SUBCHAPTER 3
ADMINISTRATION, ENFORCEMENT AND APPEALS

295-301. Authority. The administration of this chapter shall be vested in the commissioner of city development and commissioner of neighborhood services, with the commissioner of neighborhood services charged with the duty and authority to issue certificates of occupancy and construction permits. The commissioner of neighborhood services shall issue no certificate or permit for the use or development of any land or structure, nor for the erection, alteration, relocation, extension or substantial improvement of any structure, or part thereof, if the intended use or the plans and specifications therefor are not in all respects in conformity with the provisions of this chapter. In issuing permits, all city departments, officers and employes shall check all proposed work, activities, construction and uses for compliance with the provisions of the zoning code.

295-303. Occupancy. Pursuant to s. 200-42, it shall be unlawful to occupy or use any building, structure or premises unless a certificate of occupancy has been issued by the commissioner of neighborhood services. A separate certificate shall be obtained for each occupancy or use, as specified in this chapter. However, pursuant to s. 200-43, a temporary certificate of occupancy may be issued by the commissioner of neighborhood services for occupancy and use of any building, structure or premises prior to completion of construction. In addition, a conditional certificate of occupancy may be issued by the commissioner of neighborhood services for a period of up to 180 days for the temporary occupancy and use of any building, structure or premises, or part thereof, prior to the approval of a variance or special use permit by the board or the approval of a zoning map amendment by the common council. Issuance of a conditional certificate of occupancy shall not imply that the board or common council is going to approve the applicant's request. The commissioner of neighborhood services is authorized to require whatever temporary precautionary measures are necessary to safeguard the public as a condition of issuance of a conditional certificate of occupancy. A conditional certificate of occupancy may be issued only when the following criteria have been met:

1. The applicant has applied for a certificate of occupancy and paid the required fees.

2. If board action is required, the applicant has filed an application for a special use permit, use variance or dimensional variance with the board and paid all required fees related to the appeal. If a zoning map amendment is required, the applicant has filed a map amendment application with the department and paid all required fees, and a common council file number has been established.

3. The commissioner of neighborhood services has determined that the occupancy or use will not jeopardize life, health or property and will not adversely impact the adjoining property or the neighborhood in general.

4. All required inspections have been completed and passed.

5. The applicant agrees to discontinue the use within 30 days of the decision of the board or common council, if the appeal or zoning map amendment is not approved.

6. The applicant agrees to hold the city harmless for any claims resulting from the use of the property during the period the conditional certificate of occupancy is in effect.

295-304. Conditional Construction Permits. A conditional construction permit may be issued by the commissioner of neighborhood services for a period of up to 180 days for the development of land or the erection, alteration, relocation, extension or substantial improvement of a structure, or part thereof, prior to the approval of a variance or special use permit by the board or the approval of a zoning map amendment by the common council. Issuance of a conditional construction permit shall not imply that the board or common council will approve the applicant's request. A conditional construction permit may be issued only when the following criteria have been met:

1. The department has determined that plans for the proposed construction are in compliance with the building code and with all aspects of the zoning code except those provisions for which a permit denial letter has been sent to the applicant.

2. If board action is required, the applicant has filed an application for a special use permit, use variance or dimensional variance with the board and paid all required fees related to the appeal. If a zoning map amendment is required, the applicant has filed a map amendment application with the department and paid all required fees, and a common council file number has been established.

3. The commissioner of neighborhood services has determined that the occupancy or use will not jeopardize life, health or property and will not adversely impact the adjoining property or the neighborhood in general.

4. The applicant agrees to return the site to its previous condition and use within 30 days of the decision of the board or common council, if the appeal or zoning map amendment is not approved.

5. The applicant agrees to hold the city harmless for any claims resulting from construction at the premises during the period the conditional construction permit is in effect.

295-305. Temporary Use Permits. A temporary use permit authorizing any of the temporary uses listed in the use tables of the various zoning districts, except a live entertainment special event, for which no temporary use permit is required, may be issued by the commissioner of neighborhood services in accordance with the following provisions:

1. APPLICATION AND FEE. A completed application form, accompanied by the required fee specified in s. 200-33, shall be submitted to the commissioner neighborhood services.

2. APPROVAL PROCEDURE. The commissioner of neighborhood services shall approve, approve with conditions, or deny a complete application within 5 working days. No notice or public hearing shall be required.

3. FINDINGS. To approve the application for a temporary use, the commissioner of neighborhood services shall make the following findings:

a. The proposed temporary use will be located, operated and maintained in a manner consistent with the policies of the comprehensive plan and the provisions of this chapter.

b. Approval of the application will not be detrimental to property or improvements in the surrounding area or to the public health, safety or general welfare.

4. CONDITIONS OF APPROVAL. When issuing a temporary use permit, the commissioner of neighborhood services may impose conditions, including but not limited to permit term limitations, necessary to:

a. Achieve the general purposes of this code and the specific purposes of the zoning district in which the temporary use will be located.

b. Protect the public health, safety and general welfare.

c. Ensure operation and maintenance of the temporary use in a manner compatible with existing uses on adjoining properties.

295-306. Council Member Notification of Certain Limited Uses. Whenever the department issues a certificate of occupancy for any small group shelter care facility, small foster home, group home, group foster home or community living arrangement classified by this chapter as a limited use in the zoning district in which the facility is located, the department shall provide written notice of such issuance, including the location and description of the facility, to the local common council member. Notification by electronic mail shall be deemed sufficient for compliance with this requirement.

295-307. Amendments To The Zoning Text Or Map. **1.** PURPOSE. The provisions of this section are intended to prescribe procedures by which amendments may be made to this chapter, including changes to the text and the boundaries of districts as shown on the zoning map.

2. INITIATION OF MAP AMENDMENTS. An amendment to the base zoning map or the establishment of, or amendment to, an overlay district may be initiated by any one of the following:

a. By Application. A person with an ownership, possessory or contractual interest in the land subject to the application may apply for a map amendment.

b. By Common Council. The common council may initiate a map amendment by its own motion.

c. By Petition. The owners of 50% or more of the area of land included in a proposed amendment may submit to the common council a petition requesting the zoning map amendment.

3. PROCEDURE FOR MAP AMENDMENT. Consideration of a proposed map amendment shall be in accordance with the following procedure:

a. Introduction of Map Amendment. Upon receipt of a valid application, the affidavit required by s. 295-313 and the required fee, a valid petition, the affidavit required by s. 295-313 and the required fee, or a motion of common council, the department shall prepare an ordinance and map representing the requested amendment.

b. Referral to City Plan Commission. Upon introduction, the ordinance to make the zoning map amendment shall be referred to the city plan commission pursuant to s. 62.23, Wis. Stats.

c. Staff Actions. The department shall establish a time and date for a public hearing, notify affected property owners at least 10 days in advance of the hearing and prepare a staff report on the map amendment. In the case of any map amendment relating to a floodplain overlay zone, the department shall also submit the amendment and the notice of public hearing to the Wisconsin department of natural resources.

d. City Plan Commission. The commission shall hold at least one public hearing on any proposed map amendment. Notice of the public hearing shall be provided according to the commission's by-laws. Upon completion of its public hearing, the commission shall prepare a report of its findings and recommendations on the proposed map amendment and file a copy of the report with the common council.

e. Zoning, Neighborhoods and Development Committee. Following notice, review and report by the city plan commission, the common council's zoning, neighborhoods and development committee shall hold a class 2 public hearing after notifying the applicant, petitioners, owners of property under consideration and owners of property immediately surrounding and within at least 200 feet thereof, including streets and alleys. Upon conclusion of the public hearing, the committee shall prepare a recommendation for submittal to the common council.

f. Common Council. Upon receipt of the recommendation of the zoning, neighborhoods and development committee, the council shall either approve or disapprove the map amendment or refer the amendment back to the zoning, neighborhoods and development committee for additional consideration.

4. STANDARDS. A proposed amendment to the zoning map may be approved if the common council finds:

a. The proposed amendment is consistent with other provisions of this chapter and with the comprehensive plan.

b. The adoption of the proposed amendment will not adversely affect the public health, safety and general welfare of residents of the city.

5. PROTEST OF MAP AMENDMENT. In case of a protest against a map amendment, duly signed and acknowledged by the owners of 20% or more of the areas of the land included in the proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of the opposite land, the amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the common council voting on the proposed change. A protest against a proposed change, or any modification to a protest, shall be submitted no later than 48 hours prior to the date of common council action on the proposed change.

6. INITIATION OF TEXT AMENDMENTS. An amendment to the zoning text shall be initiated as an ordinance introduced to the common council.

7. PROCEDURE FOR TEXT AMENDMENT.

a. Referral of Text Amendment. Upon introduction of an ordinance to amend zoning code text to the common council, the city clerk shall simultaneously refer the ordinance to the city plan commission and to the zoning code technical committee.

b. Zoning Code Technical Committee. b-1. Composition. The zoning code technical committee shall be composed of one representative each from the city attorney's office, the department of neighborhood services, the department of city development and the legislative reference bureau, designated by the respective agency heads. The representative of the legislative reference bureau shall serve as chair of the committee.

b-2. Staff. Staff for the zoning code technical committee shall be provided by the city clerk's office.

b-3. Procedure. The zoning code technical committee shall review each proposed zoning text amendment referred to it for legality and enforceability, administrative efficiency and consistency with the format of the zoning code. Within 30 days of the date on which the city clerk refers the proposed text amendment to the committee, the committee shall provide a report of its findings with respect to these 3 criteria, as well as any recommended changes to the proposed amendment, to the zoning, neighborhoods and development committee.

c. City Plan Commission. The city plan commission shall hold a class 2 public hearing on the proposed zoning text amendment and, after receiving a report from the department, submit its report and recommendation to the zoning, neighborhoods and development committee.

d. Zoning, Neighborhoods and Development Committee. Following receipt of reports from the city plan commission and the zoning code technical committee, the zoning, neighborhoods and development committee shall prepare a recommendation for the common council. The zoning, neighborhoods and development committee may provide a recommendation to the common council prior to receipt of a report from the zoning code technical committee if the 30-day period described in par. b-3 has lapsed.

e. Common Council. Upon receipt of the report of the zoning, neighborhoods and development committee, the council shall either approve or disapprove the text amendment or refer the amendment back to the zoning, neighborhoods and development committee for additional consideration.

8. RESUBMISSION OF APPLICATION. Whenever an application for an amendment to the zoning map is denied, the application for the amendment shall not be eligible for reconsideration for one year following the denial, except in the following cases:

a. The common council may initiate reconsideration.

b. An applicant may submit an application for reconsideration if the application was originally denied because the proposed zoning would not conform to the comprehensive plan and the comprehensive plan was subsequently amended such that the proposed zoning amendment would conform to the comprehensive plan. In such a case, at least 30 days must pass between approval of the comprehensive plan amendment and approval of the zoning amendment.

295-309. Enforcement. 1. COMMISSIONER OF NEIGHBORHOOD SERVICES. The commissioner of neighborhood services shall be authorized to enforce the provisions of this chapter. The commissioner of neighborhood services shall, on his or her own initiative or on complaint or referral, proceed to the remedy of violations.

2. PERMIT REVOCATION. Any permit issued by the commissioner of neighborhood services under the terms of this chapter may be revoked by the commissioner of neighborhood services whenever any of the conditions under which the permit was issued are not complied with.

3. PERMIT ISSUED IN ERROR. Any permit or approval granted in error or in conflict with any provision of this chapter shall be void.

4. FAILURE TO COMPLY a. Correction of Violation. In the event of failure to comply with an order issued by the commissioner of neighborhood services to comply with any provision of this chapter, the commissioner of neighborhood services may take appropriate actions to restrain, correct or abate the violation of the order or cause the order to be carried out. The cost of restraining, correcting or abating the violation or of causing the order to be carried out shall be charged against the real estate upon which the violation is located, shall be a lien upon such real estate and shall be assessed and collected as a special charge.

b. Periodic Property Inspection Program. b-1. The commissioner of neighborhood services shall establish a periodic property inspection program to monitor properties to confirm that activities and uses of the properties are in compliance with any variance, special use or limited use, any plan of operation, landscape plan or site plan approved by the board of zoning appeals, and any conditions set forth in the written decisions of the board of zoning appeals.

b-2. Inspection intervals shall be determined by the commissioner of neighborhood services based on the nature of the business or operation and its potential for negative impacts upon the health, safety and welfare of the public and the impacts on the quality of life within the immediate neighborhood and surrounding community. The commissioner of neighborhood services reserves the right to increase inspection intervals at a property in the case of documented non-compliance.

5. REMEDY. If any structure is erected, constructed, reconstructed, altered, converted or maintained, or any premises is used, in violation of this chapter, the proper city officials, in addition to other remedies, may take any appropriate action to prevent such unlawful erection, construction, reconstruction, alteration or conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the premises, to prevent any illegal act, conduct, business or use in or about the premises, or to petition the proper court to order the removal of any structure erected in violation of this chapter.

6. PENALTIES. Any person, firm or corporation that owns, controls or manages any premises on which there shall be placed or there exists anything in violation of this chapter, assists in the commission of any violation of this chapter, builds contrary to the plans or specifications submitted to and approved by the commissioner of neighborhood services or omits, neglects or refuses to do any act required by this

chapter shall be subject to revocation of such person's permit, certificate of occupancy or previous approval as provided in s. 200-31 and to injunction as provided in s. 200-19-3. In addition, such person shall be subject to penalties as provided in s. 200-19-1 and 2 or a code enforcement fee as provided in s. 200-33-8.8 assessed against the subject property, which may be collected and assessed as a special charge.

295-311. Appeals. 1. BOARD OF ZONING APPEALS. a. Creation; Authority. a-1. There is created a board of zoning appeals which shall have the powers granted by state statutes and the authority to interpret this chapter, to approve, conditionally approve or deny variances and special use permits, to resolve disputes concerning floodplain district boundaries and to hear and decide appeals of administrative decisions of the commissioner of city development or the commissioner of neighborhood services that may arise under this chapter, except as provided in subdiv. 3, or state statutes.

a-2. The board of zoning appeals shall also have the authority to hear and decide appeals of revocation of permits, certificates of occupancy or approvals for violations of this chapter made pursuant to s. 200-31.

a-3. Appeals based on decisions arising from interpretation of s. 295-407-4-d-5-b and 7 shall be heard by the administrative review appeals board.

a-4. The board shall have the authority to adopt its own rules of procedure.

b. Membership. The board shall consist of 5 members appointed by the mayor, subject to confirmation by the common council, for terms of 3 years. Board members shall be residents of the city and hold no other public office or employment except that of notary public. At least one member shall be licensed to practice law in the state of Wisconsin. The mayor shall designate one of the members as chairperson. The mayor shall appoint, for terms of 3 years, 2 alternate members of such board in addition to the 5 members already provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of conflict of interest or when a member is absent. The 2nd alternate shall act, with full power, only when the 1st alternate so refuses, is absent or defers to the 2nd alternate, or when more than one member of the board so refuses or is absent. The alternate members shall be entitled to the same compensation as is provided for other members of the board. Board members, including alternates, shall be removable by the mayor for cause upon written charges and after public hearing. Vacancies, including vacancies for alternate members, shall be filled for the unexpired terms of members whose terms become vacant.

c. Board Budget and Staff. The board shall constitute a separate, independent budget control unit in city government and may employ a secretary and other employes. The board may designate one of its members who shall be licensed to practice law in the state of Wisconsin, as its administrative officer to perform administrative functions pursuant to the directions of the board and to draft decisions, findings and orders for consideration by the board.

d. Board Fees. Appeals and applications for variances, special use permits and beneficial use determinations are subject to the fees listed in s. 200-33.

2. SPECIAL USE PERMITS. a. Application. Every application for a special use permit shall be made upon a form which has been furnished by the board secretary and approved by the board. The applicant shall provide all information requested on the form, the affidavit required by s. 295-313 and any additional information requested by the board chair or secretary that is necessary to inform the board of the facts of the request.

b. Public Hearing. Prior to making a determination with respect to a special use permit request, the board shall hold a public hearing and provide, by mail, written notice of the hearing to the petitioner, at the address provided on the special use permit application, and to owners of property under consideration and owners of property immediately surrounding and within at least 200 feet thereof, inclusive of streets and alleys, as listed in the office of the city assessor. Such notice shall state that the board will be considering and conducting a public hearing on a request for a special use permit, and shall otherwise be in accordance with s. 19.84, Wis. Stats.

c. Consideration Of Input From Parties Of Interest. No special use hearing shall be held and no special use permit shall be granted unless the board or its staff has received a report of any comments, concerns or recommendations relating to the proposed special use from the department of public works, the department of city development, the department of neighborhood services and the common council

member in whose district the special use would be located. The board may proceed with its hearing and decision on the special use permit request regardless of whether any of these parties have submitted a report to the board, provided that 30 days have elapsed since the date on which the board's office notified each of these parties that a completed special use permit application had been received.

d. FINDINGS. No special use permit shall be granted unless the board, after due notice to the parties of interest, finds that the following facts and conditions exist, and so indicates in the minutes of its proceedings or its decision:

d-1. Protection of Public Health, Safety and Welfare. The use will be designed, located and operated in a manner so that the public health, safety and welfare is protected. A geographic concentration of establishments of this type may be evidence, in certain circumstances, that the public health, safety and welfare will not be protected.

d-2. Protection of Property. The use, value and enjoyment of other property in the neighborhood will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use. A geographic concentration of establishments of this type may be evidence, in certain circumstances, that the proposed use will substantially impair or diminish property values.

d-3. Traffic and Pedestrian Safety. Adequate measures have been or will be taken to provide safe pedestrian and vehicular access.

d-4. Consistency With Comprehensive Plan. The special use will be designed, located and operated in a manner consistent with all applicable elements of the city's comprehensive plan.

e. Conditions Of Approval. Conditions of approval may be imposed by the board to prevent or minimize adverse impacts upon the public and the city’s neighborhoods and to ensure compatibility of land uses and consistency with the purposes and intent of this chapter. Conditions of approval may include, but shall not be limited to: limitations on size, bulk and location; standards for landscaping, buffering and lighting; limitations on emissions of odors, dust, smoke, refuse matter, vibration, noise and other factors affecting the comfort, enjoyment, health or safety of residents, workers or visitors in the surrounding area; adequate ingress and egress; and other on-site improvements.

f. Additional Procedures For Certain Special Uses. Those uses involving the bulk storage or manufacture of explosives, acid manufacture, petroleum refining, smelting of raw ores (except by electrical process), dead animal reduction, fat rendering, glue manufacture or distillation of bones, or any use requiring local approval under s. 289.22, Wis. Stats. (excluding city of Milwaukee-owned, leased, operated or contracted facilities) shall also require reports from the commissioner of health and the fire and police chiefs. Applicants shall present all applicable permits or approvals from the U.S. environmental protection agency and the Wisconsin department of natural resources. Presentation of all such approvals is a necessary, but not sufficient, condition for local approval to take effect. Such uses shall also be subject to the following:

f-1. The use shall not be closer than 200 feet to any property line nor less than 600 feet from the boundary of the industrial district in which it is located.

f-2. The site shall be entirely enclosed with a fence at least 8 feet in height.

f-3. Transportation of hazardous waste, as defined in ch. NR 600, Wis. Admin. Code, to and from the site shall be limited to routes designated in the special use application.

f-4. Trucks or vehicles used for intrastate or interstate transportation of waste shall be marked, labeled or placarded according to U.S. department of transportation regulations as adopted by reference in 40 CFR, parts 262 and 263.

f-5. The use shall not cause pollution of any public waterways, flood control channels, the storm drainage system, the sanitary sewer system or ground water.

f-6. The use shall not cause air pollution, malodorous emissions prohibited under ch. NR 429, Wis. Adm. Code, or noise prohibited under ch. 80 of this code.

f-7. The applicant shall submit a copy of the detailed facility-specific information required by the Wisconsin department of natural resources or the U.S. environmental protection agency.

f-8. Unless included under subd. 7, the applicant shall submit a map of the site and the area within 1/4 mile of the exterior property lines of the proposed site showing:

f-8-a. Water on the land surfaces such as a pond, creek, river, lake, stream or canal.

f-8-b. Any wells or reservoirs.

f-8-c. Wetlands, as defined in s. 23.32(1), Wis. Stats.

f-8-d. Floodplains.

f-8-e. Topography at l0-foot intervals.

f-8-f. Environmental corridors.

f-9. Unless included under subd. 7, the applicant shall submit an engineering certification for the proposed site indicating:

f-9-a. Depth to wet-weather seasonal high water table.

f-9-b. Soil drainage, composition, thickness and permeability.f-9-c. Depth to bedrock and aquifers.

f-10. The applicant shall submit an assessment of the potential environmental impacts of a proposed project or activity following the format and provisions of ch. NR 150, Wis. Adm. Code, which shall include:

f-10-a. A description of the project, including proposed functions.

f-10-b. A description of the proposed site.

f-10-c. Environmental impacts of the proposed project.

f-10-d. Mitigating adverse impacts.

f-10-e. Adverse impacts which cannot be mitigated.

f-10-f. Alternatives to the project, including alternative sites, projects, sizes and designs.

f-10-g. A conclusion as to whether or not an environmental impact statement should be written for the project.

g. Filling or Grading of Land. For a filling or grading project for which a special use permit is required by s. 295-419, the applicant shall submit a plan, prepared at a recognized engineering or architectural scale, that includes:

g-1. The existing and proposed topography of the site at a contour interval of 2 feet. All topographic information shall be prepared to city datum by a registered professional engineer or land surveyor.

g-2. The existing and proposed grades of the lot at each corner of the lot, at each corner of any existing or proposed buildings and at the center of the street pavement at the lot lines extended.

g-3. The existing and proposed grades of all driveways and parking lots.

g-4. Drainage patterns, or special drainage devices proposed, as well as spot elevations at the top and bottom of all drainage swales, if applicable.

g-5. Spot elevations of all significant cut and fill areas.

g-6. Locations of existing or proposed buildings.

g-7. Locations and heights of existing and proposed fences.

g-8. Locations of any recorded easements as well as above- or below-ground utilities.

g-9. The date of the plan, the north arrow and graphic scale.

g-10. A schedule for the project indicating the duration of the project, phasing and the proposed handling of interim conditions including, but not limited to, stockpiling of materials and equipment storage.

g-11. The proposed use of the site after the completion of the project.

g-12. The hours of the day and days of the week when the filling or grading activity will occur.

g-13. A description of the measures that will be taken to minimize the impacts, on the surrounding area, of noise, truck traffic and dust generated by the filling or grading activity.

g-14. Any other information as may be reasonably requested by the city.

h. Additional Findings for Day Care Centers. No special use permit for a day care center, other than an adult day care center, shall be granted by the board unless the board finds, in addition to the findings required by par. d, that:

h-1. The proposed day care center will not be located within 500 feet of an adult retail establishment.

h-2. If the day care center is not located in a building containing an elementary or secondary school, religious assembly, community center, cultural institution or library as a principal use, the facility will not be located within 300 feet of a premises for which the common council has granted any of the alcohol beverage licenses identified in s. 90-4-1, 2 and 5 and such license is currently valid. This finding shall not be required for a day care center that is in operation as a nonconforming use or that has been granted a special use permit by the board.

i. Additional Finding for a Group Home, Group Foster Home, Community Living Arrangement, Small Group Shelter Care Facility or Large Group Shelter Care Facility. No special use permit for a group home, group foster home, community living arrangement, small group shelter care facility or large group

shelter care facility shall be granted by the board unless the board finds, in addition to the findings required by par. d, that:

i-1. The department of neighborhood services has received notification from the state of Wisconsin of application for licensure of the facility as a group home, group foster home, community living arrangement, small group shelter care facility or large group shelter care facility.

i-2. Prior to initial licensure of the group home, group foster home or community living arrangement by the state of Wisconsin, the applicant for licensure has made a good faith effort to establish a community advisory committee consisting of representatives from the proposed group home, group foster home or community living arrangement, the neighborhood in which the proposed facility will be located and a local unit of government, in accordance with s. 48.68(4) or s. 50.03(4)(g), Wis. Stats., as applicable, with the local government representative being the local common council member or the council member's designee. This provision shall not apply to an applicant for a special use permit for a small or large group shelter care facility.

3. VARIANCES. a. Application. Every application for a variance shall be made upon a form which has been furnished by the board secretary and approved by the board. The applicant shall provide all information requested on the form and any additional information requested by the board chair or secretary that is necessary to inform the board of the facts of the variance request. In the case of a use variance, the applicant shall also submit the affidavit required by s. 295-313.

b. Public Hearing. Prior to making a determination with respect to a variance request, the board shall hold a public hearing and provide, by mail, written notice of the hearing to the petitioner, at the address provided on the variance application, and to owners of property immediately surrounding and within at least 150 feet thereof, inclusive of streets and alleys, as listed in the office of the city assessor. Such notice shall state that the board will be considering and conducting a public hearing on a request for a variance, and shall otherwise be in accordance with s. 19.84, Wis. Stats. In the case of a fence variance, written notice of the hearing need only be provided to owners of abutting properties, to the owner of the property determined by the department to be directly across the street from the premises, and to owners of properties on each corner opposite the premises if the property to which the variance would apply is a corner lot.

c. Consideration Of Input From Parties Of Interest. No variance hearing shall be held and no variance shall be granted unless the board or its staff has received a report of any comments, concerns or recommendations relating to the proposed variance from the department of public works, the department of city development, the department of neighborhood services and the common council member in whose district the premises to which the variance would apply is located. The board may proceed with its hearing and decision on the variance request regardless of whether any of these parties have submitted a report to the board, provided that 30 days have elapsed since the date on which the board's office notified each of these parties that a completed variance application had been received.

d. Findings. No variance shall be granted unless the board, after due notice to the parties of interest, finds that the following facts and conditions exist, and so indicates in the minutes of its proceedings or its decision:

d-1. Preservation of Intent. A variance would not be inconsistent with the spirit, purpose and intent of the regulations for the district in which it is requested.

d-2. Exceptional Circumstances. Exceptional, extraordinary or unusual circumstances or conditions apply to the lot or intended use that do not apply generally to other properties or uses in the same district, and the variance is not of so general or recurrent nature to suggest amendment of the regulation.

d-3. Preservation of Property Rights. The variance is necessary for the preservation and enjoyment of the same substantial property rights which are possessed by other properties in the same district and same vicinity.

d-4. Absence of Detriment. The variance will not create substantial detriment to adjacent property, and will not materially impair or be contrary to the spirit, purpose and intent of this chapter, or the public interest.

d-5. Hardship; Dimensional Variance. In the case of a dimensional variance request, compliance with the code requirement from which the variance is requested would unreasonably prevent the property owner from using his or her property for a permitted purpose or would otherwise be unnecessarily burdensome.

d-6. Hardship; Use Variance. The alleged difficulty or hardship is not self-imposed, nor is it based solely on economic grounds.

e. Conditions Of Approval. Conditions of approval may be imposed by the board to prevent or minimize adverse impacts upon the public and the city's neighborhoods and to ensure compatibility of land uses and consistency with the purposes and intent of this chapter. Conditions of approval may include, but shall not be limited to: limitations on size, bulk and location; standards for landscaping, buffering and lighting; limitations on emissions of odors, dust, smoke, refuse matter, vibration, noise and other factors affecting the comfort, enjoyment, health or safety of residents, workers or visitors in the surrounding area; adequate ingress and egress; and other on-site improvements.

4. ADDITIONAL SPECIAL USE AND VARIANCE REGULATIONS. a. General Operation. A special use or variance which has been approved by the board shall operate in conformance with its approved plan of operation, site plans and conditions of approval. Such special use or variance shall not be enlarged or intensified without the approval of the board unless otherwise permitted by this section.

b. Combined Use. A permitted use may be added to, enlarged, expanded or rebuilt as part of an approved special use or variance without board approval provided the hours of operation are limited to the hours specified in this code, if any, parking is provided in accordance with this chapter and the addition, enlargement, expansion or reconstruction is in conformance with all other provisions of this code and with any applicable elements of the city's comprehensive plan, and does not require modification of the approved plan of operation.

c. Changes to Improvements. Parking areas, landscaping, signs, structures, fences, awnings or similar site features of an approved special use may be constructed, expanded, enlarged or rebuilt without board approval provided that the construction, expansion, enlargement or reconstruction is in conformance with all other provisions of this code, any applicable elements of the city's comprehensive plan and the plan of operation or conditions established by the board.

d. Repairs And Maintenance. The buildings, site features and structures of an approved special use or variance may be repaired and maintained in compliance with this code without board approval.

5. APPEALS OF ADMINISTRATIVE DECISIONS. a. Purpose. To avoid results inconsistent with the purposes of this chapter, administrative decisions of the commissioner of city development and the commissioner of neighborhood services may be appealed to the board. This subsection establishes general provisions for appeals of administrative decisions.

b. Application. Every appeal shall be made upon a form which has been furnished by the board secretary and approved by the board. The appellant shall provide all information requested on the form and any additional information requested by the board chair or secretary that is necessary to inform the board of the facts of the appeal. Appeals to the board shall be filed within a reasonable time, as provided by the rules of the board and in accordance with s. 62.23(7)(e)4., Wis. Stats.

c. Grounds For Appeal. The application shall state the specific grounds for the appeal and identify the provisions of the zoning code applicable to the appeal. Grounds for appeal shall include at least one of the following:

c-1. A description of the asserted error or abuse of discretion by the city officer whose decision is being appealed.

c-2. A description of how it is claimed a standard or review criteria was incorrectly applied.

c-3. A description of how the decision creates an inconsistency with the city's comprehensive plan or the code of ordinances.

d. Consideration of Input From Parties of Interest. After a completed notice of appeal is filed with the officer whose action is appealed, that officer shall submit a written report to the board that describes the reasons for the action or send a representative to the appeal hearing who will be prepared to comment on the action. The board may proceed with its hearing and decision on the appeal regardless of whether any of these parties have submitted a report to the board, provided that 30 days have elapsed since the date on which each of these parties was notified that an appeal was filed.

e. Public Hearing. The board shall establish a reasonable time for the hearing of the appeal and give public notice thereof, as well as due notice to the interested parties.

f. Actions. The board may reverse or affirm, wholly or partially, or may modify the requirement, decision or determination as appropriate.

g. Standards. A decision of the officer whose action is being appealed shall not be reversed or modified unless there is demonstrated evidence that the action:

g-1. Resulted from an error or abuse of discretion.

g-2. Resulted from an incorrect application of a standard or review criteria.

g-3. Is not supported by the evidence in the record.

g-4. Is inconsistent with the city's comprehensive plan or the code of ordinances.

6. APPEALS OF ORDERS. a. Purpose. To avoid results inconsistent with the purposes of this chapter, orders issued by the commissioner of neighborhood services relating to enforcement of the provisions of the zoning code may be appealed to the board. This subsection establishes general provisions for appeals of orders of the commissioner of neighborhood services relating to enforcement of the zoning code.

b. Application. Every appeal shall be made upon a form which has been furnished by the board secretary and approved by the board. The appellant shall provide all information requested on the form and any additional information requested by the board chair or secretary that is necessary to inform the board of the facts of the appeal.

c. Deadline for Appeal. An appeal of an order of the commissioner of neighborhood services relating to enforcement of the provisions of the zoning code shall be made in writing within 20 days of the date the order was issued, unless the order requires compliance in less than 20 days. Whenever an order requires compliance in less than 20 days, the appeal shall be made in writing before the end of the term required for compliance. If notification of the order is made by mail, any appeal of the order shall be made in writing within 30 days of the date of the order, unless the order requires compliance in less than 30 days. Whenever an order delivered by mail requires compliance in less than 30 days, the appeal shall be made in writing before the end of a period equal to the term required for compliance plus 5 additional days. In no case, however, shall the appeal period be longer than 30 days. Citations issued by the commissioner of neighborhood services may not be appealed to the board.

d. Grounds for Appeal. The application shall state the specific grounds for the appeal and identify the provisions of the zoning code applicable to the appeal. Grounds for appeal shall include at least one of the following:

d-1. A description of the asserted error or abuse of discretion by the city officer whose decision is being appealed.

d-2. A description of how it is claimed a standard or review criterion was incorrectly applied.

d-3. A description of how the order creates an inconsistency with the city’s comprehensive plan or the code of ordinances.

e. Consideration of Input From Parties of Interest. After a completed notice of appeal is filed with the officer whose action is appealed, that officer shall submit a written report to the board that describes the reasons for the action or send a representative to the appeal hearing who will be prepared to comment on the action. The board may proceed with its hearing and decision on the appeal regardless of whether any of these parties have submitted a report to the board, provided that 30 days have elapsed since the date on which each of these parties was notified that an appeal was filed.

f. Public Hearing. The board shall establish a reasonable time for the hearing of the appeal and give public notice thereof, as well as due notice to the interested parties.

g. Actions. The board may reverse or affirm, wholly or partially, or may modify, the order being appealed.

h. Standards. An order of the commissioner of neighborhood services shall not be reversed or modified unless there is demonstrated evidence that the order:

h-1. Resulted from an error or abuse of discretion.

h-2. Resulted from an incorrect application of a standard or review criterion.

h-3. In not supported by the evidence in the record.

h-4. Is inconsistent with the city’s comprehensive plan or the code of ordinances.

7. APPEALS OF PERMIT DENIALS; OVERLAY ZONES. a. Purpose. To avoid results inconsistent with the purposes of this chapter, any denial of a permit by the commissioner of neighborhood services on the basis of failure to meet performance or design standards of a neighborhood conservation, development incentive or site plan review overlay zone may be appealed to the city plan commission. This subsection establishes general provisions for appeals of permit denials relating to development in these overlay zones.

b. Application. Every appeal shall be made upon a form which has been furnished by the commission secretary. The appellant shall provide all information requested on the form and any additional information requested by the commission chair or secretary that is necessary to inform the commission of the facts of the appeal. An application for appeal to the commission shall be filed with the commission secretary within 30 days of the date of permit denial. Upon receiving the appeal application, the commission secretary shall provide a copy of the application to the city officer whose decision to deny a permit is being appealed.

c. Grounds For Appeal. The application shall state the specific grounds for the appeal and identify the provisions of the neighborhood conservation plan or the development, performance or design standards or criteria applicable to the appeal. Grounds for appeal shall include at least one of the following:

c-1. A description of the asserted error or abuse of discretion by the city officer whose decision is being appealed.

c-2. A description of how it is claimed a plan, standard or review criterion was incorrectly applied or interpreted.

c-3. A description of how the decision to deny the permit creates an inconsistency with the citys comprehensive plan or the code of ordinances.

d. Consideration of Input From Parties of Interest. After a completed application for appeal is filed with the commission secretary, the officer whose decision to deny a permit is being appealed shall submit a written report to the commission that describes the reasons for the action or send a representative to the appeal hearing who will be prepared to comment on the action. The commission may proceed with its hearing and decision on the appeal regardless of whether this report has been submitted to the commission, provided that 30 days have elapsed since the date on which the appeal application was filed with the commission secretary.

e. Public Hearing. The commission shall establish a reasonable time for the hearing of the appeal and give public notice thereof, as well as due notice to the interested parties.

f. Actions. The commission may reverse or affirm, wholly or partially, the decision of the city officer to deny the applicant's permit request.

g. Standards. A decision of the officer whose permit denial action is being appealed shall not be reversed or modified unless there is demonstrated evidence that the denial of the permit:

g-1. Resulted from an error or abuse of discretion.

g-2. Resulted from an incorrect application or interpretation of a neighborhood conservation plan or a development, performance or design standard or criterion.

g-3. Is not supported by the evidence in the record.

g-4. Is inconsistent with the city's comprehensive plan or the code of ordinances.

9. DEVIATIONS FROM PERFORMANCE OR DESIGN STANDARDS; OVERLAY ZONES.

a. Plan Commission Approval Required. Deviations from performance or design standards for established neighborhood conservation, development incentive and site plan review overlay zones may be approved by the city plan commission.

b. Application. Every application for a deviation from a performance or design standard shall be made upon a form furnished by the commission secretary. The applicant shall provide all information requested on the form and any additional information requested by the commission chair or secretary that is necessary to inform the commission of the facts of the request for deviation. Upon receiving an application for deviation from a performance or design standard, the commission secretary shall provide a copy of the application to the commissioner.

c. Criteria for Deviation. The application shall state the specific grounds for the deviation and identify the provisions of the neighborhood conservation plan or the development, performance or design standards or criteria applicable to the request for deviation. A deviation from a performance or design standard shall be approved by the commission if the commission finds all of the following to be true:

c-1. The purpose of the overlay zone is met.

c-2. The deviation improves the aesthetics of the site.

c-3. If applicable, the deviation addresses one or more unique site factors that make application of the standard impractical.

c-4. The deviation is consistent with the comprehensive plan.

d. Staff Report. After a completed application for deviation is filed with the commission secretary, department staff shall submit a written report to the commission that describes the reasons for the request for the deviation, along with a staff recommendation.

e. Public Hearing. The commission shall establish a reasonable time for a hearing of the application and give public notice thereof, as well as due notice to the interested parties.

f. Commission Action. The commission shall approve or deny the application for a deviation from the performance or design standards of the established overlay zone.

295-313. Affidavits Required for Various Zoning-Related Applications. 1. POLICY. Each applicant for a zoning map amendment or approval of a planned development, and each applicant for a use variance or special use permit, shall submit to the city plan commission or the board of zoning appeals, as the case may be, a signed affidavit indicating whether the applicant is:

a. Delinquent in the payment of any property tax, special assessment, special charge or special tax due to the city, provided that all appeals of the tax, assessment or charge have been concluded or the time to appeal has expired.

b. A party against whom the city has an outstanding judgment, provided that all appeals of the judgment have been concluded or the time to appeal has expired.

c. A party against whom the city has outstanding health or building and zoning code violations or orders from the commissioner of health or commissioner of neighborhood services that are not actively being abated, provided that all appeals of orders to correct violations have been concluded or the time to appeal has expired.

d. A party who has been convicted of violating an order of the commissioner of health or commissioner of neighborhood services within the past year, provided that all appeals of the conviction have been concluded or the time to appeal has expired.

e. The owner of a premises found to be in violation of s. 80-10 to whom the commissioner of neighborhood services has charged the costs of police enforcement, pursuant to s. 80-10-4, provided that all appeals of these charges have been concluded or the time to appeal has expired.

2. NON-INDIVIDUAL APPLICANTS. a. Corporations. If the applicant is a corporation, a duly authorized officer or director of the corporation shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each officer and director of the corporation, as well as each shareholder owning 5% or more of voting stock, fits any of the descriptions in sub. 1-a to e.

b. Partnerships. If the applicant is a partnership or limited partnership, a duly authorized partner, general partner or limited partner shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each partner, general partner and limited partner fits any of the descriptions in sub. 1-a to e.

c. Limited Liability Companies. If the applicant is a limited liability company, a duly authorized member or manager of the company shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each member and manager of the company fits any of the descriptions in sub. 1-a to e.

d. Nonstock Corporations. If the applicant is a nonstock corporation, a duly authorized officer or director of the corporation shall submit the affidavit required by sub. 1. The affidavit shall attest to whether each officer and director of the corporation fits any of the descriptions in sub. 1-a to e.

3. EXCEPTION. The affidavit requirement of sub. 1 shall not apply to any zoning map amendment request relating to an overlay zone other than a request for creation or amendment of a development incentive overlay zone.

[Pages 723 to 730 are blank]