

**ABSTRACT/SYNOPSIS OF THE ESSENTIAL ELEMENTS OF THE OFFICIAL  
ACTIONS OF THE COMMON COUNCIL OF THE CITY OF WHITEWATER,  
WALWORTH AND JEFFERSON COUNTIES, WISCONSIN.**

March 19, 2019

The regular meeting of the Common Council was called to order at 6:30 p.m. by Council President Singer. MEMBERS PRESENT: McCormick, Schulgit, Grady, Binnie, Singer, Allen. MEMBERS ABSENT: Palmer. LEGAL COUNSEL PRESENT: McDonell.

It was moved by Binnie and seconded by Schulgit to acknowledge receipt and filing of the Birge Fountain minutes of 3/14/18; the Landmarks Commission minutes of 3/1/2018, 4/10/18, 5/3/18, 6/7/18, 7/5/18, 8/2/18, 9/6/18, and 10/4/18; Plan Commission minutes of 11/12/18, 12/10/18, and 2/1/19; and the Public Works Committee minutes of 2/12/19. AYES: McCormick, Schulgit, Grady, Binnie, Singer, Allen. NOES: None. ABSENT: Palmer.

**CITY MANAGER UPDATE.** City Manager Clapper presented information on community events and announcements, including an update on the Milwaukee Street project, information on surveying regarding a splash pad, and the seasonal issue of potholes.

**STAFF REPORTS.** Chief Raap and UWW Representative Jan Bilgen updated the community on Spring Splash preparations. It was noted this is NOT an event sponsored by either the University or the community. Event communication methods are under review, particularly social media forms of communication.

**CITIZEN COMMENTS.** Municipal Judge candidate Patrick Taylor of 129 Esterly Ave. introduced himself to the Council and the community, expressing his desire to be elected as the next Municipal Judge. Lynn Binnie of 1315 Satinwood Lane invited the community to an event to be held at the First United Methodist Church on April 7, 2019, entitled the “Gift of our Wounds.”

**FIRST READING OF ORDINANCE AMENDING TITLE 16 RELATING TO WATER  
AND SEWER REGULATIONS, RATES AND CHARGES.**

**FIRST READING OF AN ORDINANCE AMENDING SECTION 16.04  
WATERWORKS RULES AND REGULATIONS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Section 16.04 is hereby amended to read as follows:

**Chapter 16.04 - WATERWORKS RULES AND REGULATIONS**

**I. 16.04.010 - Management.**

- a) The general control and supervision of the waterworks shall be under the common council of the city.
- b) The income and funds of the Whitewater water utility shall be used to meet operation, maintenance, depreciation, interest, sinking fund requirements, additions and improvement, and any other necessary disbursements.
- c) There shall be set aside annually sufficient funds to meet maturing municipal waterworks bonds and interest charges.
- d) The director of public works shall take charge of all construction, extensions and improvement of the water utility.
- e) All actual construction, extensions, and improvements shall be under the immediate supervision of the director of public works.
- f) The director of public works shall have the general management and supervision of the city waterworks, and all matters connected therewith, and shall have the general power and authority to appoint all officers and employees of the water department, to prescribe their duties and to fix their salaries, and to make such rules and regulations for the management of the department as he shall from time to time find necessary for the safe, economical and efficient management of the waterworks; and such rules and regulations shall have the same validity as ordinances, where not repugnant to the ordinances of the city or to the constitution or laws of the state.
- g) The director of public works shall have general supervision of the waterworks department under the direction of the common council and shall have general supervision over the buildings, grounds, machinery, pipes, and all matters connected therewith; and shall see that all ordinances, rules and regulations of the common council are complied with; that the conditions of all contracts by or with the department are faithfully complied with; that the assessments and all other utility receipts be paid directly to the city treasurer who shall pay the same into the water department fund which shall be a separate fund as required by law. He shall keep a record of all accounts and claims for or against the said department and of all extensions, additions, changes, alterations and attachments made to the system of water works, and of all meters and the location thereof, and he shall perform such other duties as the common council may prescribe.
- h) Accounts against the water department shall be audited by the common council.
- i) The ordinances, rules and regulations and water rates adopted by the common council shall be considered a part of the contract with every person, company or corporation supplied with water through the water system of the city; and every person, company or corporation by taking water shall be considered to express his or its assent to be bound thereby.

*(Prior code §11.01).*

**II.**

**III. 16.04.030 - Maps.**

The director of public works shall prepare a map showing the location, size and type of all mains, valves, and service pipes and the entire water works system; and he shall from time to time make such additions and

alterations in the maps as shall correspond to the changes in the physical plant; and he shall keep the same on file in his office. *(Prior code §11.03).*

**IV. 16.04.040 - Flushing mains.**

The water mains shall periodically undergo a most thorough treatment of flushing. *(Prior code §11.04).*

**V. 16.04.050 - Valves.**

The valves on the water distribution system shall be thoroughly inspected and operated at least once every twenty-four (24) months, and shall be maintained in good operative condition. The record of each valve shall be made and kept showing its size, type, location, date of inspection and the results thereof. *(Prior code §11.05).*

**VI. 16.04.070 - Hydrants.**

The director of public works shall maintain all hydrants in good serviceable condition at all times, and to this end inspections should be frequent and thorough and the results recorded in the office of the director of public works so that no hydrant may be found frozen or out of order when emergency demands its quick use. *(Prior code §11.07).* Hydrants are to be used by authorized personnel only. In cases where no other water supply is available, the utility will provide water from the main water facility.

**VII. 16.04.080 - Construction—Handling water mains and service pipes.**

- a) Water plans and specifications: Water plans shall be prepared or approved by the Water Utility. The Water Utility shall approve the size of water mains and the location of hydrants, valves, manholes and appurtenances thereto. Hydrant flow test information, if available, will be provided to designers by the Water Utility Engineering Division at no cost.
- b) Where excavating machines are used in digging, all water mains shall be maintained at the expense of the contractor. All contractor shall call diggers hotline prior to excavating. Contractors must ascertain for themselves the existence and location of all service pipes. Where service pipes are removed, cut or damaged in the construction, the contractor must, at his own expense, at once cause them to be replaced or repaired. The contractor must not shut off the water service pipes from any consumer without first notifying and gaining permission from the director of public works.

*(Prior code §11.08).*

**VIII. 16.04.090 - Backfilling trenches.**

Consolidation of trench backfill shall be achieved by use of smooth surface vibratory compactors or backhoe-operated hydraulic compactors for granular materials and rotating sheepsfoot-type mechanisms for loam/clay soils. The lift height shall not exceed 8 inches for walk-behind, hand-operated, vibratory compactors and sheepsfoot. Lift height shall not exceed 24 inches for self-propelled vibratory drum or backhoe-operated hydraulic compactors.

Backfill material beneath paved areas or future paved areas shall be consolidated to 95% of maximum dry density within 3 feet of the surface and to 90% of maximum dry density below 3 feet from the surface to 1 foot above the pipe.

The trench may be backfilled with the excavated material, provided that such material consists of loam clay, sand, gravel, or other materials which, are suitable for backfilling. Care shall be taken in backfilling to avoid damage to the installed pipe.

*(Prior code §11.09).*

**IX. 16.04.095 - Private well abandonment.**

- a) The purpose of this section is to prevent unused and/or improperly constructed wells from serving as a passage for contaminated surface or near-surface waters or other materials to reach the usable groundwater. These wells must be properly filled and sealed.

- b) All private wells located on any premise which is served by the public water system of the city shall be properly filled within ninety (90) days of receiving written notice that the existing well does not meet standards set forth here. Only those wells for which a well operation permit has been granted by the city may be exempted from this requirement; subject to conditions of maintenance and operation.
- c) A permit may be granted to a well owner to operate a well for a period not to exceed five (5) years if the following requirements are met. Application shall be made on forms provided by the city:
  - 1. The well and pump installation meet the requirements of Chapter NR 112, Wisconsin Administrative Code, and a well constructor's report is on file with the Department of Natural Resources, or certification of the acceptability of the well has been granted by the Private Water Supply Section of the Department of Natural Resources;
  - 2. The well has a history of producing safe water and presently produces bacteriologically safe water, as evidenced by three (3) samplings two weeks apart;
  - 3. The proposed use of the well can be justified as being necessary in addition to water provided by the public water system;
  - 4. No physical connection shall exist between the piping of the public water system and the private well.
- d) Wells to be abandoned
  - 1. All wells abandoned under the jurisdiction of this section or rule shall be abandoned according to the procedures and methods of Chapter NR 112, Wis. Adm. Code. All debris, pump, piping, unsealed liners and any other obstructions which may interfere with sealing operations shall be removed prior to abandonment.
  - 2. The owner of the well, or the owner's agent, shall notify the City at least forty-eight (48) hours prior to commencement of any well abandonment activities. The abandonment of the well shall be observed by the water superintendent or his or her agent.
  - 3. An abandonment report form, supplied by the Department of Natural Resources, shall be submitted by the well owner to the City and the Department of Natural Resources within ten (10) days of the completion of the well abandonment.
- e) Any person, firm or corporation or other well owner violating any provision of this section shall upon conviction be punished by a fine of not less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars together with the cost of prosecution. Each twenty-four (24) hour period during which a violation exists shall be deemed and constitute a separate offense.

*(Ord. 1324 §§1, 2, 1995; Ord. 1068 §1, 1985).*

**X. 16.04.100 - Water use—Permit required.**

The law forbids free service, hence no water shall be taken without proper permit. Parties desiring to introduce water on their premises must make formal application to the water office and sign an application card or permit constituting a contract for water supplied and its specific use, which contract embodies these regulations as part of the same. *(Prior code §11.10).*

**XI. 16.04.110 - Tapping mains.**

No person unless authorized by the utility shall be permitted to tap or make any connection with any street main or distribution pipe. *(Prior code §11.11).*

**XII. 16.04.120 - Service connections.**

- a) Each applicant for water service shall at the time of making application for such water service execute and deliver to the utility a contract for such water service, agreeing to put in the service pipe from the curb line to each piece of water-using property existing at that point and owned by him where such water is desired,

at the expense of such applicant and to commence the payment of such water service sometime within one (1) month from the laying of such main in front of the premises named in such application.

- b) The water main shall be tapped by the utility and all pipes and fittings, up to and including the curb box and necessary connections, will be furnished and installed at a cost established by Department of Public Works, not including digging the trench.

*(Prior code §11.12).*

**XIII. 16.04.130 - Laying services.**

- a) Application for water service shall be made in writing. The application will contain the legal description of the property to be served, name of the owner, the exact use to be made of the service and the size of the supply pipe and meter desired.
- b) Service will be furnished only if:
  - 1. Premises have frontage on a properly platted street or public strip in which a cast iron or other long-life water main has been laid, or where property owner has agreed to and complied with the provisions of the utility's filed main extension rule;
  - 2. Each building must have one (1) distinct and separate tap and service pipe laid not less than six (6) feet below the surface after the street is brought to a grade. If multi-units within a building shall have individual shut off valves made accessible to water utilities. Each service must be provided with a stop cock and metal extension box outside of the premises connected with the same.
  - 3. Supply pipes shall not be laid across and connecting adjoining premises whether owned by the same or different parties. Every service pipe where it enters the building shall be furnished with a stop cock.
  - 4. Any new building, premises or lot contained in a commercially zoned district shall be required to install a minimum of a one and one-half inch water service at the expense of the property owner. Such one and one-half inch requirement shall apply even if it can be demonstrated that such a size service is not necessary for the building's present needs. In such event, however, if it can be demonstrated to the satisfaction of the utility that a smaller service line would satisfy the needs adequately, then the service lateral may be reduced. .
- c) The owner of a multi-unit dwelling, or multi-tenant building shall be served by individual metered water service to each unit. The owner is required to provide interior plumbing and meter settings to enable individual metered service to each unit and individual disconnection without affecting service to the other units. Each meter and meter connection will be a separate water utility customer for the purpose of the filed rules and regulations. A large meter serving the multi-unit dwelling paid for by the owner is acceptable.
- d) No division of the water service of any lot or parcel of land shall be made for the extension and independent meterage of the supply to an adjoining lot or parcel of land. No division of a water supply service shall be made at the curb for separate supplies therefrom for two or more separate premises having frontage on any street or public service strip whether owned by the same or different parties.
- e) The utility is empowered to withhold approval of any application wherein full information of the purpose of such supply is not clearly indicated and set forth by the applicant property owner.

*(Prior code §11.13).*

**XIV. 16.04.140 - Repairs to services.**

- a) The service pipe from the main to the curb will be maintained and kept in repair at the expense of the utility. However, it is the duty of the consumer to maintain the service pipe from the curb to the point of use and the utility cannot be called upon to stand the loss of water which has passed through the meter and has been wasted by leakage of defective pipes and fixtures.
- b) If a consumer fails to repair a leaky or broken service pipe from the curb to the house within such time as may appear reasonable to the director of public works, after notification has been served on the consumer by the director of public works, the water will be shut off and will not be turned on again until the repairs have been completed.

*(Prior code §11.14).*

**XV. 16.04.150 - Stop boxes—Protection.**

The consumer shall protect the stop box in his terrace and shall keep the same free from dirt and other obstructions. The utility shall not be liable for failure to locate stop box and shut off water in case of a leak on the consumer's premises. *(Prior code §11.15).*

**XVI. 16.04.160 - Turning on water.**

The water cannot be turned on for a consumer except by a duly authorized employee of the utility. When a plumber has completed a job he must leave the water turned off. This does not prevent him from testing his work. *(Prior code §11.17).*

**XVII. 16.04.170 - Meters—Installation.**

Meters will be furnished by the utility. All meters shall be so located that they shall be preserved from obstructions and allow easy access thereto for reading and inspection, such locations to be designated by the director of public works. *(Ord. 748 §2, 1972; prior code §11.18).*

**XVIII. 16.04.180 - Fraudulent use of water—State statutes adopted.**

- a) No by-pass or other connection between the meter and the main shall be made or maintained. If any consumer shall be found defrauding the utility, his service will be cut off without notice.
- b) Section 943.20 (Theft of the Wisconsin Statutes, as it applies to the supply of water service are hereby adopted and made a part of this chapter as though set forth in full herein.

*(Prior code §11.19).*

**XIX. 16.04.190 - Service piping.**

- a) In installing new service piping if meters are to be set, the consumer shall, at his own expense, provide the proper connections for the meter. Where it is possible to set meters in the basement, meter horn shall be inserted after the main valve, then a house valve on the opposite side of the meter horn shall be installed for maintenance.
- b) In the installation of new water services and in the replacement of old water services, no main house water supply line shall be smaller than 1 (one) inch.
- c) Water consumers are not permitted to interfere in any way with the meter after it is set in place. In case the meter seal is broken or the working parts of the meter have been tampered with or the meter damaged, the utility will render a bill for the current period based on an average of the last two periods. Such consumer will be liable to the penalty provided in Sections 943.20 (Theft) for illegal use of water.

- d) No water service shall be laid through any trench having cinders, rubbish, rock or gravel fill, or any other material which may cause injury to or disintegration of the service pipe, unless adequate means of protection are provided by sand filling or such other insulation as may be approved by the utility. Service pipes passing through curb or retaining walls shall be adequately safeguarded by provision of a channel space or pipe casing, not less than twice the diameter of the service connection. The space between the service pipe and channel or pipe casing shall be filled and lightly caulked with an oakum, mastic cement, or other resilient material, and made impervious to moisture.
- e) In backfilling the pipe trench, the service pipe must be protected against injury by carefully hand tamping the ground filling, free from hard lumps, rocks, stones, or other injurious material, around and at least twelve inches below and over the pipe.
- f) All water supplies shall be of undiminished size from the street main in to the point of meter placement. Beyond the meter outlet valve the piping shall be sized and proportioned to provide, on all floors, at all times, an equitable distribution of water supply for the greatest probable number of fixtures or appliances operating simultaneously.

*(Prior code §11.20).*

**XX. 16.04.200 - Meters—Repairs.**

- a) Meters will be repaired by the water department and the cost of such repairs caused by ordinary wear and tear will be borne by the utility.
- b) Any damage which a meter may sustain resulting from the carelessness of the owner of the premises, his agent or tenant, or from the negligence of either of them to properly secure and protect same, including any damage that may result from allowing the meter to become frozen or to be injured from hot water or steam setting back from a boiler, shall be paid to the utility by the consumer of the water or the owner of the premises.

*(Prior code §11.21).*

**XXI. 16.04.210 - Meters—Testing.**

- a) Every meter installation must be thoroughly tested for accuracy of registration according to Public Service Commission ruling.
- b) Every water consumer or utility patron shall be entitled to have their meter retested by Public Service Commission rule.
- c) In the event that a water meter is found to be defective in its operation to the extent of an over-registration of more than two (2%) percent, the water utility shall adjust the consumer's billing in the following manner:
  - 1. Consumer shall be billed in an amount equal to the amount charged for the service in the same time frame of the previous year.

*(Ord. 738 §3, 1972; Ord. 627 §1, 1969; prior code §11.22).*

**XXII. 16.04.215 - Multi-unit building regulations.**

- a) The owner or owners of proposed new multi-unit buildings (duplexes, townhouses, strip malls and other like structures) designed with separate entrance and living, work, or commercial area on the ground floor, will have an individual service to each living, work, or commercial unit, unless approved as in (b) below by the Director of Public Works. Each living, work, or commercial unit will be equipped with a curb stop and curb box adjacent to a public sidewalk, along with individual meter and remote reader. Each living, work, or commercial unit will be considered a separate utility customer.

- b) Proposed new multi-unit buildings (apartment-house, high-rises, etc.) shall be supplied from a single large service with each unit separately plumbed and individually metered. All meters shall be contained in a separate locked room or area accessible to utility personnel. The room or area will be limited to utility personnel and owner to insure the integrity of the meter readings. Utility personnel and owner will be the only persons with a key to the room or area mentioned above.

*(Ord. 1204 §1(part), 1991).*

**XXIII. 16.04.216 - Division of services prohibited.**

- a) No division of the water service of any lot or parcel of land shall be made for the extension and independent meterage of the supply to an adjoining lot or parcel of land. No division of a water supply service shall be made at the curb for separate supplies there from for two (2) or more separate premises having frontage on any street or public service strip whether owned by the same or different parties.
- b) The utility is hereby empowered to withhold approval of any application wherein full information of the purpose of such supply is not clearly indicated and set forth by the applicant property owner.

*(Ord. 1204 §1(part), 1991).*

**XXIV. 16.04.220 - Unauthorized use of valves and hydrants—Penalty.**

- a) Any person who, without authority of the director of public works, operates any valve connected with a street or supply main, or open any fire hydrant connected with the distribution system except for the purpose of extinguishing fire, or who wantonly injures or impairs the same is guilty of a misdemeanor; and upon conviction thereof, he shall be subject to a fine of not less than ten (\$10.00) dollars or more than five hundred (\$500.00) dollars, or imprisonment in the county jail for not less than ninety (90) days, or by both such fine and imprisonment.
- b) Only such persons as shall be authorized by the director of public works or by the chief of the fire department shall be permitted to take the hydrant wrenches or suffer them to be taken from any fire engine house except for fire purposes.

*(Prior code §11.23).*

**XXV. 16.04.230 - Boilers—Failure of supply.**

Consumers taking water from supplying boilers for generating steam or for other general use and depending upon the water main pressure for supply will do so at their own risk, and the utility shall not be liable for any damages because of the lack of pressure or failure of supply. *(Prior code §11.24).*

**XXVI. 16.04.240 - Repairs to mains.**

The water utility reserves the right to shut off supply in the mains temporarily to make repairs, alterations, or additions to the works or pipes. When the circumstances will permit of sufficient delay, the utility will give notification of the discontinuance of the supply. No rebate or damages will be allowed to a consumer for such temporary suspension of supply. *(Prior code §11.25).*

**XXVII. 16.04.250 - Vacation of premises—Notice.**

When premises are to be vacated, the utility shall be notified in writing at once so that it may remove the meter and shut off the supply at the curb cock. The owner of the premises shall be liable to prosecution for any damage to the property of the water department by reason of failure to notify the utility of vacancy. *(Prior code §11.26).*

**XXVIII. 16.04.260 - Penalty for violations.**

Any person who violates any provision of this chapter shall, upon conviction thereof, be subject to a penalty of not less than twenty-five (\$25.00) dollars nor more than five hundred (\$500.00) dollars, together with costs of prosecution. (*Ord. 983 §65, 1982*).

**XXIX. 16.04.270 - Cost recovery of professional consultant fees and charges.**

- a) The city and authorized city bodies, commissions, boards, committees, officers, and employees may retain the services of professional consultants (including, but not limited to, planners, engineers, architects, attorneys, environmental specialists, and recreation specialists) to assist in the review of applications related to developments, zoning permit approvals, rezone petitions, conditional use applications (or other zoning related requests) including, but not limited to, those being reviewed for consideration of approval by the director of Public Works.
- b) As part of the application process, the applicant shall be required to agree, in writing, to pay for said professional fees in accordance with policies in effect that are approved from time to time by the common council. The city may delay final action or approval of the associated request, until the applicant pays such fees or the required percentage thereof. Review fees that are charged to the applicant, but that are not paid, may then be imposed by the city as a special charge on the affected property.
- c) The private water main on private property is the responsibility of the land owner. All private service line replacements shall be performed by licensed contractors and conform to all applicable state and local codes, regulations and ordinances. In the event of an emergency break the landowner may authorize the city to repair the damages area. In doing so the land owner is responsible to pay for said professional services provided.

SECTION 2. This ordinance shall be effective upon passage and publication as required by law.

Ordinance introduced by Councilmember Allen, who moved its adoption. Seconded by Councilmember Grady. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer. FIRST READING APPROVED: March 19, 2019.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF AN ORDINANCE AMENDING SECTION 16.08  
WATER RATES AND CHARGES AND PUBLIC PROTECTION SERVICE**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Section 16.08 is hereby amended to read as follows:

**I. 16.08.010 - Water rates and charges in effect.**

The water rates, charges, and operating rules in effect for the City of Whitewater shall be those established pursuant to the most recent rate order issued by the Public Service Commission of the State of Wisconsin for the City of Whitewater.

(*Ord. 1548A § 2, 2004*).

**II. 16.08.020 – Public Fire Protection Service**

For public fire hydrant protection service to the City, the annual charge shall be as specified in the most current rate file, as available from the City issued by the Public Service Commission of the State of Wisconsin for the City of Whitewater.

**SECTION 2.** This ordinance shall be effective upon passage and publication as required by law.

Ordinance introduced by Councilmember Binnie, who moved its adoption. Seconded by Councilmember Schulgit. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer. FIRST READING APPROVED: March 19, 2019

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**FIRST READING OF AN ORDINANCE AMENDING SECTION 16.12**  
**SEWER REGULATIONS**

City issued by the Public Service Commission of the State of Wisconsin for the City of Whitewater.  
Chapter 16.12 - SEWER REGULATIONS

**I. 16.12.010 - Sewer district.**

All of the territory embraced within the City shall constitute one (1) sewer district. *(Prior code § 14.01).*

**II.**

**III. 16.12.011 - Management.**

The City Manager or his appointee shall have the general management and supervision of the City sewer district and all matters connected therewith, and shall have the general power and authority to appoint all officers and employees of the sewer district, to make such rules and regulations for the management of the district as he shall from time to time find necessary for the safe, economical and efficient management of the sewer district; he shall have general supervision over the buildings, grounds, machinery, pipes and all matters connected therewith; and shall see that all ordinances, rules and regulations of the Common Council are complied with; that the conditions of all contracts by or with the district are faithfully complied with; that the assessments and service charges and other receipts are paid into the sanitary sewer account and that funds in the account are appropriated and disbursed as provided in [Chapter 16.16](#) of this code. *(Ord. 776 § 1, 1973).*

**IV. 16.12.020 - Sewer Service Area.**

The Sewer Service Area heretofore adopted by the Council in the City of Whitewater Comprehensive Plan and is on file with the City Clerk. *(Prior code § 14.02).*

**V. 16.12.030 - Sanitary sewers.**

For regulations as to plans, specifications, construction, cost, etc., see Section 62.18 of the Wisconsin Statutes *(Prior code § 14.03).*

**VI. 16.12.040 - Storm sewers.**

All storm sewers shall be constructed and maintained by the City, and the expense thereof shall be apportioned between the City and the benefited property as determined by the Common Council. Unless otherwise specifically provided by ordinance or resolution of the Council, all construction work on storm sewers shall be done directly by the City without submitting the same for bids. *(Prior code § 14.04).*

**VII. 16.12.050 - Construction requirements.**

All sanitary sewers shall be constructed in compliance with the provisions and regulations of the Wisconsin State Plumbing Code. *(Prior code § 14.05).*

**VIII. 16.12.060 - Connection by City.**

The city authorized inspector is required to cause lateral water and sewer services, or either of them, to be laid and constructed from the respective mains to the curb line in all cases where the property owners make proper application for such work to be done; and shall supervise and control the construction of all such installations. In all such cases the property owner shall pay to the City the actual cost of such installation. *(Prior code §14.06).*

**IX. 16.12.070 - Habitable buildings—Connection required.**

All buildings used for human habitation and located adjacent to a sewer and water main, or in a block through which the systems extend, are required to be connected therewith in such manner as may be prescribed by the City. If any person fails to comply for more than ten (10) days after notice in writing, the City may cause connection to be made and the expense thereof may be assessed as a special tax against the property. *(Prior code §14.07).*

**X. 16.12.080 - Depositing obstructive substances prohibited.**

No person having any sewer or drain connected with any portion of the public sewerage system of the City shall deposit, or suffer to be deposited in such sewer or drain, any grease, garbage, rags, papers, or other substance likely to obstruct such public sewer, or to create a nuisance. *(Prior code §14.08).*

**XI. 16.12.090 - Downspouts—Connection prohibited.**

No person shall connect the downspouts of any building with any sanitary sewer. *(Prior code §14.09).*

**XII. 16.12.100 - Exhaust from steam engines prohibited.**

All exhausts from steam engines, and all blowoffs from steam boilers, shall be first connected with a proper catch basin, and in no case shall they be allowed to connect directly with any public sewer. *(Prior code §14.10).*

**XIII. 16.12.110 - Injuries and obstructions prohibited.**

No person shall destroy or injure any culvert, drain, or sewer located in any street or public way, or obstruct the drainage or flow of water through the same. *(Prior code §14.11).*

**XIV. 16.12.120 - Penalty for violations.**

Any person who violates any provision of this chapter shall, upon conviction therefore, be subject to a penalty of not less than twenty-five (\$25.00) dollars nor more than two hundred fifty (\$250.00) dollars, plus costs of prosecution for the first offense, and for second and subsequent offenses not less than fifty (\$50.00) dollars nor more than two hundred fifty (\$250.00) dollars, plus costs of prosecution. *(Ord. 983 §66, 1982).*

**SECTION 2.** This ordinance shall be effective upon passage and publication as required by law.

Ordinance introduced by Councilmember Allen, who moved its adoption. Seconded by Councilmember Grady. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer. FIRST READING APPROVED: March 19, 2019

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**ADOPTION OF AMENDMENTS TO CHAPTER 19 AS IT RELATES TO NONCONFORMING USES, STRUCTURES AND LOTS.** Neighborhood Services Director Munz-Pritchard presented an ordinance relating to non-conforming uses. It was explained that the proposed ordinance would incorporate State law changes. Councilmember Grady expressed concerns over the fact that the ordinance is incredibly complicated. Councilmember Binnie confirmed that the proposal affects “structural” changes and not interior improvements.

**FIRST READING OF ORDINANCE AMENDING ZONING ORDINANCE**  
**CHAPTER 19.09 AND CHAPTER 19.60 REGARDING NONCONFORMING USES,**  
**STRUCTURES, AND LOTS**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do ordain as follows:

SECTION 1. Whitewater Municipal Code Chapter 19.09 Section 19.09.510 is amended to read as follows:

**19.09.510 - Nonconforming Structure.** A dwelling, building, or other structure that existed lawfully at the time of the effective date of this Ordinance or an amendment thereto that does not conform to one or more of the Development Regulations of this Ordinance. Any such structure conforming with respect to use (containing a conforming use) but not in respect to Development Regulations shall be considered a nonconforming structure and not a nonconforming use.

SECTION 2. Whitewater Municipal Code Chapter 19.09 Section 19.09.511 is amended to read as follows:

**19.09.511 - Nonconforming Use.** A use of structure (including buildings), fixture, or premises (land or water) that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to the current use restrictions of this Ordinance.

SECTION 3. Whitewater Municipal Code Chapter 19.09, Sections 19.09.512 and 19.09.513 are hereby created to read as follows:

**19.09.512 - Nonconforming Lot.** 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.

**19.09.513 - 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.

SECTION 4. Whitewater Municipal Code Chapter 19.60, is amended to read as follows:

Chapter 19.60 - NONCONFORMING USES, STRUCTURES AND LOTS

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### **19.60.010 NONCONFORMING USES, STRUCTURES, AND LOTS**

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

### **19.60.020 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. **Discontinuance.** 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. **Abolishment or Destruction.** When a nonconforming use or 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 alterations to a structure, fixture, or premise containing a nonconforming use shall not exceed 50 percent of the equalized assessed value of the structure, fixture, or premise at the time its use became nonconforming unless it is permanently changed to a conforming use in accordance with the use provisions of this Ordinance. Ordinary maintenance and repairs are not considered structural repairs, modifications, or additions. Some examples of such repairs include painting, caulking, 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 Director of Neighborhood Services shall determine when modifications to nonconforming uses and their structures are equal to 50 percent.
- E. **Substitution of New Equipment** may be permitted by the Board of Zoning Appeals if such equipment will reduce the incompatibility of the nonconforming use with neighboring uses.

### **19.60.030 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.

**19.60.040 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 nonconforming structures with a conforming use are permitted and shall conform to the established yard/setback, height, parking, loading, and access provisions of this Ordinance. Existing buildings and their additions shall not be permitted to encroach further upon established yard/setback and height requirements than the 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.

**19.60.050 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.

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 Board of Zoning Appeals.

- B. 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.
- C. Merging.** In accordance with Section 66.10015(4) of the Statutes, the 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.

## **19.60.060 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 Board of Zoning 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.

## **19.60.070 DEFINITIONS**

Definitions of terms used in this ordinance include:

- A. 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.

- B. Nonconforming Lot.** 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.
- C. Nonconforming Use.** A use of structure (including buildings), fixture, or premises (land or water) that existed at the time of the effective date of this Ordinance or an amendment thereto that does not conform to the current use restrictions of this Ordinance.
- D. Nonconforming Structure.** A dwelling, building, or other structure that existed lawfully at the time of the effective date of this Ordinance or an amendment thereto that does not conform to one or more of the Development Regulations of this Ordinance. Any such structure conforming with respect to use (containing a conforming use) but not in respect to Development Regulations shall be considered a nonconforming structure and not a nonconforming use.

## 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.

Ordinance introduced by Council Member Binnie, who moved its adoption. Seconded by Councilmember Schulgit. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer. FIRST READING APPROVED: March 19, 2019.

Cameron Clapper, City Manager

Michele R. Smith, City Clerk

**ORDINANCE AMENDING CHAPTER 7.36, PENALTIES FOR CAUSING DAMAGE TO LANDMARK PROPERTY OR THEFT OF A LANDMARK PROPERTY.**

City Manager Clapper reminded Council that this ordinance was discussed at prior meetings, with an approval of the first reading and a request at the time of a second reading to gather more information. Councilmember Binnie recollected that details of how other communities were handling these matters was requested. Restitution remedies were discussed as well. Kori Oberle, a member of the Bassett House Board, encouraged adoption, citing the desire for additional funds, which could create a grant fund to be used for repairs. Pat Blackmer, Chairperson for the Landmarks Commission also encouraged adoption, feeling stronger fines are needed in an effort to protect the City's heritage and show the importance of the City's landmarks. Councilmember Schulgit reiterated the importance of preserving historic buildings. Councilmember Singer suggested that education and enforcement be pursued. Singer expressed concern about linking citation money to projects.

**FINAL READING OF AN ORDINANCE ESTABLISHING PENALTIES FOR CAUSING DAMAGE TO LANDMARK PROPERTY OR THEFT OF LANDMARK PROPERTY**

The Common Council of the City of Whitewater, Walworth and Jefferson Counties, Wisconsin, do hereby ordain as follows:

**SECTION 1:** Whitewater Municipal Code Chapter 7.36, Section 7.36.030 (b) (1) and (2) are hereby amended to read:

- (b) (1) Penalties for Violation. Any person who violates the provisions of this section shall upon conviction thereof be subjected to a fine of not less than \$450 nor more than \$700, together with the costs of prosecution, and in default of payment of such fine and costs of prosecution, shall be imprisoned in the county jail for a period not to exceed six months. Damage to a Landmark or Landmark Site as defined in 17.04.020 shall, upon conviction thereof, be subjected to a fine of \$700 to \$1,000.
- (b) (2) Any person who violates the provisions of this section for a second time within a one-year period shall be subject to a fine of not less than \$650 nor more than \$900, together with the costs of prosecution, and in default of payment of such fine and costs of prosecution, shall be imprisoned in the county jail for a period not to exceed six months. Any person causing damage to a Landmark or Landmark Site as defined in 17.04.020 for a second time within a one-year period shall, upon conviction thereof, be subjected to a fine of \$900 to \$1,100.

**SECTION 2:** Whitewater Municipal Code Chapter 7.46, Section 7.46.030 is hereby amended to read:

Any person who violates any of the provisions of this chapter shall, upon conviction thereof, be subjected to a fine of not less than \$150 not more than \$300 for a first offense, not less than \$200 nor more than \$350 for a second offense, and not less than \$300 nor more than \$400 for a third offense, together with costs of prosecution, and, in default of payment of such fine and cost of

prosecution, shall be imprisoned in the county jail for a period not to exceed six months. Theft or petty theft of property that is part of a Landmark or Landmark Site as defined in 17.04.020 shall, upon conviction thereof, be subjected to a fine of not less than \$300 not more than \$600 for a first offense, not less than \$350 nor more than \$700 for a second offense, and not less than \$400 nor more than \$800 for a third offense, together with costs of prosecution, and, in default of payment of such fine and cost of prosecution, shall be imprisoned in the county jail for a period not to exceed six months.

**SECTION 3:** This ordinance shall take effect upon passage and publication as provided by law. It was also requested that the requirement for a second reading of this ordinance be waived.

Ordinance introduced by Council Member Binnie, who moved its adoption. Seconded by Councilmember Schulgit. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer. ADOPTED: March 19, 2019.

Cameron Clapper, City Manager

Michele R. Smith, City Clerk

**OLD PAPER MILL DAM REPAIR PROJECT.** Director of Public Works, Marquardt, indicated that repairs for the Old Mill dam were approved through the 2019 Capital Improvement Budget. Nine bids were received. It was moved by Binnie and seconded by Allen to approve an agreement with MUDTech for completion of the repairs, at a cost not exceeding \$104,916, contingent upon Department of Natural Resources approval. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer.

**DESIGN APPROVAL FOR MILWAUKEE STREET RECONSTRUCTION PROJECT.** It was moved by Binnie and seconded by Schulgit to approve the design as presented by Wisconsin Department of Transportation, relating to the Milwaukee Street reconstruction project. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer.

**STRAND ASSOCIATES TASK ORDER 19-02 – INDUSTRIAL DRIVE WATER MAIN PROJECT.** Director of Public Works Marquardt indicated that the main on Industrial Drive, between Commercial Avenue and Universal Boulevard, has been out of service for some time. The existing water main had developed a number of leaks due to the corrosive soil. It was moved by Binnie and seconded by Schulgit to approve a task order with Strand Associates, at a cost not to exceed \$36,300. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer.

**STRAND ASSOCIATES TASK ORDER 19-03 MILWAUKEE STREET.** Director of Public Works, Brad Marquardt, indicated that in 2008 the City entered into a State Municipal Agreement for the reconstruction of Highway 59 (Milwaukee Street / Elkhorn Road). As part of the reconstruction, the City decided to replace sanitary sewer and water mains within the project boundaries. The City will be required to stake and inspect this portion of the work. Strand's Task Order provides for staking, review of shop drawings, observation and measurement of quantities, and recorded drawings as outlined in the task order. It was moved by Binnie and seconded by Schulgit to approve a task order with Strand Associates, at a cost not to exceed \$120,400. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer.

**NEIGHBORHOOD SERVICES PLANNING / CODE ENFORCEMENT FEES.** Neighborhood Services Director Munz-Pritchard requested implementation of fees to allow her to improve enforcement results. She proposed a processing fee for violations that have had three or more re-inspections for the

same violation. Another proposal is a change in planning fees. Munz-Pritchard reviewed her Department's current process, and provided examples of properties with three or more violations, and the financial impact on those property owners. She noted that each certified letter the city mails costs \$6.67 in postage. She cited additional costs including expenses related to the Neighborhood Services officers, the administrative assistant, the accounting technicians and the Finance Comptroller salaries. Munz-Pritchard also proposes increasing the fee for certified surveys for over five lots, for conditional use permits for projects over \$15,000, and for zoning changes and annexations. It was moved by Binnie and seconded by Grady to approve the fee increases as presented by the Neighborhood Services Department. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer.

**COUNCIL MEETINGS SCHEDULED FOR SAME DAYS AS ELECTIONS.** The current ordinance indicates that when there is an election, the Council meeting scheduled for the Tuesday election day is moved two days later, to the following Thursday. Finance Director Hatton indicated that it does sometimes conflict with other meetings, and wondered whether Council would like to revisit this schedule. It was agreed that there were some conflicts. In response to questions, City Clerk Smith said a change in the schedule would not benefit her office greatly, and she did not have a preference. No action was taken.

**REQUESTS FOR FUTURE AGENDA ITEMS AND POLCO QUESTIONS.** Schulgit requested a future discussion relating to splash pads, and recommended a POLCO question relating to smoking in parks.

**EXECUTIVE SESSION.** It was moved by Singer and seconded by Binnie to Adjourn to closed session, NOT TO RECONVENE. pursuant to Chapter 19.85 (1) (e) of the Wisconsin Statutes, "Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session". Items to be Discussed 1) Negotiation of Memorandum of Understanding with DP Electronics; 2) negotiations relating to Clay Street temporary easements; AND 3) negotiation of sale of city-owned property near roundabout. AYES: Schulgit, McCormick, Binnie, Singer, Allen, Grady. NOES: None. ABSENT: Palmer. Being no further business to come before the open session portion of the meeting, the meeting adjourned at 8:00 p.m.

Respectfully submitted,

Michele R. Smith, Clerk