

**ARTICLE 4
GENERAL PROCEDURAL REQUIREMENTS**

Divisions

- 1. Generally
- 2. Notice requirements
- 3. Public hearings
- 4. Site visits
- 5. Neighborhood meetings
- 6. Financial guarantees

**DIVISION 1
GENERALLY**

490-200 Legislative findings

The Common Council makes the following legislative findings:

- (1) Development review procedures should be easily understood and well-structured, and only involve those steps and requirements that are needed to properly review the application. Excessive procedural requirements add unnecessary costs to development projects.
- (2) The general public, property owners in the area, and affected agencies have a right to know about proposed development projects and have meaningful participation in the review process to the extent allowed or required by this chapter.
- (3) Enforcing the rules and regulations contained in this chapter is an important function of government.

490-201 Purpose

The development review requirements and procedures in this chapter are intended to:

- (1) provide efficient and timely review of applications and ensure fairness and due process,
- (2) ensure that applications are reviewed consistently by establishing criteria in making recommendations and final decisions, and
- (3) ensure complete and timely compliance.

490-202 Authority to file an application

Unless otherwise specified in this chapter, the owner of the property or ~~their authorized a person having the power of attorney for the property owner~~ must sign the application submitted for review. ~~A person signing an application under the authority of a power of attorney must include a copy of the power of attorney with the application.~~

490-203 Permission to enter subject property

Submission of an application as may be required in this chapter authorizes city officials and employees, or other designated agents to enter the subject property to verify information in the application and to conduct other site investigations as may be necessary to review the application. This does not authorize any individual to enter any building on the subject property in the absence of the property owner or his or her authorized agent. Failure to allow access to the subject property is sufficient grounds to deny the application.

490-204 Burden of proof

- A. **Application review process.** During the application review process, the applicant has the burden of proof to show that the application should be approved based on the decision criteria relating to that application.
- B. **Appeal of an administrative decision.** During an administrative appeal proceeding, the petitioner has the burden of proof to show that such decision is not consistent with this chapter.
- C. **Enforcement proceedings.** During an enforcement proceeding, the Zoning Administrator or administrative unit taking enforcement action has the burden of proof to show that the action or development is in violation of this chapter.

490-205 Effect of an outstanding violation

If the Zoning Administrator determines that a parcel is in violation of this chapter, no permit or approval of any kind can be granted under this chapter that would benefit such parcel, except to correct the violation or as may be required by state law.

490-206 Effect of an outstanding obligation

No permit or approval of any kind can be granted under this chapter that would benefit a parcel for which taxes, assessments, special assessments, or other required payments are delinquent and unpaid.

490-207 Concurrent review

To the extent possible, a development project requiring multiple reviews should be done concurrently. When one approval is a condition precedent to approval of another application, the approvals must be issued in the requisite order.

490-208 Application fees and other charges

- A. **Assessment of fees.** From time to time, the Common Council may establish application fees and other charges it deems necessary in the administration of this chapter.
- B. **After the fact fees.** The Common Council may establish an "after-the-fact" fee for any procedure it deems appropriate. Payment of such fees does not release the applicant from full compliance with this chapter nor from prosecution for a violation of this chapter.
- C. **Timing for payment.** Application fees must be paid at the time the application is submitted for review.
- D. **Refunds.** Application fees are nonrefundable, except when city staff accepts the payment in error.

490-209 Charge back of professional service fees

~~An applicant must comply with § [redacted] of the municipal code with regard to professional service fees. (Bob lets discuss)~~

490-210 Non-confidentiality of submitted information

All written information that an applicant submits during a pre-submittal meeting or at any point in the review process is considered part of the public record subject to disclosure under state and local law.

490-211 Nature of staff comments

Any statements or recommendations that are made by the Zoning Administrator, city staff and officials, and other representatives prior to or during the application review process are not binding on the decision-making body responsible for making the final decision.

490-212 Withdrawal of application

- A. **Timing of withdrawal.** An applicant may withdraw an application anytime after submittal, but prior to a final decision.
- B. **Effect of withdrawal.** A request to withdraw an application terminates the review process and no decision shall be rendered. Upon request, the Zoning Administrator may, in his or her sole discretion, return the petitioner's application fee if the City has not done any work to process the application.
- C. **Retention of application materials.** A withdrawn application and related review documents ~~should must~~ be kept as a ~~permanent~~ public record and is subject to the City's record retention policy.

490-213 Appeals

If an application for a development project is approved under this chapter, the applicant may commence the work authorized by the approval after satisfying all of the conditions of the approval, if any, upon receipt of the decision notice and satisfaction of all precedent conditions of approval, commence the work as authorized under the approval with the understanding that an aggrieved person may file an appeal with the appropriate review body. Prior to the end of the appeal period, all such work proceeds at the risk of the applicant. Similarly, any work that is done while an appeal is pending is done at the risk of the applicant.

490-214 Revocation or modification of an approval

If an application for a development project is approved under this chapter, the review authority granting final approval may revoke or modify an approval if it is determined that information in the application or otherwise provided by the applicant or the applicant's agent was incomplete, false, misleading, or inaccurate and such information would have altered its decision to approve the application or the conditions of approval which were or were not imposed.

490-215 Application review schedule

The Zoning Administrator must make the current review schedules available to the public and may post them on the City's website.

490-216 Application forms

The Zoning Administrator must prepare application forms and may amend them from time to time.

490-217 Other approvals

It is the responsibility of those undertaking development projects within the City to obtain all applicable permits and other approvals as may be required by the City of Port Washington, Ozaukee County, and federal and state authorities as may be required.

490-218 Building permit

A building permit for the construction of a new building or the expansion of an existing building shall not be issued until such time as a zoning permit has been issued or a written determination is made that one is not required. ~~(Bob to verify with Gary on current practice)~~

490-219 Administrative review of municipal determinations

As authorized under § 68.16, Wis. Stats., the Common Council has established specific appeal procedures for each of the review procedures included in Article 5.

490-220 through 490-229 reserved**DIVISION 2
NOTICE REQUIREMENTS****490-230 Generally**

The type of notice that is given for each of the various procedures outlined in this article is dictated by the nature of the decision. Administrative decisions, such as a zoning permit, involve very little discretion. Either the proposed development meets the standards in this chapter, or it does not. In contrast, there are other decisions that involve more discretion and judgment based on particular circumstances. The review of a conditional use application, for example, involves discretion on the part of those involved in making recommendations, and a final determination whether the application should be approved or not. As a general rule, notice for an application is not given for administrative decisions. More notice is given when a proposed action could potentially affect other parties, including nearby property owners, other governmental bodies, and the general public. This division describes the different types of notice and related requirements.

490-231 Cost to provide notice

The City pays the costs related to the provision of notice required under this division, unless otherwise specified in the adopted fee schedule.

490-232 Public hearing notice

- A. Generally.** When required in Article 5, the official responsible for processing the application must place a public hearing notice in the official newspaper as set forth in this section.
- B. Time requirements.** A class 1 public hearing notice must be published one time at least 7 days before the meeting or hearing. A class 2 public hearing notice must be published once each week for 2 consecutive weeks, the last one occurring at least 7 days before the meeting or hearing.^[1]
- C. Content.** The notice must include the information listed in Exhibit 4-1.

Editorial notes:

[1] See §§ 985.01 (1m) and 985.07, Wis. Stats.

490-233 Property owner notice

- A. Generally.** When required in Article 5, the Zoning Administrator must mail a notice to property owners within 400-200 feet of the subject property involved in the application as set forth in this section. In the event an outlot associated with a certified survey map or subdivision is located within the 400-200-foot area and lot owners within the certified survey map or subdivision have a property interest in the outlot, ~~such owners do not need to be notified each of these property owners must also receive the notice.~~
- B. Additional notice.** When the applicant also owns the land adjoining the subject property involved in the application, the administrator must mail a notice to those property owners within 400-200 feet of such property.
- C. Time requirements.** The notice must be mailed by regular mail at least 10 business days prior to the date of the meeting at which the matter will be considered.
- D. Content.** The notice must include the information listed in Exhibit 4-1.
- E. Source of names and addresses.** The names and addresses of property owners are those listed on the tax records maintained by Rock-Ozaukee County.
- F. Failure to receive notice.** The failure of a person to receive notice as described in this section does not invalidate or otherwise have any effect upon a public hearing or other action taken on the application.

- G. Affidavit of mailing.** The person sending the notices should prepare an affidavit of mailing to certify that notice was provided as described in this section. Such affidavit must be kept as a public record.

490-234 Distribution list notice^[1]

- A. Establishment of distribution list.** The City Clerk must maintain a list of persons who submit a written request to receive notice of any proposed regulation or amendment thereof that may affect the allowable use of the person's property.
- B. When notice is required.** The body conducting the public hearing must send a notice, which contains a copy of the proposed regulation or amendment, to each person on the distribution list whose property, the allowable use of which may be affected by the proposed regulation or amendment.
- C. Method of distribution of notices.** The notice shall be by mail or in any reasonable form that is agreed to by the person and the City Clerk.
- D. Establishment of charges.** The Common Council may from time to time adopt a resolution establishing a processing fee that shall be charged to each person on the list who is sent a notice. The amount of such fee shall not exceed the approximate cost of providing the notice to the person.
- E. Effect of failure to send notice.** An ordinance or amendment shall take effect if the body conducting the meeting fails to send the notice as required by this section.

Editorial notes:

[1] See § 62.23 (7)(d)(4), Wis. Stats.

490-235 Meeting agenda notice

When required, the body responsible for acting on the application must place the item on its meeting agenda.

490-236 Content of required notice

Notices must include the information listed in Exhibit 4-1.

Exhibit 4-1. Content of notice

	Public Hearing Notice (§ 490-232)	Property Owner Notice (§ 490-233)	Distribution List Notice (§ 490-234)
Applicant name	X	X	X
Subject property address or other description by which the public can locate the subject property	X	X	X
Nature of the application	X	X	X
A description of the proposed project	X	X	X
Name of body or official who will consider the application	X	X	X
Date, time and location of the public hearing	X	X	X
Location where the public can view the application	X	X	X
General location map (or available from the City Clerk during normal office hours)	X	X	-

Key: An "X" means that the indicated information is required; a dash "-" means that the indicated information is not required

1. If the proposed amendment would have the effect of changing the allowable use of any property, the notice must include either a map showing the property affected by the amendment or a description of the property affected by the amendment and a statement that a map may be obtained from the City Clerk.

490-237 through 490-249 reserved**DIVISION 3
PUBLIC HEARINGS****490-250 Legislative findings**

The Common Council makes the following legislative findings relating to public hearings:

- (1) Public hearings should be conducted in an orderly, timely, and efficient manner.
- (2) Public input is important and should be encouraged.

490-251 General requirements

- A. **Meetings to be public.** All public hearings must be conducted in the city hall or in such other public place as may be selected by the body conducting the hearing.
- B. **Notice of meetings.** Notice of public hearings must be given as provided for in Division 2 of this article.

490-252 General procedure

When conducting a public hearing, the presiding officer may follow the following steps listed in this section as a general guideline. As such, the steps listed below are intended to provide a general format for all participants. For matters of little complexity or controversy, the presiding officer may use their discretion in applying the procedures as appropriate.

1. Announce the purpose and subject of the public hearing.
2. Determine whether public notice as required by this chapter has been provided. If notice has not been provided, the hearing must be postponed until such time as proper notice has been provided.
3. Ask if any member of the body conducting the public hearing has a conflict of interest in regard to the matter being discussed and excuse those who do.
4. Ask if any member of the body conducting the public hearing believes another member has a conflict of interest in regard to the matter being discussed. If so, and following a discussion of the alleged conflict of interest, the members (except the member with the alleged conflict) must determine by vote whether a reasonable person may conclude that the member has a conflict of interest and should be removed from the pending decision.
5. Ask the applicant to describe the proposal.
6. Ask the staff to present a staff report, if required.
7. Allow members of the body conducting the public hearing to direct questions to the applicant and staff, if present.
8. Ask for statements from the public.
9. Read aloud written comments that were submitted when the individual submitting the comments is not in attendance, subject to such time limitations the presiding officer may establish.
10. Call for discussion of the members of the body conducting the public hearing during which time they may ask questions of a member of the public, the applicant, and the staff, if present, upon the authorization of the presiding officer.
11. Ask the applicant if they want to (1) respond to any comment made by an individual during the proceeding, (2) submit additional information, (3) amend the application, or (4) request a continuance.

12. Announce that the body will not accept any additional comment from the applicant or any member of the public once the public hearing is closed.
13. Ask for a motion and second and vote to close the public hearing.

490-253 Continuances

- A. **Prior to start of public hearing.** In the event the applicant or the applicant's agent is not present for the public hearing, the body conducting the public hearing may authorize a continuance.
- B. **During a public hearing.** Prior to the close of the public hearing, the applicant may request a continuance and the body conducting the public hearing may agree to the continuance upon a showing of good cause. Likewise, the body conducting the public hearing may ask the applicant for a continuance, but the applicant is not required to grant such request. If the applicant does not grant a continuance, the body must act on the information available at that time.
- C. **Effect.** A continuance stops the time clock, if any, for making a decision.
- D. **Notice requirements.** A public hearing may be continued to a later date without again providing public notice, provided the location, date, and time for the continued hearing are announced at the time of the continuance.

490-254 Public comment

- A. **Time limitations on public comment.** The presiding officer may impose a time limit on members of the public who wish to address the body conducting the public hearing to assure completion of the agenda in a timely manner. The time limit may not be less than 3 minutes.
- B. **Written comment.** Prior to the close of the public hearing, members of the public may submit written comments to the body conducting the public hearing. Such documents must be retained and made part of the public record for the proceeding. If a person submits written comments, a member of the reviewing authority should read the comments into the record and for the benefit of all attending, but the time dedicated to reading such written comments is subject to the same time limits imposed upon those providing oral comments at the public hearing. For example, if speakers have a 3-minute time limit, the reading of any written comment will stop at 3 minutes. Materials supporting any written comment can be identified by reference and do not need to read into the record.

490-255 through 490-269 reserved

DIVISION 4 SITE VISITS

490-270 Authorization

The Historic Preservation Commission, Zoning Board of Appeals, Plan Commission, and Common Council may conduct a site visit to inspect a property as it relates to a pending development application, provided the site visit is stated on the meeting agenda.

490-271 Open meeting requirements

A site visit is a public meeting and must comply with Wisconsin's open meeting requirements and the requirements of the Americans with Disabilities Act (ADA). Any person who would like to attend a site visit should notify the City Clerk in advance of the date. The City Clerk will follow established procedures in complying with such request.

490-272 Rules of conduct

- A. Participation.** To ensure everyone hears what is being said during a site visit, participants should stay together as they tour the subject property.
- B. Comments.** No recommendations can be offered, and no decisions can be made during a site visit.
- C. Quorum required.** A site visit must be attended by a quorum of the review authority.
- D. Overview of site visit.** When the review authority reconvenes their meeting or public hearing, the presiding officer should initiate a discussion of the members to document the major points that were discussed and/or observations made on the site visit.

490-273 Site visit during a public hearing

If a site visit is conducted as part of a public hearing, discussion is strictly limited to points of clarification, such as (1) the location of features (e.g., property boundary lines), (2) placement of proposed improvements, (3) features to be retained or removed as part of the proposed project, and the like. The merits of the proposal must not be discussed during the site visit.

490-274 Site visit not part of a public hearing

If a site visit is not part of a public hearing, the petitioner and Plan Commission members may engage in a general discussion related to the pending application. Such discussion should however be limited to what is observed during the tour as it relates to the proposed project.

490-275 through 490-279 reserved

DIVISION 5 NEIGHBORHOOD MEETINGS

490-280 Generally

A developer may hold a neighborhood meeting before submitting a development application to the City for review to inform neighbors of a potential development project and to establish a forum for those attending the meeting to learn more about the project, ask questions, and offer any feedback. Having heard the feedback, the developer has the opportunity to modify their proposal and/or provide more information with their application that is submitted to the city for review. Nothing in this division precludes a developer from meeting with any person or group to discuss their project before or after holding a neighborhood meeting.

490-281 When required

~~Although a neighborhood meeting is not a mandatory step in the City's development review process (to be confirmed), any project that involves a public hearing would benefit. Examples include a significant change in the zoning of a parcel, planned development districts, multi-family projects with more than 10 dwelling units that are within or next to residential area, and conditional uses that have the potential of impacting surrounding residential areas or generate a significant increase in traffic.~~

490-282 Meetings to be public

A neighborhood meeting must be held in a public place (e.g., school, community center) within or near the neighborhood to the extent possible.

490-283 Coordination with city

The developer should work with the Zoning Administrator in scheduling a neighborhood meeting to ensure staff are able to attend if so requested.

490-284 Notice of meeting

The developer hosting a neighborhood meeting should send a written notice to those property owners within 400 feet of the subject property at least 14 days in advance of the scheduled date. The same notice should also be sent to the Zoning Administrator at least 14 days before the scheduled date so that the City can publish a notice indicating that elected officials may be in attendance, but not participating in the meeting.

490-285 Staff attendance

City staff and elected officials may attend a neighborhood meeting to listen to the developer's presentation and any feedback from those in attendance. City staff will not directly participate in the formal presentation but may respond to questions relating to the City's review process.

490-286 through 490-289 reserved

DIVISION 6 FINANCIAL GUARANTEES

490-290 Performance bond

For the purpose of this chapter, a performance bond is not an acceptable financial guarantee, unless otherwise required to be allowed by Wisconsin Statutes.

490-291 Letter of credit

- A. Form.** The letter of credit must be irrevocable and in a form acceptable to the City Attorney.
- B. Amount.** The amount of the letter of credit must conform to the amount established in this chapter. If an amount is not specified in this chapter, the Common Council can establish the amount. (verify current practice)
- C. Acceptance required.** A letter of credit is not accepted by the City until formal action by the Common Council upon the recommendation of the City Attorney. (verify current practice)
- D. Minimum requirements for issuer.** The bank, savings and loan, or other financial institution issuing the letter of credit must be authorized to do business in the state of Wisconsin and have a financial standing acceptable to the City Attorney.
- E. Obligation of private party.** The provision of a letter of credit does not remove the burden of performing the work the letter of credit is intended to guarantee.

490-292 Cash deposit

- A. Generally.** If a cash deposit is provided under this chapter, the City is not obligated to pay interest thereon. Any such cash deposit shall remain in the custody of the City Treasurer.
- B. Amount.** The amount of the cash deposit must conform to the amount established in this chapter. If an amount is not specified in this chapter, the Common Council can establish the amount. (verify current practice)

- C. **Acceptance required.** A cash deposit is not accepted by the City until formal action by the City Council. (verify current practice)
- D. **Obligation of private party.** The provision of a cash deposit does not remove the burden of performing the work the cash deposit is intended to guarantee.
- E. **Administrative fee.** When a cash deposit is offered as a financial guarantee, the City may charge a fee for the additional work required of the City Clerk and City Treasurer to monitor and handle the cash deposit. The amount of such fee must be set by the Common Council from time-to-time by resolution.

490-293 Insufficient funds

If the City exercises its right to use a financial guarantee and the cost of performing the authorized work exceeds the amount of the financial guarantee, the City must send a bill to the property owner for the outstanding balance. If the property owner does not pay such costs within 30 days after billing, such costs constitute a special charge under § 66.0628, Wis. Stats., or as otherwise authorized by state law.

490-294 through 490-299 reserved

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