

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

April 4, 2019

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

It was moved by Binnie and seconded by Schulgit to approve the Council minutes of 3/5/19 and to acknowledge receipt and filing of the Irvin L. Young Memorial Library Board minutes of 3/27/19. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

PAYMENT OF INVOICES. It was moved by Binnie and seconded by Schulgit to approve payment of city invoices in the sum of \$10,523.45. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

CITIZEN COMMENTS: None.

**SECOND READING OF ORDINANCES AMENDING TITLE 16 , WATER AND
SEWER REGULATIONS, RATES AND USE CHARGES.**

NEEDS ORDINANCE INSERTED

**SECOND READING OF ORDINANCE ADOPTING AMENDMENTS TO CHAPTER 19,
RELATING TO NONCONFORMING USES, STRUCTURES AND LOTS.**

**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 Councilmember Allen, who moved its adoption. Seconded by Councilmember Schulgit. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady. ADOPTED: April 4, 2019.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

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

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 \$300.00 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.

Ordinance introduced by Councilmember Allen, who moved its adoption. Seconded by Councilmember Schulgit. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady. ADOPTED: April 4, 2019.

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

SECOND READING OF ORDINANCE INCREASING FINE / CITATION AMOUNTS FOR DAMAGE TO LOCALLY-DESIGNATED LANDMARK PROPERTY.

SECOND READING OF AN ORDINANCE AMENDING SECTION 1.21.010 SCHEDULE OF DEPOSITS

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

SECTION 1: Whitewater Municipal Code Section 1.21.010 is hereby amended to add the following:

Chapter or Section Number	Offense	Deposit and Costs
7.36.030	Damage to Property	Damage to a Landmark or Landmark Site - \$800 plus statutory penalty assessment, jail assessment, and court costs. Damage to a Landmark or Landmark Site – Second Offense - \$1,000 plus statutory penalty assessment, jail assessment, and court costs.

SECTION 2: Whitewater Municipal Code Section 1.21.010 is hereby amended to add the following:

Chapter or Section Number	Offense	Deposit and Costs
7.46.030	Theft Violations	Theft or petty theft of property that is part of a Landmark or Landmark Site - \$400 plus statutory penalty assessment, jail assessment, and court costs. Theft or petty theft of property that is part of a Landmark or Landmark Site – Second Offense - \$450 plus statutory penalty assessment, jail assessment, and court costs.

Theft or petty theft of property that is part of a Landmark or Landmark Site – Third Offense - \$600 plus statutory penalty assessment, jail assessment, and court costs.

SECTION 3: This Ordinance shall take effect upon passage and publication as provided by law. Ordinance introduced by Council Member Allen, who moved its adoption. Seconded by Council Member Schulgit. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady. ADOPTED: April 4, 2019.

Cameron Clapper, City Manager

Michele R. Smith, City Clerk

MEMORANDUM OF UNDERSTANDING WITH D.P. ELECTRONICS. An update to the existing Memorandum of Understanding with D.P. Electronics was presented. The agreement, dated 2/18/16 agreed that the City would sell 10.96 acres in the Technology Park to D.P. Electronics at a cost of \$1.00, contingent upon DP repaying CDA loans and constructing an approximately 100,000 square foot facility and employing approximately 90 employees. Due to unexpected delays, the project did not proceed and the deadlines for performance have passed. The proposed revision requires employment of approximately 80 full time employees and agrees that parties will work together to amend the 2016 Development Agreement, and unless otherwise amended or replaced, the terms of the 2016 Development Agreement remain in full force and effect. DP owes the CDA approximately \$86,100 in principal. Interest would be added at the time of payoff. It was moved by Allen and seconded by McCormick to approve the MOU with DP Electronics. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

APPROVAL OF MOU BETWEEN CITY AND WHITEWATER PROFESSIONAL POLICE ASSOCIATION (“WPPA”) RELATING TO LATERAL TRANSFERS. It was moved by Allen and seconded by Schulgit to approve the MOU between the City and the WPPA as it relates to Seniority – Lateral Transfers. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

APPROVAL OF MOU BETWEEN CITY AND WHITEWATER PROFESSIONAL POLICE ASSOCIATION (“WPPA”) RELATING TO SHIFT CHANGE. It was moved by Allen and seconded by Schulgit to approve the MOU between the City and the WPPA as it relates to Shift Change. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

APPROVAL OF MOU BETWEEN CITY AND WHITEWATER PROFESSIONAL POLICE ASSOCIATION (“WPPA”) RELATING TO UNLIMITED COMP TIME USAGE. It was moved by Allen and seconded by Schulgit to approve the MOU between the City and the WPPA as it relates to Unlimited Comp time. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

APPROVAL OF MOU BETWEEN CITY AND WHITEWATER PROFESSIONAL POLICE ASSOCIATION (“WPPSA”) RELATING TO LATERAL TRANSFERS. It was moved by Allen and seconded by Schulgit to approve the MOU between the City and the WPPSA as it relates to Seniority – Lateral Transfers. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

APPROVAL OF MOU BETWEEN CITY AND WHITEWATER PROFESSIONAL POLICE ASSOCIATION (“WPPSA”) RELATING TO SHIFT CHANGE. It was moved by Allen and seconded by Schulgit to approve the MOU between the City and the WPPSA as it relates to Shift Change. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

APPROVAL OF MOU BETWEEN CITY AND WHITEWATER PROFESSIONAL POLICE ASSOCIATION (“WPPSA”) RELATING TO UNLIMITED COMP TIME USAGE. It was moved by Allen and seconded by Schulgit to approve the MOU between the City and the WPPSA as it relates to unlimited comp time. AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady.

COUNCILMEMBER REQUESTS FOR FUTURE AGENDA ITEMS. Councilmember Binnie requested an update on the City’s taxi service and also requested discussion regarding the mounds of plastic located on the JOHN’s site north of town.

EXECUTIVE SESSION. It was moved by Singer and seconded by Allen to adjourn to closed session, NOT TO RECONVENE, pursuant to Chapter 19.85(1)(c) of the Wisconsin Statutes, “Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility” and 19.85(1)(e) “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.” Item to be Discussed: (1) **Discussion concerning changes to the structure and work assignments of Police Department officers with administrative/oversight responsibilities; and** (2) **City Manager Performance Evaluation.** AYES: Schulgit, McCormick, Binnie, Palmer, Singer, Allen. NOES: None. ABSENT: Grady. Being no further business to come before the regular portion of the meeting, the meeting adjourned at 7:25 p.m.

Respectfully submitted,

Michele R. Smith, Clerk