

CHAPTER 24: PROCEDURES AND ADMINISTRATION

SUBCHAPTER 24-9: PROCEDURAL REGULATIONS

Section 24.901 Purpose of Procedural Regulations

The purpose of this portion of the Subchapter is to establish the procedural requirements for zoning text amendments, zoning map amendments, conditional use review and approval, special use review and approval, temporary use review and approval, sign permits, site plan review and approval, Certificates of Occupancy, variances, zoning provision interpretations by the Zoning Administrator, and appeals of zoning provision interpretations to the Zoning Board of Appeals.

Section 24.902 Amendment of Zoning Regulations

- (1) **Purpose:** The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed amendments to provisions of this Title. (Refer to the requirements of Wisconsin Statutes 62.23(7)(d)).
- (2) **Initiation of Request for Amendment to this Title:** Proceedings for amendment of this Title may be initiated by any one of the following three methods:
 - (a) an application by any member of the general public;
 - (b) by action of the Plan Commission; or (RC-325, 10/9/12)
 - (c) by action of the Common Council.
- (3) **Application Requirements:** All applications for proposed amendments to this Title, regardless of the party of their initiation per (2) above shall be approved as complete by the Zoning Administrator prior to the formal initiation of this procedure. The submittal of an application to the City Clerk to initiate this procedure shall not occur until the Zoning Administrator has certified acceptance of the complete application to the City Clerk. No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, with the permission of the Zoning Administrator, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper by the City Clerk, the Applicant shall provide the City Clerk with 12 copies of the complete application as certified by the Zoning Administrator. Said complete application shall be comprised of all of the following:
 - (a) A copy of the portion of the current provisions of this Title which are proposed to be amended, with said provisions clearly indicated in a manner which is clearly reproducible with a photocopier;
 - (b) A copy of the text which is proposed to replace the current text; and
 - (c) As an optional requirement, the applicant may wish to provide written justification for the proposed text amendment, consisting of the reasons why the Applicant believes the proposed text amendment is in harmony with the recommendation of the City of Delavan Comprehensive Plan, particularly as evidenced by compliance with the standards set out in subsection (4)(c)1.-5., below. (RC-325, 10/9/12)

- (4) **Review by the Zoning Administrator:** The proposed text amendment shall be reviewed by the Zoning Administrator as follows:
- (a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify Applicant.
 - (b) Upon notifying the Applicant that his application is complete, the Zoning Administrator shall review the application and evaluate and comment on the written justification for the proposed text amendment which may be provided in the application per Subsection (3)(a)-(c), above.
 - (c) The Zoning Administrator may also evaluate the application to determine whether the requested text amendment is in harmony with the recommendations of the City of Delavan's Comprehensive Plan, particularly as evidenced by compliance with the standards of Subsection (4)(c)1.-5., below: (RC-325, 10/9/12)
 - 1. How does the proposed text amendment further the purposes of this Title as outlined in Section 21.005?
 - 2. How does the proposed text amendment further the purposes of the general Subchapter in which the amendment is proposed to be located?
 - 3. How does the proposed text amendment further the purposes of the specific Section in which the amendment is proposed to be located?
 - 4. Which of the following factors has arisen that are not properly addressed in the current zoning text?:
 - a. The provisions of this Title should be brought into conformity with the Comprehensive Plan. (If a factor related to the proposed amendment, note pertinent portions of the Comprehensive Plan.);
 - b. A change has occurred in the land market, or other factors have arisen which require a new form of development, a new type of land use, or a new procedure to meet said change(s);
 - c. New methods of development or providing infrastructure make it necessary to alter this Title to meet these new factors;
 - d. Changing governmental finances require amending this Title in order to meet the needs of the government in terms of providing and affording public services.
 - 5. If the proposed text amendment is concerned with the provisions of Subchapter 23-2 and/or 23-3: How does the proposed amendment maintain the desired overall consistency of land uses, land use intensities, and land use impacts within the pertinent zoning districts?
 - (d) The Zoning Administrator shall forward the report per (4)(b), and if prepared the report per (4)(c), to the Plan Commission for the Commission's review and use in making its recommendation to Common Council. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Comprehensive Plan, the Zoning Administrator shall note this determination in the report. (RC-325, 10/9/12)
- (5) **Review, Public Hearing, and Recommendation by the Plan Commission:** Common Council shall not make an amendment to this Title without allowing for a recommendation from the Plan Commission per the provisions of this Subsection. (RC-325, 10/9/12)
- (a) The Plan Commission shall schedule a public hearing to consider the application within a reasonable time period after receipt of the written recommendation from the Plan Commission. The Applicant may appear in person, or by agent, and/or by attorney. Notice of the proposed text amendment and the public hearing shall conform to the requirements of Section 62.23(7)(d) of the Wisconsin Statutes. Said notice shall contain a description of the proposed text amendment. In addition, at least ten days before said public hearing, the City Clerk shall mail an identical notice to the Applicant and to the Clerk of any municipality whose boundaries are within 1,000 feet

of any portion of the jurisdiction of this Title. Failure to mail said notice, to said clerk(s) of such neighboring municipalities, provided it is unintentional, shall not invalidate proceedings under this Section. (RC-325, 10/9/12)

- (b) Within 60 days after the public hearing (or within an extension of said period requested in writing by the Applicant and granted by the Plan Commission), the Plan Commission may make a written report stating to the Common Council, and/or shall state in the minutes, its findings regarding Subsections (3) and (4), above, and its recommendations regarding the application as a whole. Said report may include a formal finding of facts developed and approved by the Plan Commission concerning the requirements of (4)(c)1.-5., above. (RC-325, 10/9/12)
 - (c) If the Plan Commission fails to make a report within 60 days after the filing of said complete application (and in the absence of an Applicant-approved extension per (5)(b), above), then the Common Council may proceed under Section (6). Failure to receive said written report from the Plan Commission per Subsection (5)(b), above, shall not invalidate the proceedings or actions of the Common Council.
 - (d) If the Plan Commission recommends approval of an application, it shall state in the minutes or in the subsequently issued written report to the Common Council, its conclusion and any finding of facts supporting its conclusion as to the following: that the potential public benefits of the proposed text amendment outweigh any and all potential adverse impacts of the proposed text amendment, as identified in Subsections (4)(c)1.-5. above, after taking into consideration the proposal by the Applicant.
- (6) **Review and Action by Common Council:** Common Council shall consider the Plan Commission's recommendation regarding the proposed text amendment. (RC-325, 10/9/12)
- (a) The Council may request further information and/or additional reports from the Plan Commission, the Zoning Administrator, and/or the Applicant. (RC-325, 10/9/12)
 - (b) The Common Council may take final action on the application at the time of its initial meeting and will allow public input or may continue the proceedings. Common Council may approve the text amendment as originally proposed, may approve the proposed text amendment with modifications (per the recommendations of the Zoning Administrator, the Plan Commission, authorized outside experts, or its own members) or may deny approval of the proposed text amendment. If the Common Council wishes to make significant changes in the proposed text amendment, as recommended by the Plan Commission, then the procedure set forth in Section 62.23(7)(d) of the Wisconsin Statutes shall be followed prior to Council action. (RC-325, 10/9/12)
 - (c) When the Common Council takes action on the application, it shall state in the minutes and/or in the recitals of the adopting ordinance, its conclusion and any finding of facts supporting its conclusion as to the following: that the potential public benefits of the proposed text amendment outweigh any and all potential adverse impacts of the proposed text amendment, as identified in Subsections (4)(c)1.-5. above, after taking into consideration the proposal by the Applicant and the recommendation of the Plan Commission. Any action to amend the provisions of text requires a majority vote of the Council. The Common Council's approval of the requested amendment shall be considered the approval of a unique request, and shall not be construed as precedent for any other proposed amendments to provisions of this Title.
- (7) **Effect of Denial:** No application which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.
- (8) **Fee:** A fee is required for this procedure. Refer to Section 24.935(1)(a).

Section 24.903 Amendment of Official Zoning Map

- (1) **Purpose:** The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed amendments to provisions of the Official Zoning Map (see Sections 22.103 and 22.107). (Refer to the requirements of Wisconsin Statutes 62.23(7)(d)). In the event the property is located within a floodplain as defined in Section 23.503 of Subchapter 23-5 of the City of Delavan Zoning Ordinance for Natural Resources Protection, the Applicant and the City must comply with the requirements of Section 23.503. (RC-287, 3/9/10)
- (2) **Initiation of Request for Amendment to Official Zoning Map:** Proceedings for amendment of the Official Zoning Map may be initiated by any one of the following three methods:
 - (a) an application of the owner(s) of the subject property;
 - (b) by action of the Plan Commission; or (RC-325, 10/9/12)
 - (c) by action of the Common Council.
- (3) **Application Requirements:** All applications for proposed amendments to the Official Zoning Map, regardless of the party of their initiation per (2) above, shall be filed in the office of the Zoning Administrator, and shall be approved as complete by the Zoning Administrator prior to the formal initiation of this procedure. The submittal of an application to the City Clerk to initiate this procedure shall not occur until the Zoning Administrator has certified acceptance of the complete application to the City Clerk. No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, with the permission of the Zoning Administrator, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper by the City Clerk, the Applicant shall provide the City Clerk with 12 copies of the complete application as certified by the Zoning Administrator. Said complete application shall be comprised of all of the following:
 - (a) A map of the subject property showing all lands for which the zoning is proposed to be amended, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current tax records of the City of Delavan. Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;
 - (b) A map, such as the Land Use Plan Map, of the generalized location of the subject property in relation to the City as a whole; and
 - (c) As an optional requirement, the applicant may wish to provide written justification for the proposed amendment to the Official Zoning Map, consisting of the reasons why the Applicant believes the proposed map amendment is in harmony with the recommendations of the City of Delavan Comprehensive Plan, particularly as evidenced by compliance with the standards set out in Subsection (4)(c)1.-3, below. (RC-325, 10/9/12)

- (4) **Review by the Zoning Administrator:** The proposed amendment to the Official Zoning Map shall be reviewed by the Zoning Administrator as follows:
- (a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify the Applicant.
 - (b) Upon notifying the Applicant that his application is complete, the Zoning Administrator shall review the application and evaluate and comment on the written justification for the proposed map amendment which may be provided in the application per Subsection (3)(a)-(c), above.
 - (c) The Zoning Administrator may also evaluate the application to determine whether the requested amendment to the Official Zoning Map is in harmony with the recommendations of the City of Delavan's Comprehensive Plan, particularly as evidenced by compliance with the standards of Subsection (4)(c)1.-3., below:
(RC-325, 10/9/12)
 - 1. How does the proposed Official Zoning Map amendment further the purposes of this Title as outlined in Section 21.005 and the applicable rules and regulations of the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA)?
 - 2. Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map?
 - a. The designations of the Official Zoning Map should be brought into conformity with the Comprehensive Plan;
 - b. A mistake was made in mapping on the Official Zoning Map. (That is, an area is developing in a manner and purpose different from that for which it is mapped.) NOTE: If this reason is cited, it must be demonstrated that the discussed inconsistency between actual land use and designated zoning is not intended, as the City may intend to stop an undesirable land use pattern from spreading;
 - c. Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district;
 - d. Growth patterns or rates have changed, thereby creating the need for an Amendment to the Official Zoning Map.
 - 3. How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?
 - (d) The Zoning Administrator shall forward the report per (4)(b), and if prepared the report per (4)(c), to the Plan Commission for the Commission's review and use in the making its recommendation to Common Council. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Comprehensive Plan, the Zoning Administrator shall note this determination in the report. (RC-325, 10/9/12)

- (5) **Review, Public Hearing, and Action by the Plan Commission:** Common Council shall not make an amendment to the Official Zoning Map without allowing for a recommendation from the Plan Commission per the provisions of this Subsection. (RC-325, 10/9/12)
- (a) The Plan Commission shall schedule a reasonable time and place for a public hearing to consider the application after receipt of the written recommendation from the Plan Commission. The Applicant may appear in person, or by agent, and/or by attorney. Notice of the proposed amendment to the Official Zoning Map and the public hearing shall conform to the requirements of Section 62.23(7)(d) of the Wisconsin Statutes. Said notice shall contain a description of the subject property and the proposed change in zoning. In addition, at least ten days before said public hearing, the City Clerk shall mail an identical notice to the Applicant; to all property owners within 300 feet of the boundaries of the submit property as identified in Subsection (3)(a), above; and to the Clerk of any municipality whose boundaries are within 1,000 feet of any portion of the jurisdiction of this Title. Failure to mail said notice, to said clerk(s) of such neighboring municipalities, provided it is unintentional, shall not invalidate proceedings under this Section. (RC-325, 10/9/12)
 - (b) Within 60 days after the public hearing (or within an extension of said period requested in writing by the Applicant and granted by the Plan Commission), the Plan Commission may make a written report stating to the Common Council, and/or shall state in the minutes, its findings regarding Subsections (3) and (4), above, and its recommendations regarding the application as a whole. Said report may include a formal finding of facts developed and approved by the Plan Commission concerning the requirements of (4)(c)1.-3., above. (RC-325, 10/9/12)
 - (c) If the Plan Commission fails to make a report within 60 days after the filing of said complete application (and in the absence of an Applicant-approved extension per (5)(b), above), then the Common Council may proceed under Section (6). Failure to receive said written report from the Plan Commission per Subsection (5)(b), above, shall not invalidate the proceedings or actions of Common Council.
 - (d) If the Plan Commission recommends approval of an application, it shall state in the minutes or in the subsequently issued written report to the Common Council, its conclusion and any finding of facts supporting its conclusion as to the following: that the potential public benefits of the proposed amendment to the Official Zoning Map outweigh any and all potential adverse impacts of the proposed map amendment, as identified in Subsections (4)(c)1.-3. above, after taking into consideration the proposal by the Applicant.
- (6) **Review and Action by Common Council:** Common Council shall consider the Plan Commission's recommendation regarding the proposed amendment to the Official Zoning Map. (RC-325, 10/9/12)
- (a) The Council may request further information and/or additional reports from the Plan Commission, the Zoning Administrator, and/or the Applicant. (RC-325, 10/9/12)
 - (b) The Common Council may take final action on the application at the time of its initial meeting and will allow public input, or may continue the proceedings. Common Council may, by amending ordinance, adopt the amendment to the Official Zoning Map as originally proposed, may adopt the proposed map amendment with modifications (per the recommendations of the Zoning Administrator, the Plan Commission, authorized outside experts, or its own members) or may deny adoption of the proposed map amendment. If the Common Council wishes to make significant changes in the proposed map amendment, as recommended by the Plan Commission, then the procedure set forth in Section 62.23(7)(d) of the Wisconsin Statutes shall be followed prior to Council action. (RC-325, 10/9/12)

- (c) When the Common Council takes action on the application, it shall state in the minutes and/or the recitals to the amending ordinance, its conclusion and any findings of facts supporting its conclusion as to the following: that the potential public benefits of the proposed map amendment outweigh any and all potential adverse impacts of the proposed map amendment, as identified in Subsections (4)(c)1.-3. above, after taking into consideration the proposal by the Applicant and the recommendation of the Plan Commission. Any action to amend the zoning map requires a majority vote of the Council. The Common Council's approval of the proposed map amendment shall be considered the approval of a unique request, and shall not be construed as precedent for any other amendment to the Official Zoning Map.
- (7) **Effect of Denial:** No application which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.
- (8) **Fee:** A fee is required for this procedure. Refer to Section 24.935(1)(b).
- (9) **Floodland District Boundary Changes Limited:** The Common Council shall not permit changes to the floodland district boundaries that are inconsistent with the purpose and intent of this Ordinance or in conflict with the applicable rules and regulations of the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA).
- (a) Changes in the Floodway Overlay District boundaries shall not be permitted where the change will increase the flood stage elevation by 0.1 foot or more, unless the applicant has made appropriate legal arrangements with all affected units of government and all property owners affected by the stage increase. The only way the 1.0 foot limit may be exceeded is through obtaining a waiver from the Federal Emergency Management Agency for a specific project that necessarily exceeds the one foot increase in flood elevation. Applications for Floodway Overlay District changes shall show the affects of the change within the associated floodfringe, and shall provide adjusted water surface profiles and adjusted floodland limits to reflect the increased flood elevations.
- (b) Changes in the Floodplain Conservancy Overlay District boundaries shall not be permitted where the change will increase the flood stage elevation by 0.1 foot or more, unless the application has made appropriate legal arrangements with all affected units of government and all property owners affected by the stage increase. In no event shall a change be permitted that would increase the flood stage elevation by more than 1.0 foot. Applications for Floodplain Conservancy Overlay District changes shall show the affects of the change within the associated floodfringe, and shall provide adjusted water surface profiles and adjusted water surface profiles and adjusted floodland limits to reflect the increased flood elevations.
- (c) Removal of land from the floodland districts shall not be permitted unless the land has been filled to an elevation at least two feet above the elevation of the regional flood and provided that such land is contiguous to lands lying outside of the floodlands.
- (d) Amendment of floodlands which were delineated by approximate methods shall not be permitted unless the Applicant provides the City with engineering data showing the flood profile, necessary river cross-sections, flood elevations, and any effect the establishment of a floodway/floodfringe will have on flood stages. The effects shall be limited as set forth above for changes in subparagraphs (1) and (2) above. If the proposed development is less than five acres in area, and where the cost of the proposed development is estimated to be less than \$125,000.00, the Department of

Natural Resources (DNR) will assist the Applicant in determining the required flood elevations.

- (e) No river or stream shall be altered or relocated until a floodland zoning change has been applied for and granted in accordance with the requirements of this Section, and until all adjacent communities have been requested to review and comment on the proposed alteration or relocation. The flood carrying capacity of the altered or relocated watercourse shall not be reduced to less than the flood carrying capacity before the water-course was altered or relocated. All necessary state and federal permits shall be obtained.
- (f) Notice to and approvals by DNR and FEMA. A copy of all notices for amendments or rezoning in the Floodland Districts shall be transmitted to the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA) at least 10 days prior to the public hearing. No amendments to the floodland district boundaries or regulations shall become effective until approved by the DNR and reviewed by the FEMA. In the case of floodland district boundary changes, an official letter of map amendment from the FEMA may also be required.

(10) Amendments to Shoreland-Wetland Districts

- (a) The City shall transmit a notice of any change (text or map) in the Shoreland-Wetland Overlay Zoning District to the Wisconsin Department of Natural Resources (DNR). Notice requirements shall be as follows:
 - 1. A copy of every application for a text or map change mailed within five days of filing with the City Clerk.
 - 2. At least 10 days prior notice of any public hearing on a shoreland C-I zoning amendment.
 - 3. Notice of a City Plan Commission recommendation no later than 10 days following the recommendation.
 - 4. Notice of a Common Council decision no later than 10 days following the decision.
- (b) No wetland in the Shoreland-Wetland Overlay District shall be rezoned if the rezoning may result in a significant adverse impact on storm or floodwater storage capacity; maintenance of dry season stream flow, the discharge of groundwater from the wetland to another area, or the flow of groundwater through a wetland; filtering or storage of sediments, nutrients, heavy metals, or organic compounds that would otherwise drain into navigable waters; shoreline protection against soil erosion; fish spawning, breeding, nursery or feeding grounds; wildlife; habitat; or areas of special recreational, scenic or scientific interest, including scarce wetland types.
- (c) If the DNR has notified the City Plan Commission that an amendment to the Shoreland-Wetland Overlay Zoning District may have a significant adverse impact upon any of the criteria listed in subparagraph (b) above, that amendment, if approved by the Common Council, shall contain the following provision:

"This amendment shall not take effect until more than 30 days have elapsed since written notice of the Common Council's approval of this amendment was mailed to the Department of Natural Resources. During this 30-day period, the Department of Natural Resources may notify the Common Council that it will adopt a superseding shore land ordinance for the City pursuant to Section 62.231 of the Wisconsin Statutes. If the Department does so notify the Common Council, the effect of this amendment shall be stayed until the Section 62.231 adoption procedure is completed or otherwise terminated."

Section 24.904 Special Use Review and Approval

(1) Purpose

- (a) The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed special uses.
- (b) Special uses are those uses which have the potential to create undesirable impacts on nearby properties if allowed to develop simply under the general requirements of this Title. In order to prevent this from occurring, all special uses are required to meet certain requirements applicable only to special uses, in addition to the general requirements of this Title and the requirements of the zoning district in which the subject property is located.
- (c) Land uses proposed which fail to meet one of the requirements for special uses of Section 23.206, may be reviewed as a conditional use. (See Section 23.202(3)(b).)

(2) Regulations Applicable to All Special Uses: No public hearing is required to develop a special use, however, a demonstration that the developer proposes to meet all special use requirements of this Subchapter and Subchapter 23-4 must be made at time of site plan application (see Section 24.908). Furthermore, no Building Permit or Certificate of Occupancy shall be issued for any development which does not comply with all requirements of this Title (see Section 24.909). Any special use found not to be in compliance with the terms of this Title shall be considered in violation of this Title and shall be subject to all applicable procedures and penalties.

(3) Application Requirements: All applications for proposed special uses, shall be approved as complete by the Zoning Administrator prior to the formal initiation of this procedure. Said complete application shall be comprised of all of the following:

- (a) A map of the subject property showing all lands for which the special use is proposed, and all other lands within 300 feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;
- (b) A map, such as the Land Use Plan Map, of the generalized location of the subject property in relation to the City as a whole;
- (c) A written description of the proposed special use describing the type of activities, buildings, and structures proposed for the subject property and their general locations; and,
- (d) A site plan of the subject property as proposed for development. Said site plan shall conform to any and all the requirements of Section 24.908(3).

(4) Fee: A fee is required for this procedure. Refer to Section 24.935(1)(c).

Section 24.905 Conditional Use Review and Approval

(1) Purpose

- (a) The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed conditional uses.
- (b) Certain uses in situations which are of such a special nature, or are so dependent upon actual contemporary circumstances, as to make impractical the predetermination of permissibility, or the detailing in this ordinance of specific standards, regulation, or conditions which would permit such determination in each individual situation, may be permitted as conditional uses.
- (c) Conditional uses are also those proposed uses which are listed as special uses, but fail to meet one of the requirements for special use approval listed in Section 23.206. (See Section 23.202(3)(b).)
- (d) Under this Ordinance, a proposed Conditional Use shall be denied unless the Applicant can demonstrate, to the satisfaction of the City, that the proposed Conditional Use will not create undesirable impacts on nearby properties, the environment, nor the community as a whole.
- (e) **Limited Conditional Uses:** Limited conditional uses are the same as regular conditional uses excepting that further, in the considered findings of the Common Council and the granting thereof, because of any of the following: Their particularly specialized nature, their particular locations within a district, the peculiar unique relationships or needed compatibility of uses to involved individuals, or any other reason(s) the Common Council deems specially relevant and material to delimit the scope thereof.. should be of lesser permanence than regular conditional uses and the duration or term of existence may be established until time certain or be limited to a future happening or event at which time the same shall terminate.

(2) **Initiation of Request for Approval of a Conditional Use:** Proceedings for approval of a conditional use may be initiated by an application of the owner(s) of the subject property.

(3) **Application Requirements:** All applications for proposed conditional uses shall be approved as complete by the Zoning Administrator prior to the initiation of this procedure. The submittal of an application to the City Clerk to initiate this procedure shall not occur until the Zoning Administrator has certified acceptance of the complete application to the City Clerk. No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, with the permission of the Zoning Administrator, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper by the City Clerk, the Applicant shall provide the City Clerk with 12 copies of the complete application as certified by the Zoning Administrator. Said complete application shall be comprised of all of the following:

- (a) A map of the subject property showing all lands for which the conditional use is proposed, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County (as provided by the City of Delavan). Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;

- (b) A map, such as the Future Land Use Map from the Comprehensive Plan, of the generalized location of the subject property in relation to the City as a whole;
(RC-325, 10/9/12)
 - (c) A written description of the proposed conditional use describing the type of activities, buildings, and structures proposed for the subject property and their general locations;
 - (d) A site plan of the subject property as proposed for development. Said site plan shall conform to any and all the requirements of Section 24.908(3). If the proposed conditional use is a cluster development (per Section 23.206(1)(b) through (f)) or a group development (per Section 23.208) a proposed preliminary plat or conceptual plat may be substituted for the required site plan, provided said plat contains all information required on said site plan per Section 24.908;
 - (e) As an optional requirement, the Applicant may wish to provide written justification for the proposed conditional use consisting of the reasons why the Applicant believes the proposed conditional use is appropriate, particularly as evidenced by compliance with the standards set forth in Subsection (4)(c)1.-6. and (4)(d)1.-7., below.
- (4) **Review by The Zoning Administrator:** The proposed conditional use shall be reviewed by the Zoning Administrator as follows:
- (a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify Applicant.
 - (b) Upon notifying the Applicant that his application is complete the Zoning Administrator shall review the application and evaluate and comment on the written justification for the proposed conditional use which may be provided in the application per Subsection (3)(a)-(e), above.
 - (c) Criteria for granting conditional use permits. In granting a conditional use permit, the Common Council shall consider the advice and recommendations of the Plan Commission and the effect of the proposed use upon the health, safety, morals, and general welfare of occupants and/or surrounding lands. The Plan Commission, in arriving at its recommendations to Council, shall consider, and the Council, among other things and prior to taking action on granting such permit, shall determine whether it can make affirmative findings on what it considers a sufficient number of, such of the following criteria as are deemed pertinent to the particular application under consideration:
 1. The use will not create an excessive burden of existing parks, schools, and other public facilities and utilities which serve or are proposed to serve the area.
 2. The property and proposed structures will have proper ingress and egress with particular reference to automotive and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe.
 3. The use will be sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.

4. The use is consistent with the purposes of the Zoning Code and the purposes of the zoning district in which the applicant intends to locate the proposed use.
 5. The use will not cause traffic hazard or congestion.
 6. Existing business nearby will not be adversely affected because of curtailment of customer trade brought about by intrusion of noise, glare or general unsightliness.
- (d) Additional Conditions. In permitting a new conditional use or the alteration of an existing conditional use, the Plan Commission may recommend, and the Common Council may impose, in addition to the standards and requirements expressly specified by the Zoning Code, additional conditions which the Plan Commission and Common Council consider necessary to protect the best interests of the surrounding area or the City as a whole. These conditions may include, but are not limited to the following:
1. Increasing the required lot size or yard dimension.
 2. Limiting the height, size or location of buildings.
 3. Controlling the location and number of vehicle access points.
 4. Increasing the street width.
 5. Increasing the number of required off-street parking spaces.
 6. Limiting the number, size, location of lighting signs.
 7. Requiring diking, fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- (e) The Zoning Administrator shall forward the report per (4)(b) to the Plan Commission for the Commission's review and use in making its recommendation to Common Council. Included in this report shall be a recommendation as to whether the proposed conditional use should be a regular or a limited conditional use. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Comprehensive Plan, the Zoning Administrator shall note this determination in the report. (RC-325, 10/9/12)

(5) Review, Public Hearing, and Recommendation by the Plan Commission: Common Council shall not approve a conditional use without allowing for a recommendation from the Plan Commission per the provisions of this Subsection. (RC-325, 10/9/12)

- (a) The Plan Commission shall schedule a public hearing to consider the application within a reasonable time after receipt of the written recommendation from the Plan Commission. The Applicant may appear in person, or by agent, and/or by attorney. Notice of the proposed conditional use and the public hearing shall conform to the requirements of Section 62.23(7)(d) of the Wisconsin Statutes. Said notice shall contain a description of the subject property and the proposed conditional use per Subsections (3)(a) and (c), above. In addition, at least ten days before said public hearing, the City Clerk shall mail an identical notice to the Applicant; to all property owners within 300 feet of the boundaries of the submit property as identified in Subsection (3)(a), above; and to the Clerk of any municipality whose boundaries are within 1,000 feet of any portion of the jurisdiction of this Title. Failure to mail said notice, to said clerk(s) of such neighboring municipalities, provided it is unintentional, shall not invalidate proceedings under this Section. (RC-325, 10/9/12)
- (b) Within 60 days after the public hearing (or within an extension of said period requested in writing by the Applicant and granted by the Plan Commission), the Plan Commission may make a written report stating to the Common Council, and/or shall state in the minutes, its findings regarding Subsections (3) and (4), above, and its recommendations regarding the application as a whole and, if for issuance, whether as regular or limited conditional use. Said report may include a formal finding of facts developed and approved by the Plan Commission concerning the requirements of (4)(c)1.-6. and (4)(d)1.-7., above. (RC-325, 10/9/12)

- (c) If the Plan Commission fails to make a report within 60 days after the filing of said complete application (and in the absence of an Applicant-approved extension per (5)(b), above), then the Common Council proceed under Section (6). Failure to receive said written report from the Plan Commission per Subsection (5)(b), above, shall not invalidate the proceedings or actions of Common Council.
 - (d) If the Plan Commission recommends approval of an application, it shall state in the minutes or in the subsequently issued written report to the Common Council, its conclusion and any finding of facts supporting its conclusion as to the following: that the potential public benefits of the proposed conditional use permit outweigh any and all potential adverse impacts of the proposed conditional use, as identified in Subsections (4)(c)1.-6. and (4)(d)1.-7. above, after taking into consideration the proposal by the Applicant.
- (6) **Review and Action by Common Council:** Common Council shall consider the Plan Commission's recommendation regarding the proposed conditional use. (RC-325, 10/9/12)
- (a) The Council may request further information and/or additional reports from the Plan Commission, the Zoning Administrator, and/or the Applicant. (RC-325, 10/9/12)
 - (b) The Common Council may take final action on the application at the time of its initial meeting and will allow public input, or may continue the proceedings. Common Council may, by amending ordinance, adopt the amendment to the Official Zoning Map as originally proposed, may adopt the proposed map amendment with modifications (per the recommendations of the Zoning Administrator, the Plan Commission, authorized outside experts, or its own members) or may deny adoption of the proposed map amendment. If the Common Council wishes to make significant changes in the proposed map amendment, as recommended by the Plan Commission, then the procedure set forth in Section 62.23(7)(d) of the Wisconsin Statutes shall be followed prior to Council action. (RC-325, 10/9/12)
 - (c) When the Common Council takes affirmative action on the application, it shall state in the adopting resolution, its conclusion and any finding of facts supporting its conclusion as to the following: that the potential public benefits of the proposed conditional use sufficiently outweigh any and all potential adverse impacts of the proposed conditional use, as identified in Subsections (4)(c)1.-6. above, after taking into consideration the proposal by the Applicant and the recommendation of the Plan Commission. Any action to approve or allow the proposed conditional use requires a majority vote of the Council. The Common Council's approval of the proposed conditional use shall be considered the approval of a unique request, and shall not be construed as precedent for any other proposed conditional use.
- (7) **Effect of Denial:** No application which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence, or proof of change of factors, is found to be valid by the Zoning Administrator.
- (8) **Termination of an Approved Conditional Use:** Upon approval by Common Council, the Applicant must demonstrate that the proposed conditional use meets all general and specific conditional use requirements in the site plan required for initiation of development activity on the subject property per Section 24.908. Once a conditional use is granted, no Erosion Control Permit, Site Plan approval (per Section 24.908), Certificate of Occupancy (per Section 24.909), or Building Permit shall be issued for any development which does not comply with all requirements of this Title. Any conditional use found not to be in compliance with the terms of this Title shall be considered in violation of this Title and shall be subject to all applicable procedures and penalties. A conditional use may be revoked for such a violation by majority vote of the Common Council, following the procedures outlined in Subsections (2) through (7), above.

- (9) **Time Limits on the Development of Conditional Use:** The start of construction of any and all conditional uses shall be initiated within 365 days of their approval by Common Council and shall be operational within 730 days of said approval. Failure to initiate development within this period shall automatically constitute a revocation of the conditional use. For the purposes of this Section, "operational" shall be defined as the granting of a Certificate of Occupancy for the conditional use. Prior to such a revocation, the Applicant may request an extension of this period. Said request shall require formal approval by Common Council and shall be based upon a showing of acceptable justification (as determined by Common Council).
- (10) **Discontinuing an Approved Conditional Use:** Any and all conditional uses which have been discontinued for a period exceeding 365 days shall have their conditional use invalidated automatically. The burden of proof shall be on the property owner to conclusively demonstrate that the subject conditional use was operational during this period.
- (11) **Change of Ownership:** All requirements of the approved conditional use shall be continued regardless of ownership of the subject property, except where limited explicitly by the Common Council. Modification, alteration, or expansion of any conditional use in violation as approved per (6), above, without approval by Common Council, shall be grounds for revocation of said conditional use approval per (8), above. For Bed and Breakfast land uses the granting of a Conditional Use Permit shall be valid while said property is owned by the owner at time of conditional use approval.
- (12) **Recording of Conditional Use Requirements:** Except for conditional use approvals for temporary uses, a certified copy of the authorizing resolution, containing identifiable description and any specific requirements of approval, shall be recorded by the City with the County Register of Deeds office.
- (13) **Notice to the DNR:** The Plan Commission shall transmit a copy of each application for a conditional use for conservancy regulations in the Shoreland-Wetland, Floodway, Floodplain, or Floodfringe Overlay Zoning Districts to the Wisconsin Department of Natural Resources (DNR) for review and comment at least 10 days prior to any public hearings. Final action on the application shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions relating to conditional uses for shoreland-wetland conservancy regulations or to floodland regulations shall be transmitted to the DNR within 10 days of the date of such decision.
- (14) **Uses Now Regulated as Conditional Uses which were Approved as Legal Land Uses -- Permitted by Right or as Conditional Uses -- Prior to the Effective Date of this Ordinance:** A use now regulated as a conditional use which was approved as a legal land use -- either permitted by right or as a conditional use -- prior to the Effective Date of this Ordinance shall be considered as a legal conforming land use so long as the previously approved conditions of use and site plan are followed. Any modification of the previously approved conditions of use or site plan shall require application and City consideration under this Section. (C-735, 1/21/97)
- (15) **Fee:** One or more fees are required for this procedure. Refer to Section 24.935(1)(d). (C-735, 1/21/97)

Section 24.906 Temporary Use Review and Approval

(1) Purpose

- (a) The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed temporary use.
- (b) Temporary uses are those uses which have the potential to create undesirable impacts on nearby properties if allowed to develop simply under the general requirements of this Title. In addition to such potential, temporary uses also have the potential to create undesirable impacts on nearby properties which potentially cannot be determined except on a case by case basis. In order to prevent this from occurring, all temporary uses are required to meet certain procedural requirements applicable only to temporary uses, in addition to the general requirements of this Title and the requirements of the zoning district in which the subject property is located. A public hearing process is not required to review a request for a temporary use.
- (c) Land uses proposed which fail to meet one of the requirements for temporary uses of Section 23.206, may be reviewed as a conditional use. (See Section 23.202(3)(b).)

(2) Regulations Applicable to All Temporary Uses: No public hearing is required to develop a temporary use, however, a demonstration that the developer proposes to meet all temporary use requirements of this Subchapter and Subchapter 23-4 must be made at time of site plan application (see Section 24.908). Furthermore, no Building Permit or Certificate of Occupancy shall be issued for any development which does not comply with all requirements of this Title (see Section 24.909). Any temporary use found not to be in compliance with the terms of this Title shall be considered in violation of this Title and shall be subject to all applicable procedures and penalties.

(3) Application Requirements: All applications for proposed temporary uses, shall be approved as complete by the Zoning Administrator prior to the formal initiation of this procedure. Said complete application shall be comprised of all of the following:

- (a) A map of the subject property showing all lands for which the temporary use is proposed, and all other lands within 300 feet of the boundaries of the subject property. Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;
- (b) A map, such as the Land Use Plan Map, of the generalized location of the subject property in relation to the City as a whole;
- (c) A written description of the proposed temporary use describing the type of activities, buildings, and structures proposed for the subject property and their general locations; and
- (d) The Zoning Administrator may require a site plan of the subject property when, in his estimation, a clear public purpose will be achieved. Said site plan shall conform to any and all the requirements of Section 24.908(3). (C-735, 1/21/97)

(4) Approval by Zoning Administrator. Approval of a temporary use shall be by the Zoning Administrator following review of said complete application per (3) above.

(5) Fee: A fee is required for this procedure. Refer to Section 24.935(1)(c).

Section 24.908 Site Plan Review and Approval

- (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 Ordinance. 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 site, building and operational plans by the City staff before the building, occupancy, and zoning permits can be issued -- except, however, that development activity associated with an approved final plat of subdivision or certified survey map for single-family and/or duplex dwelling units, and development activity associated with the full and complete implementation of a project approved within the PID phase of the Planned Infill Development District [PID] is exempt from this requirement; however, a survey prepared and certified by a registered surveyor shall be prepared for any proposed development activity for such uses. (C-735, 1/21/97)

- (2) **Procedure**
 - (a) **Initiation of Request for Approval of a Site Plan:** Proceedings 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 shall first meet with the Zoning Administrator and other applicable City 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.
 - (c) **Application for Site Plan Review and Review by Zoning Administrator:** The petitioner shall apply to the Zoning Administrator for the scheduling of an appearance before the City staff. The Zoning Administrator shall notify the petitioner of the date and time of the applicable meeting. The meeting with the City staff shall not be scheduled unless the application is approved as complete by the Zoning Administrator per the requirements of Subsection (3), below. The review of the submitted application shall be completed within ten working days of application submittal. Once the application is approved as complete by the Zoning Administrator, the Zoning Administrator may schedule a meeting with City staff a minimum of two weeks from the date of complete application acceptance. At time of acceptance and meeting scheduling, the Zoning Administrator shall forward copies of the complete application (as provided by the Petitioner) to all of the pertinent City staff. (C-735, 1/21/97)

- (3) **Application Requirements (RC-287, 3/9/10):** All applications for proposed site plans shall be approved as complete by the Zoning Administrator prior to the formal initiation of this procedure. The submittal of an application to the City Clerk to initiate this procedure shall not occur until the Zoning Administrator has certified acceptance of the complete application to the City Clerk. No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, with the permission of the Chair of the Plan Commission, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper by the City Clerk, the Applicant shall provide the City Clerk with 12 copies of the complete application as certified by the Zoning Administrator. In the event the property is located within a floodplain as defined in Section 23.503 of Subchapter 23-5 of the City of Delavan Zoning Ordinance for Natural Resources Protection, the additional requirements of Section 23.503 must be complied with. Said complete application shall be comprised of all the following:

- (a) Written Description of the intended use describing in reasonable detail the:
1. existing zoning district(s) (and proposed zoning district(s) if different);
 2. land use plan map designation(s);
 3. Natural Resources Site Evaluation Worksheet (Subsection 23.303);
 4. current land uses present on the subject property;
 5. proposed land uses for the subject property (per Section 23.206);
 6. projected number of residents, employees, and daily customers;
 7. proposed amount of dwelling units, floor area, impervious surface area, and landscape surface area, and resulting site density, floor area ratio, impervious surface area ratio, and landscape surface area ratio;
 8. operational considerations relating to hours of operation, projected normal and peak water usage, sanitary sewer or septic loadings, and traffic generation;
 9. operational considerations relating to potential nuisance creation pertaining to noncompliance with the performance standards addressed in Subchapter 23-7 (Sections 23.701-23.721) including, 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. If no such nuisances will be created (as indicated by complete and continuous compliance with the provisions of Subchapter 23-7), then the statement "The proposed development shall comply with all requirements of Subchapter 23-7." shall be provided;
 10. exterior building and fencing materials (Sections 23.718 and 23.720);
 11. possible future expansion and related implications for 1-10, above, and;
 12. any other information pertinent to adequate understanding by the Plan Commission of the intended use and its relation to nearby properties.
- (b) A Small Location Map at 11" x 17" showing the subject property and illustrating its relationship to the nearest street intersection. (A photocopy of the pertinent section of the City's Land Use Plan Map with the subject property clearly indicated shall suffice to meet this requirement.)
- (c) A Property Site Plan drawing (and reduction at 11" x 17") which includes:
1. A title block which indicates the name, address and phone/fax number(s) of the current property owner and/or agent(s) (developer, architect, engineer, planner) for project;
 2. The date of the original plan and the latest date of the revision to the plan;
 3. A north arrow and a graphic scale. Said scale shall not be smaller than one inch equals 100 feet;
 4. A legal description of the subject property;
 5. All property lines and existing and proposed right-of-way lines with bearings and dimensions clearly labeled;
 6. 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;
 7. All required building setback lines;
 8. All existing and proposed buildings, structures, and paved areas, including building entrances, walks, drives, decks, patios, fences, utility poles, drainage facilities, and walls;
 9. The location and dimension (cross-section and entry throat) of all access points onto public streets;

10. 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 Ordinance;
 11. The location and dimension of all loading and service areas on the subject property and labels indicating the dimension of such areas;
 12. The location of all outdoor storage areas and the design of all screening devices;
 13. The location, type, height, size and lighting of all signage on the subject property;
 14. The location, height, design/type, illumination power and orientation of all exterior lighting on the subject property – including the clear demonstration of compliance with Section 23.707;
 15. The location and type of any permanently protected green space areas;
 16. The location of existing and proposed drainage facilities; and
 17. In the legend, data for the subject property:
 - a. Lot Area;
 - b. Floor Area;
 - c. Floor Area Ratio (b/a);
 - d. Impervious Surface Area;
 - e. Impervious Surface Ratio (d/a); and
 - f. Building Height.
- (d) A Detailed Landscaping Plan of the subject property, at the same scale as the main plan (and reduction at 11" x 17"), showing the location of all required bufferyard and landscaping areas, and existing and proposed Landscape Point fencing and berm options for meeting said requirements. The Landscaping Plan shall demonstrate complete compliance with the requirements of Subchapter 23-6. (NOTE: the individual plant locations and species, fencing types and heights, and berm heights need to be provided.)
- (e) A Grading and Erosion Control Plan at the same scale as the main plan (and reduction at 11" x 17") showing existing and proposed grades, including retention walls and related devices, and erosion control measures per the following detailed requirements:
- (f) Elevation Drawings of proposed buildings or proposed remodeling of existing buildings showing finished exterior treatment shall also be submitted, with adequate labels provided to clearly depict exterior materials, texture, color and overall appearance. Perspective renderings of the proposed project and/or photos of similar structures may be submitted, but not in lieu of adequate drawings showing the actual intended appearance of the buildings. (Refer to Section 23.718.)
- (g) A certified Plat of Survey may be required by the Zoning Administrator in instances where he determines compliance with setback requirements may be difficult. The survey shall be prepared by a registered land surveyor and shall depict property lines, and proposed buildings, structures, and paved areas.

- (4) **Review by the Plan Commission:** The Plan Commission, in its consideration of the submitted complete application, shall take into account the basic intent of the Zoning Ordinance 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. The Plan Commission, in reviewing the application may require such additional measures and/or modifications 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 Site Plan until a revisions 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. 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 by one of the two above procedures as directed by the Plan Commission.
- (5) **Initiation of Land Use or Development Activity:** Except with the written permission of the Zoning Administrator, absolutely no land use or development activity, including site clearing, grubbing, or grading shall occur on the subject property prior to the approval of the required site plan. Any such activity prior to such approval shall be a violation of this Ordinance and shall be subject to all applicable enforcement mechanisms and penalties.
- (6) **Modification of an Approved Site Plan:** Any and all variation between development and/or land use activity on the subject property and the approved site plan is a violation of this Ordinance. An approved site plan shall be revised and approved via the procedures of Subsections (2) and (4), above, so as to clearly and completely depict any and all proposed modifications to the previously approved site plan, prior to the initiation of said modifications.
- (7) **Fee:** A fee is required for this procedure. Refer to Section 24.935(1)(g).

Section 24.909 Certificate of Occupancy

- (1) **Purpose:** The purpose of this Section is to provide regulations governing the review and approval of Certificates of Occupancy. This procedure is required to ensure completed development complies with the approved site plan (per the requirements of Section 24.908), and the requirements of this Title as a whole. In the event the property is located in the floodplain as defined in Section 23.503 of Subchapter 23-5 of the City of Delavan Zoning Ordinance for Natural Resources Protection, said application must comply with Section 23.503. (RC-287, 3/9/10)

- (2) **Land Uses and Development Requiring a Certificate of Occupancy:** Certificates of Occupancy shall be required for any of the following:
 - (a) Occupancy and use of a building or structure hereafter erected or structurally altered.
 - (b) New occupancy and use of an existing building when the new use is of a different land use classification (a different line in Table 23.203).
 - (c) Occupancy and use of vacant land.
 - (d) New use of vacant land when the new use is of a different land use classification (a different line in Table 23.203).
 - (e) Any change in the use of a nonconforming use. No such occupancy, use of change of use shall take place until a Certificate of Occupancy therefor shall have been issued by the Building Inspection Superintendent.

- (3) **Issuance of Certificate of Occupancy**
 - (a) Every application for a Building Permit shall also be deemed to be an application for a Certificate of Occupancy for a new building or for an existing building which is to be substantially altered or enlarged as determined by the Zoning Administrator. Such Certificate shall be issued within ten working days after a written request for the same has been made to the Building Inspector after the erection or alteration of such building or part thereof has been completed in conformity with the provisions of this Title.
 - (b) Written application for a Certificate of Occupancy for the use of vacant land or for a change in the use of land or of a building, or for a change in a nonconforming use, as herein provided, shall be made to the Building Inspector; if the proposed use is in conformity with the provisions of this Title, the Certificate of Occupancy shall be issued within ten working days after the application therefor has been made.
 - (c) Every Certificate of Occupancy shall state that both the building, and the proposed use of a building or land, substantially complies with all provisions of this Title. A record of all Certificates of Occupancy shall be kept on file in the office of the Building Inspector and copies shall be furnished on request to any person having proprietary or tenancy interest in the building or land affected.

- (4) **Certificate of Occupancy for Legal Nonconforming Uses:** Upon application, a Certificate of Occupancy shall be issued for all lawful nonconforming uses of land or buildings created by adoption of this Title, or in existence at the effective date of this Title (see Section 21.011). Application for such Certificate of Occupancy for nonconforming use shall be filed with the Building Inspector by the owner or lessee of the building or land occupied by such nonconforming use within one year of the effective date of this Title. It shall be the duty of the Building Inspector to issue a Certificate of Occupancy for a legal nonconforming use.

- (5) **Termination of a Certificate of Occupancy:** It shall constitute a violation of this Title for any person, firm, corporation, or voluntary association, either owner or agent, to do any of the things mentioned in Subsection (2), above, without having first obtained a Certificate of Occupancy. Any Certificate issued upon a false statement of any fact which is material to the issuance thereof shall be void. Whenever the fact of such false statement shall be established to the satisfaction of the Building Inspector, he shall forthwith revoke the Certificate of Occupancy, by notice in writing to be delivered by him to the holder of the void Certificate upon the premises where the violation has occurred, or if such holder be not found there, by mailing the said notice of revocation by Certified Letter to his last known address. Any person who shall proceed thereafter with such work or use without having obtained a new Certificate of Occupancy shall be deemed guilty of violation of this Title.
- (6) **Fee:** A fee is required for this procedure. Refer to Section 24.935(1)(h).

Section 24.910 Variances

- (1) **Purpose:** The purpose of this Section is to provide regulations which enable the City to hear and decide requests for permitted variation from the terms of this Title as will not be contrary to the public interest; where owing to special factors, a literal enforcement of the provisions of this Title would result in practical difficulty or unnecessary hardship, so that the spirit of this Title shall be observed, public safety and welfare secured, and substantial justice done; as provided for by Wisconsin Statutes 62.23(7)(e)(7).
- (2) **Initiation of Request for Approval of a Variance:** Proceedings for approval of a requested variance shall be initiated by:
 - (a) an application of the owner(s) of the subject property
- (3) **Application Requirements:** All applications for requested variances shall be approved as complete by the Zoning Administrator a minimum of two weeks prior to the initiation of this procedure. In the event the property is located in a floodplain as defined in Section 23.503 of Subchapter 23-5 of the City of Delavan Zoning Ordinance for Natural Resources Protection, the applicant and the City must comply with the variance requirements set forth therein. The submittal of an application to the City Clerk to initiate this procedure shall not occur until the Zoning Administrator has certified acceptance of the complete application to the City Clerk. No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, with the permission of the Zoning Administrator, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper by the City Clerk, the Applicant shall provide the City Clerk with 12 copies of the complete application as certified by the Zoning Administrator. Said complete application shall be comprised of all of the following:
 - (a) A map of the subject property showing all lands for which the variance is proposed, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County (as determined by the City of Delavan). Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;
 - (b) A map, such as the Land Use Plan Map, of the generalized location of the subject property in relation to the City as a whole;
 - (c) A written description of the proposed variance describing the type of specific requirements of the variance proposed for the subject property;
 - (d) A site plan of the subject property as proposed for development. Said site plan shall conform to any and all the requirements of Section 24.908(3); and;
 - (e) Written justification for the requested variance consisting of the reasons why the Applicant believes the proposed variance is appropriate, particularly as evidenced by compliance with the standard set out in Subsection (4)(c) 1.-6, below. (RC-287, 3/9/10)

- (4) **Review by The Zoning Administrator:** The requested variance shall be reviewed by the Zoning Administrator as follows:
- (a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify Applicant.
 - (b) Upon notifying the Applicant that his application is complete, the Zoning Administrator shall review the application and evaluate and comment on the written justification for the proposed variance provided in the application per Subsection (3)(a)-(e), above.
 - (c) The Zoning Administrator may also evaluate the application to determine whether the requested variance is in harmony with the recommendations of the City of Delavan's Comprehensive Master Plan, particularly as evidenced by compliance with the standards of Subsection (4)(c)1.-6., below:
 - 1. What exceptional or extraordinary circumstances or special factors are present which apply only to the subject property? The response to this question shall clearly indicate how the subject property contains factors which are not present on other properties in the same zoning district. Specifically:
 - a. The hardship or difficulty shall be peculiar to the subject property and different from that of other properties, and not one which affects all properties similarly. Such a hardship or difficulty shall have arisen because of the unusual shape of the original acreage parcel; unusual topography or elevation; or because the property was created before the passage of the current, applicable zoning regulations, and is not economically suitable for a permitted use or will not accommodate a structure of reasonable design for a permitted use if all area, yard, green space, and setback requirements are observed;
 - b. Loss of profit or pecuniary hardship shall not, in and of itself, be grounds for a variance;
 - c. Self-imposed hardship shall not be grounds for a variance. Reductions resulting from the sale of portions of a property reducing the remainder of said property below buildable size or cutting-off existing access to a public right-of-way or deed restrictions imposed by the owner's predecessor in title are considered to be such self-imposed hardships;
 - d. Violations by, or variances granted to, neighboring properties shall not justify a variance;
 - e. The alleged hardship shall not be one that would have existed in the absence of a zoning ordinance. (For example, if a lot were unbuildable because of topography in the absence of any or all setback requirements.)
 - 2. In what manner do the factors identified in 1., above, prohibit the development of the subject property in a manner similar to that of other properties under the same zoning district? The response to this question shall clearly indicate how the requested variance is essential to make the subject property developable so that property rights enjoyed by the owners of similar properties can be enjoyed by the owners of the subject property.

3. Would the granting of the proposed variance be of substantial detriment to adjacent properties? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on adjacent properties.
 4. Would the granting of the proposed variance as depicted on the required site plan (see (3)(d), above), result in a substantial or undue adverse impact on the character of the neighborhood, environmental factors, traffic factors, parking, public improvements, public property or rights-of-way, or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the intent, provisions, and policies of this Title, the Comprehensive Plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the City or other governmental agency having jurisdiction to guide growth and development? The response to this question shall clearly indicate how the proposed variance will have no substantial impact on such long-range planning matters.
 5. Have the factors which present the reason for the proposed variance been created by the act of the Applicant or previous property owner or their agent (for example: previous development decisions such as building placement, floor plan, or orientation, lotting pattern, or grading) after the effective date of this Title (see Section 21.011.) The response to this question shall clearly indicate that such factors existed prior to the effective date of this Title and were not created by action of the Applicant, a previous property owner, or their agent.
 6. Does the proposed variance involve the regulations of Section 23.203 (Table of Land Uses)? The response to this question shall clearly indicate that the requested variance does not involve the provisions of this Section.
- (d) The Zoning Administrator shall forward the report per (4)(b), and if prepared the report per (4)(c), to the Zoning Board of Appeals for the Board's review and action. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Zoning Ordinance and Comprehensive Master Plan, the Zoning Administrator shall note this determination in the report.

(5) Review and Determination by Zoning Board of Appeals

- (a) Within 30 days after filing of the complete application as determined by the Zoning Administrator, the Zoning Board of Appeals shall hold a public hearing. Notice of the requested variance and the public hearing shall conform to the requirements of Section 62.23(7)(d) of Wisconsin Statutes. Said notice shall contain a description of the subject property and the proposed variance per Subsections (3)(a) and (c), above. In addition, at least ten days before said public hearing, the City Clerk shall mail an identical notice to the Applicant of the proposed variance; to the Clerk of any municipality whose boundaries are within 1,000 feet of any portion of the subject property; and to all property owners within 300 feet of the boundaries of the subject property as identified in Subsection (3)(a), above. Failure to mail said notice, to said clerk(s) of such neighboring municipalities, provided it is unintentional, shall not invalidate proceedings under this Section.

- (b) Within 30 days after the holding of the public hearing (per (5)(a), above, (or, within an extension of said period approved by the Applicant and granted by the Zoning Board of Appeals), the Zoning Board of Appeals make its findings per Subsection (4), above, and its determination regarding the application as a whole. The Zoning Board of Appeals may request further information and/or additional reports from The Zoning Administrator and/or the Applicant. The Zoning Board of Appeals may take final action on said request for approval of the requested variance at time of its initial meeting, or said proceedings may be continued from time-to-time for further consideration. The Zoning Board of Appeals shall make a written report of its findings and determinations following its determination.
 - (c) If the Zoning Board of Appeals fails to make a determination within 30 days after said public hearing, then the request for the variance shall be considered denied.
 - (d) Said report shall include a formal findings of facts developed and approved by the Zoning Board of Appeals concerning the requirements of (4)(c)1.-6., above.
- (6) **Effect of Denial:** No application for a variance which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.
- (7) **Limited Effect of a Variance:** Where the Zoning Board of Appeals has granted a variance, such approval shall neither change the use classification of the building or premises, nor give it any status as a nonconforming use other than that which it has as a result of the variance. Granting of a variance shall be considered as unique to the variance granted, and shall not be construed as precedent for any other proposed variance.
- (8) **Stay of Proceedings:** An application for a variance shall stay all legal proceedings furthering enforcement of any provisions of this Title from which the Applicant is requesting a variance, unless the Zoning Administrator certifies to the Zoning Board of Appeals after the request for the variance has been filed, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals, or by a Court of Record on application, on notice to the Zoning Administrator, and on due cause shown. *State Law Reference: Section 62.23(7)(e)5., Wisconsin Statutes.*
- (9) **Notice to the DNR:** The Zoning Board of Appeals shall transmit a copy of each application for a variance to conservancy regulations in the Shoreland-Wetland, Floodway, Floodplain, or Floodfringe Overlay Zoning Districts, and a copy of all Shoreland floodland appeals, to the Wisconsin Department of Natural Resources (DNR) for review and comment at least 10 days prior to any public hearings. A copy of all decisions relating to variances to shoreland-wetland conservancy regulations or to floodland regulations, and a copy of all decisions to shoreland-wetland conservancy and floodland appeals, shall be transmitted to the DNR within 10 days of the date of such decision.
- (10) **Fee:** A fee is required for this procedure. Refer to Section 24.935(1)(i).

Section 24.911 Interpretations

- (1) **Purpose:** The purpose of this Section is to assign responsibility for the official interpretation of the provisions of this Title, and to describe the required procedure for securing such interpretation.
- (2) **Initiation of Request for an Interpretation:** Proceedings for an interpretation may be initiated by any of the following four methods:
 - (a) an application of the owner(s) of the subject property;
 - (b) a recommendation of the Plan Commission;
 - (c) by action of the Common Council, or;
 - (d) by a request by The Zoning Administrator.
- (3) **Application Requirements:** All applications for interpretations, regardless of the party of their initiation per (2) above, shall be approved as complete by the Zoning Administrator a minimum of two weeks prior to the initiation of this procedure. The submittal of an application to the City Clerk to initiate this procedure shall not occur until the Zoning Administrator has certified acceptance of the complete application to the City Clerk. No placement of the application on any agenda, as an item to be acted upon, shall occur unless said certification has occurred. The item may be placed on any agenda as a discussion-only item, with the permission of the Zoning Administrator, without an application. Prior to the submittal of the Official Notice regarding the application to the newspaper by the City Clerk, the Applicant shall provide the City Clerk with 12 copies of the complete application as certified by the Zoning Administrator. Said complete application shall be comprised of all of the following:
 - (a) All requests for interpretations shall clearly indicate the part of the text of this Title for which the interpretation is requested and the specific questions the Applicant has regarding said text.
 - (b) If the requested interpretation relates to the application of this Title to a specific property, the additional following information shall be required:
 1. A map of the subject property showing all lands for which the interpretation is requested, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County as provided by the City of Delavan. Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;
 2. A map, such as the Land Use Plan Map, of the generalized location of the subject property in relation to the City as a whole;
 3. A written description of the reason for the requested interpretation and how the proposed interpretation relates to type of activities, buildings, and structures currently located on, and proposed for, the subject property; and,

4. A site plan of the subject property as proposed for development. Said site plan shall conform to any and all the requirements of Section 24.908(3).
- (c) If the requested interpretation relates to the classification or treatment of a particular land use under the provisions of this Title, a series of written responses to the following questions:
1. How is the subject land use (in general) in harmony with the purposes, goals, objectives, policies and standards of the City of Delavan Comprehensive Plan, this Title, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the City?
 2. How is the subject land use in harmony with the purposes, goals, objectives, policies and standards of the pertinent zoning district for which the interpretation is being sought?
 3. Do the potential public benefits of the proposed interpretation outweigh any and all potential adverse impacts of the proposed interpretation?

(4) Review by Zoning Administrator

- (a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify Applicant.
- (b) Upon notifying the Applicant that the application is complete, and within 30 days of such filing, the Zoning Administrator shall review the application and shall evaluate and comment on the written justification for the proposed interpretation provided in the application per Subsection (3), above. This review shall also take into consideration the standards for review presented in Subsection (5), below. The Zoning Administrator shall also evaluate the application to determine whether the requested is in harmony with the recommendations of the City of Delavan's Comprehensive Master Plan.
- (c) The Zoning Administrator shall forward a report to the Applicant indicating the interpretation of the Zoning Administrator. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Comprehensive Master Plan, the Zoning Administrator shall note this determination in the report.

(5) Standards for Review of Requested Interpretations: This Title shall be interpreted in a manner which is consistent with the purposes intended by the City of Delavan Common Council as noted in this Title and the Comprehensive Plan. The intent of the standards and supporting definitions of this Title is to protect both individual property owners and the general public from adverse impacts that may result from a proposed, modified, or existing land use. To this end, those called upon to interpret this Title shall proceed as follows:

- (a) Articulate certain public purpose(s) underlying the standard(s) for which an interpretation is required.

Rationale: Before any zoning interpretation is made, there must be an explicit discussion of certain purpose(s) for which the regulation was initially imposed. Each zoning regulation is intended to protect the interests of both present and future neighbors and the general public. Each standard is developed as a regulatory response to an identifiable potential negative impact. A sound interpretation of any standard cannot be ensured without careful analysis of the regulation and the end toward which it is directed. It is understood that there may be other public purposes underlying the interpretation which are not explicitly articulated.

- (b) Articulate the actual impact of various proposed interpretations, permitting flexibility in design and prohibiting any interpretation that lowers the protection afforded to the public.
Rationale: There is a critical distinction between an interpretation which provides a greater degree of design freedom to achieve a permitted land use, and an interpretation which permits a new or not previously permitted use, or which allows a use to be enlarged, or have its intensity increased beyond the degree specified in the Title. Design freedom is to be encouraged while a lowering of the standards of this Title is to be prohibited.
- (c) Determine whether the proposed interpretation will ensure a just balance between the rights of the landowner and all others who will be affected by that person's land use proposal.
Rationale: If an interpretation would merely allow a design solution that is slightly different from the one expressly stated or permitted, and if it would result in a same or greater degree of protection to any affected party (either the adjoining landowners, the public at large, and/or a future property owner or renter), such an interpretation may be appropriately made. Any interpretation which would result in any identifiable loss of protection for one group to the benefit of others is contrary to the spirit of this Title. Similarly, any interpretation which would either increase the nuisance potential of any use or alter the purpose for which the regulation was adopted shall be considered counter to the legislative intent of this Title. Any interpretation which will result in any loss of protection or increase in intensity beyond that already permitted shall only be made if the party interpreting this Title has the power to impose additional restrictions or requirements and exercise this power in order to protect the public.
- (d) This Title has been carefully designed by the Common Council to combine maximum achievement of public goals, and the protection of adjoining property owners while providing flexibility for property owners to use their land for a variety of uses consistent with the goals and objectives of the Comprehensive Plan for the City of Delavan. Great care has been taken to balance the rights of competing groups while achieving maximum protection with flexibility and a range of use options. Persons interpreting this Title should not substitute their own judgements for the legislative acts of the Common Council.
- (e) In addition to the Applicant's response to the questions required by Subsection (3) above, the following standards shall govern the decision on the requested interpretation on land use interpretation matters:
1. No interpretation shall allow the establishment of any land use which was previously considered and rejected by the Common Council on an application for an amendment to the Zoning Ordinance, the Official Zoning Map, or a previously applied for appeal from a requested interpretation.
 2. No interpretation shall permit a land use listed as a use permitted by right, a special use, or a conditional use in another zoning district if the use is not listed as permitted in the zoning district of the subject property (see Section 23.203).
 3. No interpretation shall permit a land use in a zoning district unless evidence is presented which demonstrates that the land use will comply with any and all regulations applicable to development in the subject property's zoning district (see Sections 23.203 and 23.206).
 4. No interpretation shall permit a land use in a particular zoning district unless such use is substantially similar to other uses permitted in that same district and is more similar to such other uses than to uses either not permitted in said district, or permitted in a more intensive district in the same zoning district category (see Sections 22.102 and 23.203).

5. If the proposed land use is more similar to a land use permitted only as a conditional use in the subject property's district than to a use permitted by right, then an interpretation permitting such use shall be conditioned upon the approval of a Conditional Use pursuant to Section 24.905.
- (6) **Effect of a Favorable Land Use Interpretation:** No interpretation finding a particular land use to be permitted or conditionally permitted in a specific zoning district shall authorize either the establishment of such use or the development, construction, reconstruction, alteration or moving of any building or structure. A favorable interpretation merely authorizes the preparation, filing, and processing of applications for any permits and approvals which may be required by this Title. These permits and approvals include, but are not limited to required site plans, special use permits, conditional uses, and Certificates of Occupancy.
- (7) **Limitations on Favorable Land Use Interpretation**
 - (a) No interpretation finding a particular land use to be permitted or conditionally permitted in a specified zoning district shall be valid for a period of more than 365 days from the date of issuance of the interpretation, unless a Building Permit is issued and development is actually begun within that period, and is thereafter diligently pursued to completion, or a Certificate of Occupancy is obtained and a use commenced within that period.
 - (b) An interpretation finding a particular land use to be permitted or conditionally permitted in a specified zoning district shall be deemed to authorize only that particular use at that particular location for which the interpretation was issued. The interpretation shall not be deemed to authorize any allegedly similar use for which a separate interpretation has not been issued. A favorable interpretation shall automatically expire and cease to be of any force or effect if the particular use for which it was issued shall, for any reason, be discontinued for a period of 365 consecutive days or more.
- (8) **Fee:** A fee is required for this procedure. Refer to Section 24.935(1)(j).

Section 24.912 Appeals of Zoning Interpretations

- (1) **Purpose:** The purpose of this Section is to provide regulations which enable the City to hear and decide requests for appeals from the interpretations of the Zoning Administrator per Section 24.911 as provided for by Wisconsin Statutes 62.23(7)(e)(7).
- (2) **Initiation of Request for Review of Zoning Interpretation:** Proceedings for the review of an appeal may be initiated by any person aggrieved, or by any officer, department, board, or bureau of the City affected by any decision of the Zoning Administrator.
- (3) **Time Limit for Filing An Appeal:** Any appeal of an interpretation under the provisions of this Section shall be made per the requirements of Subsection (4), below, within a period not exceeding 45 days from the date of issuance of the interpretation by the Zoning Administrator. Failure to initiate this appeal procedure within this 45 day period shall constitute a final and binding waiver of the right to appeal said interpretation.
- (4) **Application Requirements:** All applications for review of an interpretation, regardless of the party of their initiation per (2) above, shall be filed in the office of the Zoning Administrator, and shall be approved as complete by the Zoning Administrator a minimum of two weeks prior to the initiation of this procedure. The Zoning Administrator shall forward copies of said complete application to the office of the City Clerk, and to the Zoning Board of Appeals. Said complete application shall be accompanied by all of the following:
 - (a) A copy of pertinent items in the file on the matter at hand maintained by the Zoning Administrator, as identified by the Zoning Administrator and/or the Applicant.
 - (b) A written statement from the Applicant indicating the reasons why an appeal is justified, based upon an analysis of the Zoning Administrator's interpretation. This statement shall be dated and signed by the Applicant.
- (5) **Review by the Zoning Administrator:** The submitted appeal shall be reviewed by The Zoning Administrator in the following steps:
 - (a) The Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete or does not fulfill the requirements of this Ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify Applicant.
 - (d) Upon notifying Applicant that the application is complete, the Zoning Administrator shall review the application and shall evaluate and comment on the written justification for the appeal to the Zoning Board of Appeals as submitted by the Applicant. The Zoning Administrator shall also evaluate the application to determine whether the requested is in harmony with the recommendations of the City of Delavan's Comprehensive Master Plan.
 - (c) The Zoning Administrator shall forward a report to the Zoning Board of Appeals for review and action. If the Zoning Administrator determines that the proposal may be in conflict with the provisions of the City's Comprehensive Master Plan or Zoning Ordinance, the Zoning Administrator shall note this determination in the report.

(6) Review and Action by the Zoning Board of Appeals

- (a) Within 45 days after the filing of the complete application as determined by the Zoning Administrator, the Zoning Board of Appeals shall schedule a reasonable time and place for a public hearing to consider the application. Notice of the appeal and said public hearing shall conform to Section 63.23(7)(d) of the Wisconsin Statutes. Said notice shall contain a description of the issue per Subsection (4)(b), above. At least ten days before said public hearing, the City Clerk shall mail an identical notice to the Applicant; to the Clerk of any municipality whose boundaries are within 1,000 feet of any portion of the jurisdiction of this Title; and to any property owner within 300 feet of the subject property. Failure to mail said notice, provided it is unintentional, shall not invalidate proceedings under this Section.
- (b) Within 60 days after the filing of the complete application as determined by the Zoning Administrator (or, within an extension of said period requested in writing by the Applicant and granted by the Zoning Board of Appeals), the Zoning Board of Appeals make its findings per Subsection (3) above. The Zoning Board of Appeals may request further information and/or additional reports from The Zoning Administrator and/or the Applicant. The Zoning Board of Appeals may take final action on the application for appeal at the time of its initial meeting, or may continue the proceedings at Applicant's request. Said final action shall be followed by a written report which shall include a formal finding of facts developed and approved by the Zoning Board of Appeals concerning the request.
- (c) If the Zoning Board of Appeals fails to make a determination within 60 days after the filing of said complete application, then the request for the appeal shall be considered denied.

(7) Effect of Denial: No application for an appeal which has been denied (either wholly or in part) shall be resubmitted for a period of 12 months from the date of said order of denial, except on grounds of new evidence or proof of change of factors found valid by the Zoning Administrator.

(8) Limited Effect of a Favorable Ruling on an Appeal

- (a) No ruling by the Zoning Board of Appeals on an appeal finding a particular land use to be permitted or conditionally permitted in a specified zoning district shall be valid for a period of more than 365 days from the date of issuance of the ruling on the appeal, unless a building permit is issued and development is actually begun within that period, and is thereafter diligently pursued to completion, or a Certificate of Occupancy is obtained and a use commenced within that period.
- (b) A ruling by the Zoning Board of Appeals on an appeal finding a particular land use to be permitted or conditionally permitted in a specified zoning district shall be deemed to authorize only that particular use at that particular location for which the ruling was issued. The ruling shall not be deemed to authorize any allegedly similar use for which a separate ruling has not been issued. A favorable ruling shall automatically expire and cease to be of any force or effect if the particular use for which it was issued shall, for any reason, be discontinued for a period of 365 consecutive days or more.

(9) Fee: A fee is required for this procedure. Refer to Section 24.935(1)(k).

Section 24.913 Downtown Design Overlay Zoning District

- (1) **Purpose and Scope:** This district is intended to implement the urban design recommendations of the Downtown Concept Plan by preserving and enhancing the historical quality of the downtown, and by attaining a consistent visually pleasing image for the downtown area. As emphasized by said Plan, this district is designed to forward both aesthetic and economic objectives of the City by controlling the site design and appearance of development within the district in a manner which is consistent with sound land use, urban design, and economic revitalization principles. The application of these standards will ensure the long-term progress and broad participation toward these principles.
- (2) **Definitions**
 - (a) cornice: The topmost projecting portion of the entablature, or top portion of a building. This term also refers to any "crowning" projection of a building.
 - (b) header: A brick laid so that the end only appears on the face of the wall, as opposed to a stretcher, which is a brick laid so that the side only appears.
 - (c) kickplate: A horizontal area on the façade of a building located between the sidewalk/entrance pavement and the lowest storefront windows.
 - (d) sign band: A horizontal area on the façade of a building located between the transom and the cornice, which is typically opaque and provides a location for signage indicating the name of the establishment.
 - (e) sill: A horizontal, lower member or bottom of a door or window casing.
 - (f) transom: A horizontal bar of stone, wood or glass across the opening of a door or window.
- (3) **Designation of Downtown Design Overlay Zoning District Boundaries:** All properties having frontage on either side of the following described route, and all other properties located within the boundaries of described route: BEGINNING at the intersection of Walworth Avenue and Beloit Street; thence east along Walworth Avenue to Swan Creek; thence north along Swan Creek to McDowell Street; thence east along McDowell Street to Seventh Street; thence south along Seventh Street to Washington Street; thence west along Washington Street to Beloit Street; and thence north along Beloit Street to Walworth Avenue to the point and place of BEGINNING.
- (4) **Powers and Duties of the Zoning Administrator and Plan Commission for All Development:** Proposed changes to the exterior appearance of properties used exclusively for residential purposes and which do not have frontage on Walworth Avenue are hereby excluded from the provisions of this Section. All other applications within the Downtown Design Overlay Zoning District are subject to one of the following three processes, as determined by the Zoning Administrator:
 - (a) Applications which involve *only a renovation of the exterior appearance of a property* (such as repainting, re-roofing, residing or replacing with identical colors and materials approved by the City and listed in the attached Appendix), or a change in the exterior appearance of a property in absolute clear and complete compliance with the provisions of Subsection (6) below (as determined by the Zoning Administrator), are subject to **Downtown Renovation Review** by the Zoning Administrator. The Zoning Administrator shall determine whether the petition requires only certification of thorough compliance with the technical requirements set out in Subsection (5)(b) below. In part, this effort shall be guided by the attached appendix, which provides a list of sample projects which are eligible for this form of review;

- (b) Applications which involve *only a change in the appearance of a property* (such as painting, roofing, siding, architectural component substitution, fencing, paving, or signage), are subject to **Downtown Design Review** by the Zoning Administrator and the Plan Commission. The Zoning Administrator shall serve as the liaison between the applicant and the Plan Commission in facilitating the thorough and expedient review of an application, and shall ensure that the technical and procedural requirements of the Zoning Ordinance are met. The Plan Commission shall serve as the final review and determining body in these matters, and shall focus its review on whether the application complies with sound aesthetic, urban design, historic and architectural practices pursuant to the procedures outlined in Subsection (5)(b), below. In part, this effort shall be guided by the Downtown Plan Summary: Concept Design Handbook recommendations;
- (c) Applications which involve *modification to the physical configuration of a property* (such as grading, the erection of a new building, the demolition of an existing building, or the addition or removal of bulk to an existing building) are subject to **Downtown Project Review** by the Zoning Administrator and the Plan Commission. The Zoning Administrator shall serve as the liaison between the applicant and the Plan Commission in facilitating the thorough and expedient review of an application, and shall ensure that the technical and procedural requirements of the Zoning Ordinance are met. The Plan Commission shall serve as the initial and final review and determining body in these matters, and shall focus its review on whether the application complies with sound aesthetic, urban design, historic and architectural practices pursuant to the procedures outlined in Subsection (5)(b), below. In part, this effort shall be guided by the Downtown Plan Summary: Concept Design Handbook recommendations.

(5) Procedure for Project Review and Approval

- (a) **Downtown Renovation Review:** Applications which involve *only a renovation of the exterior appearance of a property* (such as repainting, re-roofing, residing or replacing with identical colors and materials approved by the City and listed in the attached Appendix), or a change in the exterior appearance of a property in absolute clear and complete compliance with the provisions of Subsection (6) below (as determined by the Zoning Administrator), are subject to **Downtown Renovation Review** by the Zoning Administrator. The Zoning Administrator shall serve to determine whether the applications simply requires certification of thorough compliance with the technical requirements below. In part, this effort shall be guided by the attached appendix, which provides a list of sample projects which are eligible for this form of review. (Refer to the procedure summary chart at the end of this Section.)

- 1. **Application Requirements:** All applications for Downtown Renovation Review shall be made to the Zoning Administrator and shall be accompanied by the Building Permit application, and, in addition, shall be accompanied by all of the following:
 - a. A clear depiction of the *existing appearance* of the property. Clear color photographs are recommended for this purpose. Scaled and dimensioned drawings of existing components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for alteration or replacement may be required by the Zoning Administrator;

- b. A clear depiction of the *proposed appearance* of the property. Paint charts, promotional brochures, and/or clear color photographs of replacement architectural components are recommended for this purpose. Scaled and dimensioned drawings of proposed components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for renovation or replacement may be required by the Zoning Administrator;
 - c. A written description of the proposed renovation, including a complete listing of proposed components, materials, and colors.
 - d. Written justification for the proposed renovation consisting of the reasons why the Applicant believes the requested alteration is in harmony with the recommendations of the Downtown Plan, particularly as evidenced by compliance with the standards set out in Subsection 2.b., below.
2. **Review by the Zoning Administrator:** The application for Downtown Renovation Review shall be reviewed by the Zoning Administrator as follows:
- a. Within 20 days after the filing of the application, the Zoning Administrator shall determine whether the application is complete and fulfills the requirements of this Ordinance. If the Zoning Administrator determines that the application is not complete and does not fulfill the requirements of this ordinance, he shall return the application to the Applicant. If the Zoning Administrator determines that the application is complete, he shall so notify Applicant.
 - b. Within 20 days after the filing and notification of a complete application, the Zoning Administrator shall review the application which: 1) shall evaluate its status as merely requiring Downtown Renovation Review; and, 2) shall evaluate and comment on the written justification for the proposed alteration provided in the application per Subsection (5)(a)1.d., above. The Zoning Administrator shall also evaluate the application based on the following question:
How is the proposed alteration in harmony with the recommendations of the Downtown Plan Summary Concept Design Handbook, particularly as evidenced by compliance with the standards of Subsection (6), below?
3. **Action by the Zoning Administrator**
- a. The Zoning Administrator may request further information and/or additional reports from the Applicant.
 - b. The Zoning Administrator may approve the application as originally proposed, may approve the application with modifications, may deny the application, or (where the proposal requires discretionary aesthetic judgement) shall forward the application to Plan Commission as an application for Downtown Design Review.
 - c. The Zoning Administrator shall not approve any application unless he makes written findings of facts regarding the application.
 - d. The approval of the proposed renovation shall be considered as the approval of a unique request, and shall not be construed as precedent for any other proposed alteration.

- (b) **Downtown Design Review:** Applications which involve *only a change in the appearance of a property* (such as painting, roofing, siding, architectural component substitution, fencing, paving, or signage), are subject to **Downtown Design Review** by the Zoning Administrator and the Plan Commission. The Zoning Administrator shall serve as the liaison between the Applicant and the Plan Commission in facilitating the thorough and expedient review of an application, and shall ensure that the technical and procedural requirements of the Zoning Ordinance are met. The Plan Commission shall serve as the final review and determining body in these matters, and shall focus its review on the application's compliance with sound aesthetic, urban design, historic and architectural practices per the procedures outlined below. In part, this effort shall be guided by the Downtown Design Guidelines of the Downtown Plan Summary Concept Design Handbook. (Refer to the procedure summary chart at the end of this Section.)
1. **Procedure:** Downtown Design Review proposals shall follow the procedures for Conditional Use Permits, see Section 24.905.
 2. **Application Requirements:** In addition to the application requirements for Conditional Use Permits, Section 24.905, all applications for Downtown Design Review shall be made to the Zoning Administrator and shall be accompanied by the Building Permit application, and, in addition, shall be accompanied by all of the following:
 - a. A clear depiction of the *existing appearance* of the property. Clear color photographs are recommended for this purpose. Scaled and dimensioned drawings of existing components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for alteration or replacement may be required by the Zoning Administrator or by the Plan Commission;
 - b. A clear depiction of the *proposed appearance* of the property. Paint charts, promotional brochures, and/or clear color photographs of replacement architectural components are recommended for this purpose. Scaled and dimensioned drawings of proposed components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for alteration or replacement may be required by the Zoning Administrator or by the Plan Commission;
 - c. A written description of the proposed modification, including a complete listing of proposed components, materials, and colors.
 - d. Written justification for the proposed alteration consisting of the reasons why the Applicant believes the requested alteration is in harmony with the recommendations of the Downtown Plan, particularly as evidenced by compliance with the standards set out in Subsection 2.b., below., using the following question to develop said written justification.

How is the proposed alteration in harmony with the recommendations of the Downtown Plan Summary Concept Design Handbook, particularly as evidenced by compliance with Subsection (6), below?
- (c) **Downtown Project Review:** Applications which involve *modification to the physical configuration of a property* (such as the erection of a new building, the demolition of an existing building, or the addition or removal of bulk to an existing building) are subject to **Downtown Project Review** by the Zoning Administrator and the Plan Commission. Specifically, the powers of the Zoning Administrator and Plan Commission within the Downtown Design Overlay Zoning District shall be as

described in the following sections. The Zoning Administrator shall serve as the liaison between the Applicant and the City in facilitating the thorough and expedient review of an application, and shall ensure that the technical and procedural requirements of the Zoning Ordinance are met. The Plan Commission shall serve as the initial and final discretionary review body, and shall focus its review on the application's compliance with sound land use, site design and economic revitalization practices. In part, this effort shall be guided by the Downtown Streetscape Concept of the Downtown Plan. (Refer to the procedure summary chart at the end of this Section.)

1. **Procedure:** Downtown Project Review proposals shall follow procedures for Conditional Use Permits, refer to Section 24.905.
2. **Application Requirements:** In addition to the application requirements for Conditional Use Permits, Section 24.905, all applications for Downtown Project Review shall be made to the Zoning Administrator and shall be accompanied by the Building Permit application, and, in addition, shall be accompanied by all of the following:
 - a. A clear depiction of the *existing appearance* of the property. Clear color photographs are recommended for this purpose. Scaled and dimensioned drawings of existing components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for alteration or replacement may be required by the Zoning Administrator or by the Plan Commission.
 - b. A clear depiction of the *proposed appearance* of the property. Paint charts, promotional brochures, and/or clear color photographs of replacement architectural components are recommended for this purpose. Scaled and dimensioned drawings of proposed components such as windows, doors, railings, fencing or other site components, and/or detailed building elevations which are proposed for alteration or replacement may be required by the Zoning Administrator or by the Plan Commission.
 - c. For all projects involving a new building, or an addition exceeding 100 square feet of gross floor area, a detailed site plan which provides the following information:
 - i. A title block which indicates the name and address of the current property owner, developer and project consultants;
 - ii. The date of the original plan and the latest date of revision to the plan;
 - iii. A north arrow and a graphic scale. Said scale shall not be smaller than one inch equals 100 feet;
 - iv. All property lines and existing and proposed right-of-way lines with bearings and dimensions clearly labeled;
 - v. 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;
 - vi. All existing and proposed buildings, structures, and paved areas, including walks, drives, decks, patios, fences, utility poles, drainage facilities, and walls;
 - vii. All required building setback lines;
 - viii. A legal description of the subject property;

- ix. The location, type and size of all signage on the site;
- x. The location, type and orientation of all exterior lighting on the subject property;
- xi. The location of all access points, parking and loading areas on the subject property, including a summary of the number of parking stalls and labels indicating the dimension of such areas;
- xii. The location of all outdoor storage areas;
- xiii. The location and type of any permanently protected green space areas;
- xiv. The location of existing & proposed drainage facilities;
- xv. In the legend, the following data for the subject property:
 - Lot Area;
 - Floor Area;
 - Floor Area Ratio;
 - Impervious Surface Area;
 - Impervious Surface Ratio; and
 - Building Height
- d. A detailed landscaping plan of the subject property, at the same scale as the main plan, showing the location, species and size of all proposed plant materials.
- e. A written description of the proposed project, including a complete listing of proposed components, materials, and colors.
- f. Written justification for the proposed project consisting of the reasons why the Applicant believes the requested alteration is in harmony with the recommendations of the Downtown Plan, particularly as evidenced by compliance with the standards set out in Subsection 2.b., below., using the following question to develop said written justification:

How is the proposed project in harmony with the recommendations of the Downtown Plan Summary Concept Design Handbook, particularly as evidenced by compliance with the standards of Subsection (6), below?

(6) Additional Recommendations Permitted Under the Design Review Process

- (a) The Zoning Administrator is hereby authorized to make recommendations for, or require modifications to, a proposed application for Downtown Renovation Review; and to make recommendations for the modification of a proposed application for Downtown Design Review or Downtown Project Review.
- (b) The Plan Commission is hereby authorized to make recommendations for, or require modifications to, a proposed application for Downtown Design Review and Downtown Project Review.

(7) Appeals: Appeals from the decisions of the Zoning Administrator and Plan Commission may be made per the provisions of the Municipal Code and State Statutes.

(8) Penalty: Penalty for violation of the provisions of this ordinance shall be per the provisions of Section 24.936.

(9) **Downtown Design Standards**

(a) **Overall Design Theme:** The design theme for the Downtown area is based on historic commercial and residential architectural styles which dominated the economic growth period from 1890 through the 1920s, as treated in detail on page 38 of the 1991 City of Delavan Comprehensive Master Plan and also in the Downtown Plan Summary Concept Design Handbook.

1. **Nonresidential Development:** The design theme varies by location.

a. **Walworth Avenue Frontage (RC-354, 6/9/15):** Along the Walworth Avenue frontage, from Main Street to Fifth Street, the nonresidential design theme is characterized by a variety of architectural styles popular at the time, including Italianate, Romanesque and Neoclassical, in a two story format with office, storage or residential located over commercial. The façades of these buildings have a traditional main street storefront appearance, are relatively small in scale, have street-yard and side-yard setbacks of zero feet, have prominent horizontal and vertical patterns formed by regularly-spaced window and door openings, detailed cornice designs, rich detailing in masonry coursing, window detailing and ornamentation, and are predominantly of brick, stone or wood. Exterior building materials are of high-quality. Exterior appurtenances are minimal. Exterior colors are harmonious, simple and muted. Exterior signage blends, rather than contrasts with buildings in terms of coloring (complementary to building), location (on-building), size (small) and number (few).

b. **Remainder of Downtown Design Overlay Zoning District:** In this area, the nonresidential design theme is characterized by a variety of architectural styles popular throughout the entire 20th Century. Building styles, heights, setbacks and details vary significantly. In the desired theme, exterior building materials are of high-quality. Exterior appurtenances are minimal. Exterior colors are harmonious, simple and muted. Exterior signage blends, rather than contrasts with buildings in terms of coloring (complementary to building), location (on-building), size (small) and number (few).

2. **Residential Development:** This theme is characterized by a variety of architectural styles popular at the time, including Queen Anne, Gothic, High Victorian, Georgian, and Prairie. These homes have generous street-yard, side-yard and rear-yard setbacks, and are well-landscaped with a mixture of canopy and understory yard trees, and foundation shrubs and/or flower beds. For illustrative purposes, examples of architectural styles which tend to have elements *incompatible* with Downtown historic styles include (with no attempt to be inclusive) Spanish Mission, Scandinavian Modern, Bavarian, and California Contemporary.

(b) **Non-Residential Construction**

1. **General:** Nonresidential construction, including new structures, building additions, building alterations, and restoration or rehabilitation shall correspond to the Downtown Design Guidelines of the Downtown Plan Summary Concept Design Handbook as determined by the Plan Commission and as evidenced by certain existing structures within the Downtown and by the following requirements for building setback; height; building mass; horizontal rhythms (created by the placement and design of façade openings and related elements such as piers, columns); vertical rhythms (created by the placement and design of façade details such as sills, transoms, cornices and sign bands); roof forms; exterior materials; exterior surface features and appurtenances; exterior colors; exterior signage; on-site landscaping; exterior lighting; parking and loading area design; and the use of screening.

2. **Building Setback:** Throughout the district, the setback of buildings from street-yard and side-yard property lines shall be compatible with existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission.

3. **Building Height:** Throughout the district, the height of buildings shall be compatible with existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. In no instance shall buildings be more than one story taller or shorter than the height of a building of similar use on one of the immediately adjoining properties, which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission.

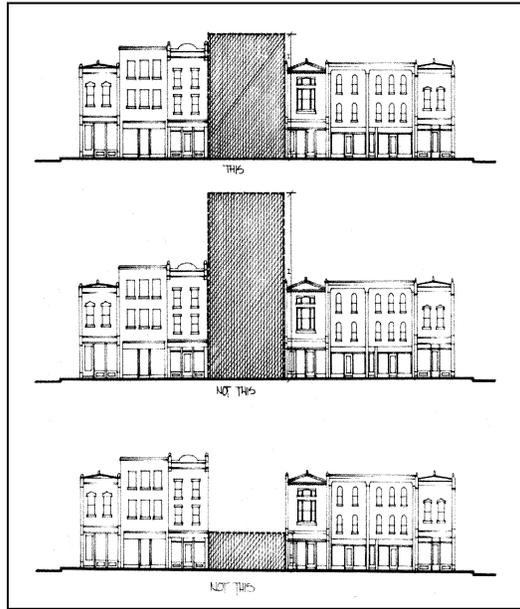


Figure 1

4. **Building Mass:** Throughout the district, the mass of buildings shall be compatible with existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. The characteristic proportion (relationship between façade height and width) of the general design theme shall be maintained. Building mass for large structures (with a façade area exceeding 5,000 square feet) shall be disguised through the use of façade articulations, or through the use of exterior treatments which give the impression of directly adjoining individual buildings, as determined appropriate by the Plan Commission. (See Figures 2 and 3.)

5. **Horizontal Rhythms:** Along Walworth Avenue between Main Street and Fifth Street, the horizontal pattern of exterior building elements formed by patterns of building openings for windows and doors, and related elements such as piers and columns shall be spaced at regular intervals across all visible façades of the building, and shall be compatible with those of existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. (See Figures 2 and 3.)

6. **Vertical Rhythms:** Along Walworth Avenue between Main Street and Fifth Street, the floor heights on main façades shall appear visually in proportion to those of adjoining buildings. The rhythm of the ground floor shall harmonize with the rhythm of upper floors. The vertical pattern of exterior building elements formed by patterns of building openings for windows and doors, and related elements such as sills, headers, transoms, cornices and sign bands shall be compatible in design and elevation with those of existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission.

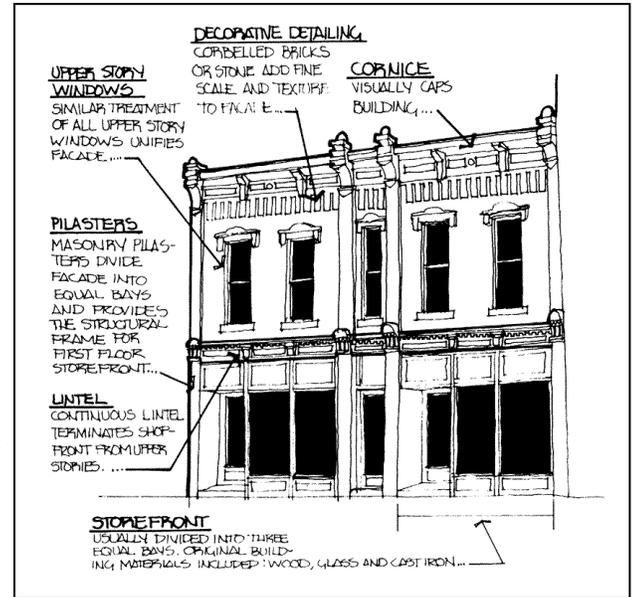


Figure 2

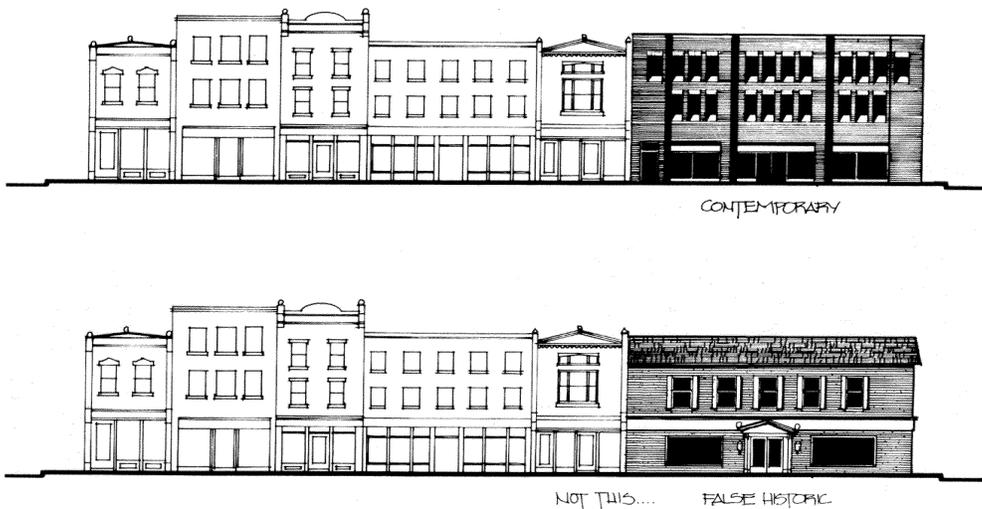


Figure 3

7. **Roof Forms:** Along Walworth Avenue between Main Street and Fifth Street, flat or gently sloping roofs which are not visible from the street shall be used. Mansards or other exotic roof shapes not characteristic of the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission, shall not be used. Throughout the District, roof shapes not characteristic of the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission, shall not be used.
8. **Exterior Materials:** Selected building materials shall be compatible with those of existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. In addition:

- a. **Masonry:** Along Walworth Avenue between Main Street and Fifth Street, stone or brick facing should be of even coloration and consistent size. Cinder block, concrete block, concrete slab, or concrete panel shall not be permitted.
 - b. **Siding:** Along Walworth Avenue between Main Street and Fifth Street, wood or thin board textured vinyl or textured metal clapboard siding may be appropriate – particularly if the proposed non-masonry exterior was used on a building which conforms to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. In certain instances clapboard, board and batten may be in keeping with the general design theme. Asphalt shingles shall not be permitted.
 - c. **Glazing:** Along Walworth Avenue between Main Street and Fifth Street, clear, or slightly tinted glass or related glazing material shall be used. Mirrored glass, smoked glass, or heavily tinted glass shall not be permitted.
9. **Exterior Surface Appurtenances:** Exterior surface appurtenances shall be compatible with those of existing buildings in the immediate area which conform to the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. In addition:
- a. Along Walworth Avenue between Main Street and Fifth Street, the traditional storefront design theme (characterized by strong horizontal and vertical rhythms formed by building openings, storefront columns, storefront cornices, upper cornices, kickplates, signbands, large display windows, and transom windows) shall be employed for all new nonresidential buildings – including retail, office, professional service, personal service, maintenance, lodging, entertainment, and storage uses. (See Figure 3, above, and pages 15-18 of the Downtown Plan Summary Concept Design Handbook for visual examples.)
 - b. Throughout the district, avoid cluttering building façades with brackets, wiring, meter boxes, antennae, gutters, downspouts and other appurtenances. Unnecessary signs shall also be avoided. Where necessary, such features shall be colored so as to blend in, rather than contrast, with the immediately adjacent building exterior. Extraneous ornamentation which is inconsistent with the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission, is also prohibited.
 - c. **Awnings:** Throughout the district, awning size, color and placement should complement the architectural character of the building, as determined by the Plan Commission. Soft, weather-treated canvas or vinyl materials which allow for flexible or fixed installation shall be used. Aluminum or suspended metal canopies shall be prohibited. Signage applied to awnings shall be simple and durable. Backlit awnings are prohibited.
10. **Exterior Colors:** Selected exterior colors for structures and appurtenances including fixtures, but not including exterior signage which is regulated per (9)(b)11., below, shall be compatible and harmonious with those of existing buildings in the immediate area which conform to the general design theme notes in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. Specifically, throughout the district: (C-735, 1/21/97)
- a. Primary (red, blue, green, and yellow) colors, black, and fluorescent, "day glow", and/or "neon" colors shall not be permitted. Where such colors constitute a component of a standardized corporate theme or identity, muted versions of such colors shall be used.
 - b. High gloss paints, lacquers, varnishes or other "shiny" non-glazing surfaces shall not be used.

- c. Color combination schemes shall be limited to no more than three different colors for all the structures and appurtenances on a property. (Varying shades, tints or intensities of a color shall count as a different color for this purpose.)
 - d. Color schemes shall be used consistently throughout the property, including on both the upper and lower portions of buildings, and on all façades of a building or structure.
11. **Exterior Signage:** All signage which is visible from any point outside of the building or structure shall be compatible and harmonious with the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. Signage regulations are provided in Subchapter 23-8. In addition:
- a. **Number of Signs:** No more than three exterior signs for the same business shall be visible from any single vantage point on or off the subject property. (C-735, 1/21/97)
 - b. **Area of Signage:** Signage area shall comply with the requirements for the Business Commercial (BC) district in Section 23.806(6).
 - c. **Types of Signage:** Wall signs, projecting signs (smaller than five square foot) and awning signs (see Subsection 9. d. above, for additional restrictions for awning signs) may be used for individual businesses. Roof signs, mobile signs and portable signs are not permitted in any instance. Holiday and special event signs shall be regulated per Section 23.807 of this ordinance. (C-735, 1/21/97)
 - d. **Group Development Signs:** Group Development signs may be wall, projecting, awning or freestanding signs. Such freestanding signs shall be limited to one per lot, shall not exceed the height of the principle building on the subject property, shall be limited in area to a maximum of one square foot of sign area for every two feet of frontage along the public street located closest to the freestanding sign, and shall in no instance exceed the area allocated in Table 23.806(6). The base of freestanding signs shall be fully landscaped per the requirements of Subsection 12. d. below. The supports of freestanding signs shall be constructed of materials and in a style which is consistent with the materials and style of the principle structure on the site, and with the Downtown Design Guidelines of the Downtown Plan Summary Concept Design Handbook as determined by the Plan Commission.
 - e. **Sign Colors:** Fluorescent shall not be permitted. Where, however, fluorescent colors constitute a component of a standardized corporate theme or identify, muted versions of such colors shall be used. Color combination schemes shall be limited to no more than five different colors for all the structures and appurtenances on a property. (Varying shades, tints or intensities of a color shall count as a different color for this purpose.) Color schemes and lettering styles shall be used consistently on all signage used throughout the property. (C-735, 1/21/97)
 - f. **Sign Materials:** Permitted sign materials include glass, plastic, wood, brass, metal leaf, metal plates, canvass or related fabric, or etched glass, stone or concrete. (C-735, 1/21/97)
 - g. **Sign Illumination:** Illumination of exterior signage shall be limited to shielded spotlight. The lighting element of such fixtures shall not be visible from public rights-of-way or adjoining properties. Flashing signs (including illuminated awnings with or without messages) are not permitted, including neon and related illumination systems.

- h. **Sign Location:** Wall signs, canopy signs and projecting signs shall not be located on any portion of upper stories. The location of signs shall fit the building. (See Figure 4, below.)



Figure 4

- i. **Removal of Signs:** Illegal nonconforming signs, poorly maintained signs, and obsolete signs pertaining to a closed business, shall be removed. The property owner shall be responsible for the removal of such signs.
12. **On-Site Landscaping and Screening:** On-site landscaping is not required within portions of the Downtown Design Overlay Zoning District located along Walworth Avenue between Main Street and Fifth Street, except to provide vegetated ground cover for pervious (non-paved/roofed) surfaces, and to provide screening and shading of on-site paved areas.
- a. **Groundcover:** All areas which are not covered by impervious paving or structures shall be covered with vegetative groundcover. Appropriate groundcover includes grasses, forbs, and shrubs.
- b. **On-Site Paved Areas:** On-site landscaping shall also be provided for on-site paved areas used for outdoor seating, vehicular parking, or loading, except for pedestrian and vehicle walks and drives which connect such areas to public rights-of-way (such as driveways and walks to building entrances).
- i. **Required Screening:** On-site paved areas, including parking lots, loading areas, circulation drives, and patios shall be partially screened from the view of public rights-of-way and adjoining properties by, at minimum, a continuous vegetated hedge with a minimum width of five feet, and a height of between 40 and 60 inches. This hedge may be supplemented by trees and/or compatible iron, masonry, or wood fencing, and/or berming.
- ii. **Required Shading:** In addition, one canopy tree (with a minimum installed breast height caliper of 2½ inches) shall be provided within, or within five feet of the edge of, on-site paved areas for every 2,000 square feet (or fraction thereof) of paved area.

- c. **Exterior Storage and Utility Areas:** Trash storage areas, air conditioning units, and related storage and utility areas and components shall be fully screened from the view of adjoining properties, public rights-of-way, and customer areas.
 - d. **Freestanding Signs:** The base of freestanding signs shall be fully concealed by plants to a minimum height of twenty-four inches.
 - e. Additional landscaping standards are found in Subchapter 23-6.
13. **Exterior Lighting:** Throughout the district, on-site exterior lighting shall be compatible and harmonious with the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission. Specifically:
- a. **Pedestrian Lighting:** The design, color, height, location and light quality of on-site pedestrian lighting shall be consistent with the pedestrian lighting fixtures recommended as a component of Downtown Plan Summary Concept Design Handbook.
 - b. **Vehicular Circulation Lighting:** The design, color, height, location and light quality of on-site vehicular circulation lighting shall be consistent with the lighting fixtures recommended as a component of the Downtown Plan Summary Concept Design Handbook.
 - c. Additional lighting standards are found in Section 23.707.
14. **Rehabilitation and Restoration:** New projects, building additions, and new appurtenances and features shall comply with the provisions of 1-13, above. The following standards shall apply where existing construction is proposed for rehabilitation and/or restoration:
- a. **In General (RC-354, 6/9/15):** Buildings shall be restored relying on physical evidence (such as photographs, original drawings, and existing architectural details) to the extent possible and practicable, in keeping with the design themes noted in Subsection (9)(a)1.a., 1.b. and 2., above, and the more specific standards provided in Subsections i. through ix., below. In determining the extent possible and practicable, the Plan Commission shall be guided by the recommendations of City Staff, and may also seek the recommendations of outside experts in historic preservation and building restoration. Specifically, throughout the Downtown Design Overlay Zoning District:
 - i. **Exterior Materials and Surface Features (RC-354, 6/9/15):** Materials and features identical to the original shall be used. Where such knowledge is lacking, materials and features in common use at the time of building erection, as determined by the Plan Commission, shall be used. Significant architectural features, including cornices, moldings and coursings shall be preserved or replaced with identical features and materials where possible and practicable. The following potential flexibility may be considered for any portion of a building façade that faces toward an interior side yard, rear yard, or alley: Where an exterior material is deteriorating, or is at risk of deteriorating significantly, the Plan Commission may grant approval to protect and conceal said exterior area with an approved exterior material which is similar in appearance to a material found elsewhere on the building. Approved exterior materials may include: thin-profile masonry; stucco or EIFS equivalent; wood siding or cement board, smart board; thick vinyl equivalent; modern exterior metals, glass and acrylics; and wood, cement, and composite composite equivalents for cornices, lintels, pilasters, and other exterior details.
 - ii. **Windows and Doors:** The size, proportion and rhythm of original windows and doors shall not be altered. Original window and door openings shall not be blocked, except with a dark opaque panel placed behind the window or door to preserve the appearance of the opening. Where now blocked in another manner, blocked window and doors shall be restored using said

method. Window and door features, including lintels, sills, architraves, shutters, pediments, hoods and hardware, shall be preserved where possible, or replaced with identical features and materials. Dark frames (ie. anodized bronze) shall be used to replace storefront and upper story windows. Clear aluminum finishes and mill finish aluminum storm windows are prohibited. Real shutters and awnings shall be used if there is evidence that they were a component of the original building design. Vinyl and plastic shutters and awnings shall be prohibited.

- iii. **Shop Fronts:** Shop fronts should fit inside the original shop front in terms of all three dimensions (vertical, horizontal and front to back articulation);
 - iv. **Display Windows:** Display windows should be restored to their original appearance.
 - v. **Entrances and Porches:** Original porches and steps shall be retained, except as required to meet accessibility standards. Porches, steps and related enclosures which do not comply with the architectural design theme, as determined by the Plan Commission, shall be removed.
 - vi. **Roofs:** The original roof shape and character of visible materials shall be retained. Original architectural features which give the roof its essential character, including dormer windows, cupolas, cornices, brackets, chimneys and weathervanes, shall be preserved if in keeping with the architectural design theme as determined by the Plan Commission.
 - vii. **Painting and Color:** See Subsection (b) 10., above.
 - viii. **Signage:** Any and all signage, existing upon the adoption date of this Ordinance, which does not comply with the standards of Subsection (b) 11., above may be continued so long as well maintained. However, the maintenance of such legal nonconforming signs shall be limited to repair of the sign structural or lighting elements, and to the repainting or replacement of the sign face with identical new material, message, and original appearance. Should a change in material, message, or original appearance be desired, the legal nonconforming sign shall be removed.
 - ix. **Cleaning:** Structural components and exterior materials shall be cleaned when necessary, and with only the gentlest possible methods. Low pressure water and soft natural bristle brushes are acceptable. Sandblasting is never acceptable. Other methods shall be pre-approved by the Plan Commission.
- (c) **Residential Construction:** Proposed residential construction, located on properties having frontage on Walworth Avenue between Beloit Street and Seventh Street, including new structures, building additions, building alterations, and restoration or rehabilitation shall be reviewed per Section (5) above and shall correspond to the Downtown Design Guidelines of the Downtown Plan Summary Concept Design Handbook as determined by the Plan Commission. The building setback, height, mass, roof form, exterior materials, exterior surface appurtenances, exterior colors, landscaping and lighting shall be compatible and harmonious with the general design theme noted in Subsection (9)(a)1.a., 1.b., and 2., above, as determined by the Plan Commission.
- (d) **Designated Historic Structures** *(Reserved.)*

Process for Residential and Nonresidential Proposal Review in the Downtown

9 Procedure 9	9 Type of Downtown Proposal 9		
	Renovation ¹	Design ²	Project ³
1. Optional meeting with Plan Commission to discuss proposal	No	optional	recommended
2. Submit Zoning Permit Application to the Zoning Administrator, including:	Yes	Yes	Yes
a. Color photos/drawings of existing property, with close-ups of details	Yes	Yes	Yes
b. Drawings/depictions of proposed changes to the site & bldg. exterior	Yes	Yes	Yes
c. For new projects or additions <input type="checkbox"/> 100 sf, provide Site Plan including: <ul style="list-style-type: none"> i. Title block with name of current property owner and Applicant; ii. Date of original plan graphic and date of most recent revision; iii. North arrow and graphic scale; iv. Property lines and right-of-way lines (with distances & bearings); v. Easements; vi. Existing and proposed buildings, structures and paved areas; vii. Required building setback lines; viii. Legal description of the property; ix. Location, size, type and orientation of all exterior signage; x. Location, type and orientation of all exterior lighting; xi. Location of all vehicle access drives, circulation areas, loading areas and parking stalls; xii. Location of all outdoor storage and display areas (including trash facilities); xiii. Location and purpose of all drainage facilities; xiv. Location of all permanent green space areas; and, xv. Site Summary Data: Lot Area, Floor Area, Floor Area Ratio, Impervious Surface Area, Impervious Surface Ratio 	No	No	Yes
d. Landscaping Plan showing the location, size and type of plants	No	No	Yes
e. Written description of proposal, including exterior materials & colors	Yes	Yes	Yes
f. Written justification of proposal answering: How does the proposal comply with the Downtown design standards?	Yes	Yes	Yes
3. Review and action by the Zoning Administrator/City Staff	Yes	Yes	Yes
4. Review and action by the Plan Commission on site design	No	No	Yes
5. Review and action by the Plan Commission on aesthetics	No	Yes	Yes
6. If proposal is approved: <ul style="list-style-type: none"> a. Record documents with Register of Deeds; b. Work must start within 365 days and be complete within 730 days; c. Conditions of approval run with the property. If the proposal is denied: It may not be resubmitted for 12 months	Yes	Yes	Yes

KEY: Yes: Step is required. No: Step is not required.

¹ Only a renovation of the exterior appearance of a property.

² Only a change in the appearance of a property.

³ Modification to the physical configuration of a property.

Section 24.914 Planned Infill Development District Procedures

(1) Purpose

- (a) The purpose of this Section is to provide regulations which govern the procedure and requirements for the review and approval, or denial, of proposed Planned Infill Developments, and to provide for the possible relaxation of certain development standards pertaining to the underlying standard zoning district.
- (b) Planned Infill Developments are intended to provide more incentives for infill development and redevelopment in areas of the community which are experiencing a lack of significant reinvestment. Furthermore, Planned Infill Developments are designed to forward both the aesthetic and economic development objectives of the City by controlling the site design and the appearance, density or intensity of development in terms of more flexible requirements for land uses, density, intensity, bulk, landscaping, and parking requirements. In exchange for such flexibility, the Planned Infill Development shall provide a much higher level of site design, architectural control and other aspects of aesthetic and functional excellence than normally required for other developments.
- (c) Planned Infill Developments have the potential to create undesirable impacts on nearby properties if allowed to develop simply under the general requirements of this Title. In addition to such potential, Planned Infill Developments also have the potential to create undesirable impacts on nearby properties which potentially cannot be determined except with a binding site plan, landscape plan and architectural plan, and on a case by case basis. In order to prevent this from occurring, all Planned Infill Developments are required to meet certain procedural requirements applicable only to Planned Infill Developments, in addition to the general requirements of this Title. A public hearing process is required to review a request for a Planned Infill Development. This process shall essentially combine the process for a zoning map amendment with that required for a conditional use, with several additional requirements.

(2) Provision of Flexible Development Standards for Planned Infill Developments

- (a) **Permitted Location:** Planned Infill Developments shall be permitted with the approval of a Planned Infill Development Overlay Zoning District, specific to the approved Planned Infill Development, within the Residential Single Family (RS-3), Residential Mixed (RM-8), Residential Multi-family (RM-12), Office Neighborhood (ON), Business Local (BL), Business Central (BC), Manufacturing General (MG), Manufacturing Heavy (MH), Manufacturing Light (ML), Office Park (ON), Business Neighborhood (BN), and Business Regional (BR) Zoning Districts. (RC-159, 6/10/03)
- (b) **Flexible Development Standards:** The following exemptions to the development standards of the underlying and overlay zoning district(s) may be provided with the approval of a Planned Infill Development: (RC-363, 4/12/16)
 1. **Land Use Requirements:** All land uses listed as "Residential", "Institutional", or "Commercial" in Section 23.203, and permitted in the base zoning district, may be permitted within a Planned Infill Development.
 2. **Density and Intensity Requirements:** All requirements listed in Sections 23.304 and 23.305 for residential density and nonresidential intensity may be waived within a Planned Infill Development.
 3. **Bulk Requirements:** All bulk requirements listed in Sections 23.403, 23.404, 23.405, 23.406 and 23.407 may be waived within a Planned Infill Development. Furthermore, the 75 foot minimum setback from the ordinary high water mark requirement for buildings, structures, and pavement in Section 23.504(1)(h)1c and 23.505(1) may be over-ridden and reduced to no less than 50 feet within a Planned Infill Development. (RC-363, 4/12/16)
 4. **Landscaping Requirements:** All requirements listed in Sections 23.604, 23.605, 23.606, 23.607, 23.608, 23.609 and 23.610 may be waived within a Planned Infill Development.

5. Parking and Loading Requirements: All requirements listed in Sections 23.704 and 23.705 may be waived within a Planned Infill Development.

(c) **Requirements to Depict All Aspects of Development:** Only development which is explicitly depicted on the required site plan approved by the Common Council as part of the approved Planned Infill Development, shall be permitted, even if such development (including all aspects of land use, density and intensity, bulk, landscaping, and parking and loading), is otherwise listed as permitted in Section 23.403-23.407. Requested exemptions from these standards shall be made explicit by the Applicant in the application, and shall be recommended by the Plan Commission and approved explicitly by the Common Council. If not so requested and approved, such exemptions shall not be permitted.

(3) **Initiation of Request for Approval of a Planned Infill Development:** Proceedings for approval of a Planned Infill Development shall be initiated by:

- (a) an application of the owner(s) of the subject property;
- (b) a recommendation of the Plan Commission; or
- (c) by action of the Common Council.

(4) **Application Requirements:** All applications for proposed Planned Infill Developments, regardless of the party of their initiation per (3) above, shall be approved as complete by the Zoning Administrator a minimum of two weeks prior to the initiation of this procedure. The Zoning Administrator shall forward copies of said complete application to the office of the City Clerk. Said application shall apply to each of the process steps in (5) through (8) below.

(5) **PID Process Step 1: Pre-Application Conference**

- (a) The Applicant shall contact the Zoning Administrator to place an informal discussion item for the PID on the Plan Commission agenda.
- (b) No details beyond the name of the Applicant and the identification of the discussion item as a PID is required to be given in the agenda.
- (c) At the Plan Commission meeting, the Applicant shall engage in an informal discussion with the Plan Commission regarding the potential PID. Appropriate topics for discussion may include the location of the PID, general project themes and images, the general mix of dwelling unit types and/or land uses being considered, approximate residential densities and non-residential intensities, the general treatment of natural features, the general relationship to nearby properties and public streets, and relationship to the Master Plan.
- (d) Points of discussion and conclusions reached in this stage of the process shall be in no way be binding upon the Applicant or the City, but should be considered as the informal, non-binding basis for proceeding to the next step.

(6) **PID Process Step 2: Concept Plan**

- (a) The Applicant shall provide the Zoning Administrator with a draft PID Concept Plan Submittal Packet for a determination of completeness prior to placing the proposed PID on the Plan Commission agenda for Concept Plan review. This submittal packet shall contain all of the following items, prior to its acceptance by the Zoning Administrator and placement of the item on a Plan Commission agenda for Concept Plan review:
 - 1. A location map of the subject property and its vicinity at 11" x 17", as depicted on a copy of the City of Delavan Land Use Plan Map;
 - 2. A general written description of proposed PID including:
 - a. general project themes and images;
 - b. the general mix of dwelling unit types and/or land uses;

- c. approximate residential densities and non-residential intensities as described by dwelling units per acre, floor area ratio and impervious surface area ratio;
 - d. the general treatment of natural features;
 - e. the general relationship to nearby properties and public streets;
 - f. the general relationship of the project to the Master Plan;
 - g. an initial draft list of zoning standards which will not be met by the proposed PID and the location(s) in which they apply and, a complete list of zoning standards which will be more than met by the proposed PID and the location(s) in which they apply. Essentially, the purpose of this listing shall be to provide the Plan Commission with information necessary to determine the relative merits of the project in regard to private benefit versus public benefit, and in regard to the mitigation of potential adverse impacts created by design flexibility; and,
3. A written description of potentially requested exemption from the requirements of the underlying zoning district, in the following order:
 - a. Land Use Exemptions;
 - b. Density and Intensity Exemptions;
 - c. Bulk Exemptions;
 - d. Landscaping Exceptions;
 - e. Parking and Loading Requirements Exceptions;
 4. A conceptual plan drawing (at 11" x 17") of general land use layout and general location of major public streets and/or private drives. Applicant may submit copies of a larger version of the plan in addition to the 11" x 17" reduction.
- (b) Within ten working days of receiving the draft PID Concept Plan Submittal Packet, the Zoning Administrator shall determine whether the submittal is complete. Once the Zoning Administrator has received a complete packet, the proposed PID Concept Plan shall be placed on the Plan Commission agenda.
 - (c) At the Plan Commission meeting, the Applicant shall engage in an informal discussion with the Plan Commission regarding the conceptual PID. Appropriate topics for discussion may include any of the information provided in the PID Concept Plan Submittal Packet, or other items as determined by the Plan Commission.
 - (d) Points of discussion and conclusions reached in this stage of the process shall in no way be binding upon Applicant or the City, but should be considered as informal, non-binding basis for proceeding to the next step. The preferred procedure is for one or more iterations of Plan Commission review of the Concept Plan to occur prior to introduction of the formal rezoning petition which accompanies GDP application.

(7) PID Process Step 3: General Development Plan (GDP)

- (a) The Applicant shall provide the Zoning Administrator with a draft GDP Plan Submittal Packet for a determination of completeness prior to placing the proposed GDP on the Plan Commission agenda for GDP review. This submittal packet shall contain all of the following items, prior to its acceptance by the Zoning Administrator and placement of the item on a Plan Commission agenda for GDP review:
 1. A location map of the subject property and its vicinity at 11" x 17", as depicted on a copy of the City of Delavan Land Use Plan Map;

2. A map of the subject property showing all lands for which the planned infill development is proposed, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County (as provided by the City of Delavan). Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;

3. A general written description of proposed PID including:
 - a. general project themes and images;
 - b. the general mix of dwelling unit types and/or land uses;
 - c. approximate residential densities and non-residential intensities as described by dwelling units per acre, floor area ratio and impervious surface area ratio;
 - d. the general treatment of natural features;
 - e. the general relationship to nearby properties and public streets;
 - f. the general relationship of the project to the Master Plan,
 - g. a Statement of Rationale as to why PID zoning is proposed. This shall identify barriers that the Applicant perceives in the form of requirements of standard zoning districts and opportunities for community betterment the Applicant suggests are available through the proposed PID zoning.
 - h. a complete list of zoning standards which will not be met by the proposed PID and the location(s) in which they apply and a complete list of zoning standards which will be more than met by the proposed PID and the location(s) in which they apply shall be identified. Essentially, the purpose of this listing shall be to provide the Plan Commission with information necessary to determine the relative merits of the project in regard to private benefit versus public benefit, and in regard to the mitigation of potential adverse impacts created by design flexibility.
 - i. A written description of potentially requested exemption from the requirements of the underlying zoning district, in the following order:
 1. Land Use Exemptions;
 2. Density and Intensity Exemptions;
 3. Bulk Exemptions;
 4. Landscaping Exceptions;
 5. Parking and Loading Requirements Exceptions.

4. A General Development Plan Drawing at a minimum scale of 1"=100' (11" x 17" reduction shall also be provided by Applicant) of the proposed project showing at least the following information in sufficient detail to make an evaluation against criteria for approval:
 - a. A conceptual plan drawing (at 11" x 17") of the general land use layout and the general location of major public streets and/or private drives. The Applicant may submit copies of a larger version of the plan in addition to the 11" x 17" reduction;

- b. location of recreational and open space areas and facilities and specifically describing those that are to be reserved or dedicated for public acquisition and use;
 - c. statistical data on minimum lot sizes in the development, the approximate areas of large development lots and pads, density/intensity of various parts of the development, floor area ratio, impervious surface area ratio and landscape surface area ratio of various land uses, expected staging, and any other plans required by the Plan Commission or Common Council; and
 - d. notations relating the written information provided in (7)(a)3.a.-f., above to specific areas on the GDP Drawing.
5. A general conceptual landscaping plan for subject property, noting approximate locations of foundation, street, yard and paving, landscaping, and the compliance of development with all landscaping requirements of this Ordinance (except as noted in the listing of exceptions) and the use of extra landscaping and bufferyards.
 6. A general signage plan for the project, including all project identification signs and concepts for public fixtures and signs (such as street light fixtures and/or poles or street sign faces and/or poles) which are proposed to vary from City standards or common practices.
 7. Written justification for the proposed Planned Infill Development. (The Applicant is advised to use the requirements of the conditional use procedure to develop said written justification.)
 8. The process for review and approval of the GDP shall be identical to that for conditional use permits per Section 24.905 of this ordinance and (if land is to be divided) to that for preliminary and final plats of subdivision per the Municipal Code.
 9. All portions of an approved GDP not fully developed within five years of final Common Council approval shall expire, and no additional PID-based development shall be permitted, and on undeveloped portions, the PID zoning shall revert to the base zoning district following the expiration of all building permits issued for the PID for said undeveloped portions of the property. The Common Council may extend this five years period by up to five additional years via a majority vote following a public hearing.

(8) PID Process Step 4: Precise Implementation Plan (PIP)

- (a) After the effective date of the rezoning to PID/GDP, the Applicant may file an application for a proposed Precise Implementation Plan (PIP) with the Plan Commission. This submittal packet shall contain all of the following items, prior to its acceptance by the Zoning Administrator and placement of the item on a Plan Commission agenda for PID review:
 1. A location map of the subject property and its vicinity at 11" x 17", as depicted on a copy of the City of Delavan Land Use Plan Map;
 2. A map of the subject property showing all lands for which the planned infill development is proposed, and all other lands within 300 feet of the boundaries of the subject property, together with the names and addresses of the owners of all lands on said map as the same appear on the current records of the Register of Deeds of Walworth County (as provided by the City of Delavan). Said map shall clearly indicate the current zoning of the subject property and its environs, and the jurisdiction(s) which maintains that control. Said map and

all its parts and attachments shall be submitted in a form which is clearly reproducible with a photocopier, and shall be at a scale which is not less than one inch equals 800 feet. All lot dimensions of the subject property, a graphic scale, and a north arrow shall be provided;

3. A general written description of proposed PIP including:
 - a. specific project themes and images;
 - b. the specific mix of dwelling unit types and/or land uses;
 - c. specific residential densities and non-residential intensities as described by dwelling units per acre, floor area ratio and impervious surface area ratio;
 - d. the specific treatment of natural features;
 - e. the specific relationship to nearby properties and public streets.
 - f. a Statement of Rationale as to why PID zoning is proposed. This shall identify barriers that the Applicant perceives in the form of requirements of standard zoning districts and opportunities for community betterment the Applicant suggests are available through the proposed PID zoning.
 - g. a complete list of zoning standards which will not be met by the proposed PIP and the location(s) in which they apply and a complete list of zoning standards which will be more than met by the proposed PIP and the location(s) in which they apply shall be identified. Essentially, the purpose of this listing shall be to provide the Plan Commission with information necessary to determine the relative merits of the project in regard to private benefit versus public benefit, and in regard to the mitigation of potential adverse impacts created by design flexibility.
4. A Precise Implementation Plan Drawing at a minimum scale of 1"=100' (11" x 17" reduction shall also be provided by Applicant) of the proposed project showing at least the following information in sufficient detail to make an evaluation against criteria for approval:
 - a. A PIP site plan conforming to any and all the requirements of Section 24.908(3). If the proposed Planned Infill Development is a cluster development (per Section 23.206(1)(b) through (f)) or a group development (per Section 23.208) a proposed preliminary plat or conceptual plat shall be provided in addition to the required site plan.
 - b. location of recreational and open space areas and facilities and specifically describing those that are to be reserved or dedicated for public acquisition and use;
 - c. statistical data on minimum lot sizes in the development, the precise areas of all development lots and pads, density/intensity of various parts of the development, floor area ratio, impervious surface area ratio and landscape surface area ratio of various land uses, expected staging, and any other plans required by the Plan Commission or Common Council; and
 - d. notations relating the written information provided in (8)(a)3.a.-f., above to specific areas on the GDP Drawing.
5. A landscaping plan for subject property, specifying the location, species, and installed size of all trees and shrubs. This plan shall also include a chart which provides a cumulative total for each species, type and required location (foundation, yard, street, paved area or bufferyard) of all trees and shrubs.
6. A series of building elevations for the entire exterior of all buildings in the Planned Infill Development, including detailed notes as to the materials and colors proposed.

7. A general signage plan for the project, including all project identification signs, concepts for public fixtures and signs (such as street light fixtures and/or poles or street sign faces and/or poles), and group development signage themes which are proposed to vary from City standards or common practices.
8. A general outline of the intended organizational structure for a property owners association, if any; deed restrictions and provisions for private provision of common services, if any.
9. A written description which demonstrates the full consistency of the proposed PIP with the approved GDP.
10. Any and all variations between the requirements of the applicable PID/GDP zoning district and the proposed PIP development; and,
11. The Applicant shall submit proof of financing capability pertaining to construction and maintenance and operation of public works elements of the proposed development.
12. The area included in a Precise Implementation Plan may be only a portion of the area included in a previously approved General Implementation Plan.
13. The Precise Implementation Plan (PIP) submission may include site plan and design information, allowing the Plan Commission to combine design review and review of the PIP. Design review may, at the choice of the Applicant, be deferred until a later time when specific site and building developments will be brought forth.
14. The Plan Commission or Common Council may specify other plans, documents or schedules that must be submitted prior to consideration or approval of the PIP, as such may be relevant to review.
15. The process for review and approval of the PID shall be identical to that for conditional use permits per Section 24.905 of this ordinance and (if land is to be divided) to that for preliminary and final plats of subdivision per the Municipal Code.
16. All portions of an approved PID/PIP not fully developed within five years of final Common Council approval shall expire, and no additional PID-based development shall be permitted, and on undeveloped portions, the PID zoning shall revert to the base zoning district following the expiration of all building permits issued for the PID for said undeveloped portions of the property. The Common Council may extend this five years period by up to five additional years via a majority vote following a public hearing.
17. The City may require the Applicant to provide surety, with the approval of the City Attorney, to ensure the development of public and private improvements.

Section 24.915 Wellhead Protection Overlay Zoning District Procedures (RC-192, 11/9/04)

(1) Purpose:

- (a) Residents in the City of Delavan depend exclusively on groundwater from groundwater aquifers underlying the City of Delavan for a safe water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of the Wellhead Protection Overlay District is to establish land use regulations and restrictions in order to protect the City's water supply and well fields, and to promote the health, safety and general welfare of the residents of the City of Delavan.
- (b) Statutory authority of the City to enact these regulations was established by the Wisconsin Legislature in ss.62.23(7)(a) and (c), Wis. Stats. Under these statutes, the City has the authority to enact this ordinance, effective within the incorporated areas of the City.

(2) Definitions:

In addition to the definitions set forth at Section 21.034 of the Municipal Code of the City of Delavan, the following definitions shall apply to the terms of Section 23.915 and this Section 24.915:

- (a) Clean-up Costs: All costs directly associated with the release of contaminants in violation of the ordinance, including, but not limited to, the cost of any consultants or professionals hired by the City, the costs of contractors hired by the City, City costs for oversight, review, documentation and administration of a clean-up effort, and all costs incurred by the City in prosecuting an alleged violation of this ordinance or in bringing a court action for injunctive or other legal relief as provided for in this ordinance.
- (b) Discharge: Any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective Federal or State Permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying, or dumping of a regulated substance into the waters or lands of the State.
- (c) Hazard Chemicals: The phrase "hazardous chemicals" shall mean those chemicals identified by OSHA Criteria under 40 CFR Part 370.
- (d) Person: Any individual, public or private corporation, company, partnership, firm, association, owner or operator, political subdivision of this State, and any state, Federal or interstate agency or an agent or employee thereof.
- (e) Regulated Substances: Chemicals and chemical mixtures that are or may be health hazards. Health hazards for chemicals and chemical mixtures are typically identified on Material Safety Data Sheets (MSDS) available from the substance manufacturer or supplier. Substances packaged for consumption by humans or animals are not considered Regulated Substances. Regulated substances include, but are not limited to, the following:
 - (i) Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure, including carcinogens, toxic and highly toxic agents, irritants, corrosives, sensitizers, hepatotoxins, agents that act on the hematopoietic system, reproductive toxins, and agents which damage the lungs, skin, eyes, or mucous membranes as defined in 29 CFR 1910.1200, Appendix A, "Health Hazard Definitions (Mandatory)", and any future amendments thereto.
 - (ii) Mixtures of chemicals which have been tested as a whole and have been determined to be a health hazard.
 - (iii) Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and comprises one (1.0) percent or greater of the composition on a weight per unit weight basis.

- (iv) Mixtures of chemicals which include a carcinogen if the concentration of the carcinogen in the mixture is one tenth of one (0.1) percent or greater of the composition on a weight per unit weight basis.
- (v) Ingredients of mixtures prepared within the Wellhead Protection Overlay Zoning District in cases where such ingredients are health hazards but comprise more than one tenth of one (0.1) percent of the mixture on a weight per unit basis of carcinogenic, or more than one (1.0) percent of the mixture on a weight per unit weight basis if non-carcinogenic.
- (vi) Petroleum and non-solid petroleum derivatives (except non-PCB dielectric fluids used in equipment for transmission of electric power to homes and businesses).

(3) **Designation of Wellhead Protection Overlay Zoning District Boundaries**

The Wellhead Protection Overlay Zoning District shall include property located, in whole or in part, in those areas described in Exhibits "A" and "B", incorporated herein by reference, and depicted on the official zoning map for the City of Delavan and described thereon as the "Wellhead Protection Overlay Zoning District". (RC-279, 10/13/09)

(4) **Permitted Uses**

Subject to the limitation on available uses set forth in the underlying, basic zoning district, the following are exclusive permitted uses within the Wellhead Protection Overlay Zoning District, subject to the separation distances requirement set forth at Section 24.915(9)(b) herein:

- (a) Public and private parks, playgrounds and beaches, provided there are no on-site wastewater disposal systems or holding tanks.
- (b) Wildlife and natural and woodland areas.
- (c) Biking, hiking, skiing, nature, equestrian and fitness trails.
- (d) Municipally sewered residential development.
- (e) Routine tillage, planting, and field management operations in support of agricultural crop production subject to the regulations set forth at Section 24.915(9)(c) herein.
- (f) Residential use of above ground LP gas tanks for heating, not to exceed 1,000 gallons.
- (g) Commercial and industrial establishments that are municipally sewered and whose aggregate use, storage, handling and/or production of Regulated Substances does not exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.

(5) **Conditional Uses**

Subject to the limitation on available uses set forth in the underlying, basic zoning district, the following are conditional uses within the Wellhead Protection Overlay Zoning District, subject to the separation distance requirement set forth at Section 24.915(9)(b) herein:

- (a) Nurseries for ornamental plants, green houses, and associated retail sales outlets.
- (b) Pesticide and fertilizer storage and uses associated with a Permitted Use or Conditional Use.
- (c) Golf courses.
- (d) Commercial and industrial establishments that are municipally sewered and whose aggregate use, storage, handling and/or production of Regulated Substances does exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.
- (e) Subject to the prohibition against underground storage tanks set forth herein, motor vehicle services, including service stations, automobile repair, renovation and automobile body working.

(6) **Conditional Use Procedure**

In addition to those procedures set forth more specifically in the City of Delavan zoning code, any conditional use application for a use listed in this Section 24.915 shall first be submitted for review and an advisory, non-binding recommendation by the Wellhead Protection Review Committee to the Plan Commission. For purpose of this ordinance, the Wellhead Protection Review Committee shall be comprised of the City Director of Public Works, City Engineer, City Utility Director and City Utility Manager, and the City Administrator. The Wellhead Protection Review Committee may establish written procedures not inconsistent with the terms of this Ordinance governing their role in the conditional use process; provided, however that the following requirements shall be met for all conditional use permits issued for conditional uses listed in the Wellhead Protection Overlay Zoning District and to be undertaken within the boundaries of the Wellhead Protection Overlay Zoning District:

- (a) No conditional use permit shall be issued for any conditional use listed in the Wellhead Protection Overlay Zoning District without first obtaining an advisory recommendation by the Wellhead Protection Review Committee.
- (b) The Wellhead Protection Review Committee shall make its recommendation within 30 days following receipt of both an application for a conditional use permit and all information deemed necessary by the Wellhead Protection Review Committee in order to render a decision.

(7) **Prohibited Uses**

All uses not otherwise listed as a Permitted Use in Section 24.915(4) herein or listed as a Conditional Use pursuant to Section 24.915(5) herein shall be prohibited uses within the Wellhead Protection Overlay Zoning District, including, but not limited to, the following uses:

- (a) Cemeteries.
- (b) Chemical manufacturers.
- (c) Coal storage.
- (d) Industrial lagoons and pits.
- (e) Landfills and any other solid waste facility, except post-consumer recycling.
- (f) Manure and animal waste storage.
- (g) Mining; including sand and gravel pits.
- (h) Pesticide and fertilizer dealership, pesticide and fertilizer transfer facility or pesticide and fertilizer storage facility not incidental to a permitted use.
- (i) Railroad yards and maintenance stations.
- (j) Rendering plants and slaughterhouses.
- (k) Salt or deicing material storage.
- (l) Salvage or junk yards.
- (m) Septage or sludge spreading, storage or treatment.
- (n) Septage, wastewater, or sewage lagoons.
- (o) Private on-site wastewater treatment systems or holding tanks.
- (p) Stockyards and feedlots.
- (q) Stormwater filtration basins without pre-treatment, including vegetative filtration and/or temporary detention.
- (r) Wood preserving operations.
- (s) Underground hydrocarbon, petroleum or hazardous chemical storage tanks.
- (t) Dry cleaners.

(8) **Existing Non-Conforming Uses**

Existing non-conforming uses within the Wellhead Protection Overlay Zoning District shall be governed by the requirements of Section 23.207 of the City of Delavan zoning ordinance.

(9) **Additional Regulations Within the Wellhead Protection Overlay Zoning District**

(a) **Spills, Leaks or Discharges**

- (i) No person shall intentionally or negligently discharge or cause the discharge of a Regulated Substance within the Wellhead Protection Overlay Zoning District.
- (ii) In addition to any reporting requirement imposed by State or Federal law, any person with direct knowledge of a spill, leak or discharge of a Regulated Substance, within the Wellhead Protection Overlay Zoning District shall, if such spill, leak or discharge escapes containment or contacts a non-impervious ground surface and is not immediately and completely remediated, give notice to the City of Delavan Fire Department utilizing the county wide 911 service and give notice to the City of Delavan Director of Public Utilities of the City of Delavan by telephone within thirty (30) minutes. The notification shall include at a minimum, the location of the incident, name and telephone number of the contacting party, date and time thereof, type of substance(s), concentration and volume, and control or corrective action taken.
- (iii) Any entity or person who spills, leaks or discharges said substance(s) shall be liable for any reasonable expense, loss or damages incurred by the City of Delavan in response to such an incident, in addition to the amount of any fines imposed on account thereof under State and Federal law; said entity or person shall document and maintain sufficient records so as to reflect accurately the circumstances related to any such incident and develop and implement procedures to substantially eliminate the likelihood of reoccurrence of such spills, leaks or discharges as soon as practicable following the incident, but no later than one hundred eighty (180) days after the incident.

(b) **Separation Distance Requirements**. The separation distance requirement specified in NR 811.16(4)(d) shall be maintained, including, but not limited to the following:

- (i) Fifty feet between a well and a storm sewer main.
- (ii) Two hundred feet between a well and any sanitary sewer main, sanitary sewer manhole, lift station or single family residential fuel oil tank. A lesser separation distance may be allowed for sanitary sewer mains where the sanitary sewer main is constructed of water main materials and joints and pressure tested in place to meet current AWWA C600 specifications. In no case may the separation distance between a well and a sanitary sewer main be less than 50 feet.
- (iii) Four hundred feet between a well and a septic tank or soil absorption unit receiving less than 8,000 gallons per day, a cemetery or a storm water drainage pond.
- (iv) Six hundred feet between a well and any gasoline or fuel oil storage tank installation that has received written approval from the department of commerce or its designated agent under s. Comm 10.10.

- (v) One thousand feet between a well and land application of municipal, commercial or industrial waste; the boundaries of a landspreading facility for spreading petroleum-contaminated soil regulated under ch. NR 718 while that facility is in operation; industrial, commercial or municipal waste water lagoons or storage structures; manure stacks or storage structures; and septic tanks or soil absorption units receiving 8,000 gallons per day or more.
- (vi) Twelve hundred feet between a well and any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility; sanitary landfill; any property with residual groundwater contamination that exceeds ch. NR 140 enforcement standards that is shown on the department's geographic information system registry of closed remediation sites; coal storage area; salt or deicing material storage area; gasoline or fuel oil storage tanks that have not received written approval from the department of commerce or its designated agent under s. Comm 10.10; bulk fuel storage facilities; and pesticide or fertilizer handling or storage facilities.

(c) Excessive Use of Fertilizer. No agricultural crop production shall apply fertilizer in amounts in excess of soil test recommendations produced by the University of Wisconsin or the University of Wisconsin Extension for that field. Such tests shall account for nutrients from existing crops and manure in determining crop nutrient need.

(d) Business Compliance Permits. On a change of ownership or occupancy of any business or leased business space within the Wellhead Protection Overlay Zoning District the new owner or tenant/occupant shall, prior to undertaking any business use of said property, obtain from the City of Verification of Compliance Permit and shall make the property available to the appropriate City officials for inspection as a pre-condition to issuance of said Verification of Compliance Permit. The City shall produce an application form and charge a permit fee in an amount to be determined by the City from time to time.

(10) **Operations and Emergency Contingency Plan**

Any person or business who stores or uses Regulated Substances shall prepare, file with the City and subsequently maintain a current emergency contingency plan satisfactory to the City which shall detail how the person intends to respond to any emergency which may cause or threaten to cause environmental pollution or how they intend to respond to a spill, leak or discharge of a Regulated Substance, including a requirement in said emergency contingency plan requiring the person to notify the City of Delavan, Walworth County and other appropriate government officials or agencies.

(11) **Enforcement**

(a) Penalty. Any person who violates, neglects or refuses to comply with any of the provisions of this ordinance shall be subject to a penalty as provided by the City of Delavan Zoning Code.

(b) Injunction. The City of Delavan may, in addition to any other remedy, seek an injunction or restraining order against the party alleged to have violated the provisions of this ordinance, the cost of which shall be charged to the defendant in such action.

- (c) Clean-Up Costs. As a substitute for, or in addition to any other action, the City of Delavan may commence legal action against both the person who spills, leaks or discharges a Regulated Substance in violation of this ordinance and the owner of the facility whereupon the Regulated Substance was spilled, leaked or discharged to recover the costs of any alleged violation of this ordinance, together with the costs of prosecution. The person who spills, leaks or discharges such Regulated Substances in violation of this ordinance and the person who owns the facility whereon the Regulated Substances have been spilled, leaked or discharged shall be jointly and severally responsible for the cost of clean-up.