students in twelfth grade or below;
- (4) A library or museum;
- (5) A public or private park, recreation area, or playground;
- (6) A day care center;
- (7) A historic district;
- (8) A facility predominantly serving individuals with a "developmental disability," as that term is defined in W.S.A. §§ 51.01(5)(a) and (b), and subsequent amendments thereto;
- (9) A private youth development organization such as, but not limited to, YMCA, Junior Achievement, Boys Club of America and Campfire Girls.

Separate species facility shall mean a livestock facility that meets all of the following criteria:

- (1) It has only one (1) of the following types of livestock, and that type of livestock is not kept on any other livestock facility to which the separate species facility is related. (See definition of a "related livestock facility.")
 - a. Cattle;
 - b. Swine;
 - c. Poultry;
 - d. Sheep;
 - e. Goats.
- (2) It has no more than five hundred (500) animal units.
- (3) Its livestock housing and manure storage structures, if any, are separate from the livestock housing and manure storage structures used by livestock facilities to which it is related.
- (4) It meets one of the following criteria:
 - a. Its livestock housing and manure storage structures, if any, are located at least seven hundred fifty (750) feet from the nearest livestock housing or manure storage structure used by a livestock facility to which it is related.
 - b. It and the other livestock facilities to which it is related have a combined total of fewer than one thousand (1,000) animal units.

Shore protection structures shall mean structures which are intended to reduce shoreline erosion and bluff recession by providing an artificial protective barrier against direct wave and ice attacks on the beach and bluff toe, by increasing the extent of the beach available to absorb wave energy before the water reaches the bluff, by dissipating wave energy and/or by stabilizing the bluff slope. Shore protection structures include bulkheads, revetments, seawalls, groins, breakwater and slope stabilization measures.

Shore yards shall mean a yard extending across the full width or depth of a lot, the depth of which shall be the minimum horizontal distance between a line intersecting both side lot lines at the same angle and containing the ordinary highwater mark of a lake, pond, flowage, river, stream or wetland nearest the principal structure and a line parallel thereto containing the point of the principal structure nearest the ordinary highwater mark.

Shoreland setback area shall mean an area in a shoreland of an established distance from the ordinary high-water mark within the construction or placement of buildings or structures has been limited or prohibited under this chapter enacted under W.S.A. § 59.692.

Shoreland-wetland district shall mean a zoning district, created as a part of the county zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department of natural resources.

Shorelands shall mean those lands within the following distances from the ordinary highwater mark of navigable waters: one thousand (1,000) feet from a lake, pond, or flowage, and three hundred (300) feet from a river or stream or to the landward side of the floodplain, whichever distance is greater. Shorelands shall not include lands adjacent to farm drainage ditches where (a) such lands are not adjacent to a natural navigable stream or river; (b) those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and (c) such lands are maintained in nonstructural agricultural use.

Shorelines shall mean the intersection of the land surfaces abutting lakes, ponds, rivers, streams, flowages, and wetland with the ordinary highwater mark.

Side yard shall mean a yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal structure.

Sign shall mean any object, device, display, or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.

Sign height. See section 20-1409(a).

Small wind energy facility shall mean an electric generating facility consisting of one wind turbine that has a rated capacity of not more than one hundred (100) kw/one (1) mw and is primarily intended to reduce on-site consumption of power.

Smoke unit shall mean the number obtained when the smoke density in Ringelmann number is multiplied by the time of emission in minutes.

Specified anatomical areas shall mean:

- (1) Less than completely and opaquely covered:
 - a. Human genitals, pubic region;
 - b. Buttock, anus;
 - c. Female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered. Specified sexual activities shall mean:
 - (1) Human genitals in a state of sexual stimulation or arousal;
 - (2) Acts of human masturbation, sexual intercourse, or sodomy;
 - (3) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast;
 - (4) Flagellation or torture in the context of a sexual relationship;
 - (5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
 - (6) Erotic touching, fondling or other such contact with an animal by a human being; or
 - (7) Human excretion, urination, menstruation, vaginal or anal irrigation as a part of or in connection with any of the activities set forth in subsections (1) through (6) above.

Stable, commercial shall mean a building or land where horses are kept for remuneration, hire, sale, boarding, riding, or show.

Start of construction shall mean the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement

was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. Storage capacity shall mean the volume of space available above a given cross section of a floodplain for the temporary storage of floodwater. The storage capacity will vary with stage.

Streamer. See "Pennant."

Street shall mean a public or private right-of-way providing primary access to abutting properties.

Street yard shall mean a yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two (2) such yards.

Structural alterations shall mean any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams or girders.

Structural setback overlay district distance shall mean for Lake Michigan shoreland areas recommended to be protected by properly designed, constructed, and maintained shore protection structures, the distance from the existing bluff edge which would be lost by regrading the bluff slope as needed to achieve a stable slope. The structural setback distance also includes a minimum setback distance.

Structure shall mean any manmade object with form, shape and utility, either permanently or temporarily attached to, placed upon or set into the ground, stream bed or lake bed, including, but not limited to, roofed and walled buildings, gas or liquid storage tanks, bridges, dams and culverts. Additionally, in the APO district, a structure also includes a mobile object such as a crane, earthworks and overhead transmission lines. In shoreland areas a structure means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, walkway patio, deck, retaining wall, porch or firepit.

Substantial damage shall mean damage sustained by a structure whereby the cost of repairing or restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.

Substantial improvement shall mean any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the present equalized assessed value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. The term does not however, include either: (a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (b) any alteration of a designated historical structure or site documented as deserving preservation by the Wisconsin State Historical Society or listed on the National Register of Historic Places provided the alteration will not preclude the structure's continued designation as an historical structure. Ordinary maintenance repairs are not considered structural repairs, modifications, or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and

the replacement of doors, windows, and other nonstructural components. "Substantial improvement" begins when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Substantial modification means the modification of a mobile service support structure, including the mounting of an antenna on such a structure that does any of the following:

- (a) for structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet;
- (b) for structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by ten (10) percent or more;
- (c) measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by more than twenty (20) feet or more, unless a larger area is needed for collocation;
- (d) increases the square footage of an existing equipment compound to a total area of more than two thousand five hundred (2500) square feet.

Substantial work shall mean a considerable amount of work done towards completing the project that received approval, that may include obtaining necessary plot plans, surveys, engineering data, easements, deed restrictions, approvals, permits, and physically starting the project. For typical building construction projects, the site work must progress beyond grading and completion of structural foundations, and construction must be occurring above grade to be considered substantial work.

Support structure means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

Sustained yield forestry shall mean management of forest lands to provide annual or periodic crops of forest products.

Swept area shall mean the largest area of the wind energy facility that extracts energy from the wind stream. There is a direct relationship between swept area and the rotor diameter in a conventional propeller-type wind energy facility.

Temporary sign shall mean any sign intended for a limited or intermittent period of display.

Temporary structure shall mean a movable structure not designed for human occupancy nor for the protection of goods or chattels and not forming an enclosure.

Total height shall mean, when referring to a wind turbine, the distance measured from ground level to the blade extended at its highest point.

Traveling message sign shall mean any characters, letters, or illustrations (see changeable copy sign) that appear to move, change, or flash on a sign more than once every eight (8) seconds or the minimum standards set by the Federal Highway Administration, whichever is longer, excluding a "time and temperature" portion of a sign.

Tree shall mean, for purposes of the APO district, any object of natural growth.

Turning lanes shall mean an existing or proposed connecting roadway between two (2) arterial streets or between an arterial street and any other street. Turning lanes include grade separated interchange ramps.

Unnecessary hardship shall mean that circumstance where special conditions, which are not self-created, affect a particular property and make strict conformity with the restrictions governing dimensional standards (such as lot area, lot width, setbacks, yard requirements, or building height) unnecessarily burdensome or unreasonable in light of the purpose of the ordinance.

Utilities shall mean public and private facilities such as water wells, water and sewage pumping stations, water storage tanks, power and communication transmission lines, electrical power

substations, static transformer stations, telephone and telegraph stations, but not including sewage disposal plants, municipal incinerators, warehouses, shops and storage yards.

Utility pole means a structure owned or operated by an alternative telecommunications utility, public utility, telecommunications utility, county, municipality, or cooperative associate, all as defined under current law or under the proposal, and that is specifically for and used to carry lines, cables, or wires for telecommunications service, video service, or for electricity or to provide light.

Variance shall mean an authorization granted by the zoning board of adjustment to construct, alter, or use a building or structure in a manner that deviates from the dimensional standards of this ordinance. A variance may not permit the use of a property that is otherwise prohibited by the ordinance or allow floodland construction that is not protected to the flood protection elevation.

Violation shall mean the failure of a structure or other development to be fully compliant with the floodplain zoning ordinance. A structure or other development without required permits, lowest floor elevation, documentation, floodproofing certificates or required floodway encroachment calculations is presumed to be in violation until such time as that documentation is provided.

Wall sign shall mean any sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project more than twelve (12) inches from such building or structure.

Waste shall mean (for livestock siting purposes) manure, milking center waste and other organic waste generated by a livestock facility.

Waste storage facility shall mean one or more waste storage structures. Waste storage facility includes stationary equipment and piping used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. Waste storage facility does not include equipment used to apply waste to land.

Waste storage structure shall mean a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. Waste storage structure does not include equipment used to apply waste to land. For purposes of §§ ATCP 51.12(2) and 51.14, waste storage structure does not include any of the following:

- (1) A structure used to collect and store waste under a livestock housing facility;
- (2) A manure digester consisting of a sealed structure in which manure is subjected to manage biological decomposition.

Watershed shall mean the entire region contributing runoff or surface water to a watercourse or body of water.

Water surface profile shall mean a graphical representation showing the elevation of the water surface of a watercourse for each position along a reach of river or stream at a certain flood flow. A water surface profile of the regional flood is used in regulating floodplain areas.

Well shall mean an excavation opening in the ground made by digging, boring, drilling, driving or other methods, to obtain groundwater regardless of its intended use.

Wetlands shall mean those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

Wind access permit shall mean a wind access permit within the meaning of Wisconsin Statutes 66.0403 or any successor statute.

Wind energy facility siting permit shall mean a construction and operation permit granted according to the provisions of this article.

Wind turbine shall mean a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator and includes the turbine, blade, tower, base, and pad transformer, if any.

Window sign shall mean any sign that is placed inside a window or upon the windowpanes or glass and is readable from the street or highway.

Winter grazing area shall mean cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period from October 1 to April 30.

Winter grazing area does not include any of the following:

- (1) An area, other than a pasture, where livestock are kept during the period from May 1 to September 30;
- (2) An area which at any time has an average of more than four (4) livestock animal units per acre;
- (3) An area from which livestock have unrestricted access to navigable waters of the state, such that the livestock access prevents adequate vegetative cover on banks adjoining the water;
- (4) An area in which manure deposited by livestock causes nutrient levels to exceed standards in § ATCP 51.16.

Yard shall mean an open space on the same lot with a structure, unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

Zoning administrator shall mean a person recommended by the county economic development and land use planning committee and appointed by the board of supervisors to administer and enforce this chapter. Reference to the zoning administrator shall be construed to include duly appointed deputy administrators.

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