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3 **2023 OA-068**

4 AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,
5 REGARDING THE REVIEW PROCESS FOR CONDITIONAL USE PERMITS
6 AND REZONES

7 The County Board of Supervisors of the County of Dane does ordain as follows:
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9 ARTICLE 1. Unless otherwise expressly stated herein, all references to section
10 and chapter numbers are to those of the Dane County Code of Ordinances.
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12 ARTICLE 2. Sections 10.101(7) is amended to read as follows:

13 **(7) Conditional Use Permits.**

14 **(a) Purpose.** The development and execution of this ordinance is based upon the division of
15 the county into districts, within which districts the use of land and buildings, and bulk and location
16 of buildings and structures in relation to the land are mutually compatible and substantially
17 uniform. Certain uses, because of their unusual nature and potential for impacts on neighboring
18 lands, public facilities, the environment or general welfare, warrant special consideration and
19 review. With appropriate limitations on siting, development and operation, such uses may be
20 compatible with other uses in a particular zoning district. Such uses are classified as conditional
21 uses and are subject to the following provisions.

22 **(b) Application Requirements.** An application for a conditional use shall be filed with the
23 zoning administrator on a form prescribed by the zoning administrator. Only complete
24 applications will be accepted. The application shall be accompanied by such plans and other
25 information as required by this section, by requirements for particular uses or as prescribed by
26 the zoning administrator, and shall include, at a minimum, the following:

27 **1. Statement.** The applicant shall provide a written statement and adequate evidence
28 demonstrating that the proposed conditional use conforms to:

- 29 **a.** the standards for approval described in s. 10.101(7)(~~dh~~),
30 **b.** any standards applicable to the particular use under s. 10.103, and
31 **c.** any additional standards required in the applicable zoning district.

32 **2. Legal description.** The applicant shall provide a written legal description accurately
33 describing the specific area on the property where the conditional use will operate and the
34 conditional use permit will be effective. Conditional use permit areas should be the minimum size
35 necessary to accommodate the proposed use, and need not conform to lot, zoning lot or tax
36 parcel boundaries.

37 **3. Site plan.** All applications for a conditional use permit must be accompanied by a site plan,
38 meeting all the standards described in s. 10.101(6).

39 **4. Operational plan.** All applications for a conditional use permit must be accompanied by an
40 operational plan that describes, at a detail acceptable to the zoning administrator, the following
41 characteristics of the operation, as applicable:

- 42 **a.** Hours of operation.
43 **b.** Number of employees, including both full-time equivalents and maximum number of
44 personnel to be on the premises at any time.
45 **c.** Anticipated noise, odors, dust, soot, runoff or pollution and measures taken to mitigate
46 impacts to neighboring properties.
47 **d.** Descriptions of any materials stored outside and any activities, processing or other
48 operations taking place outside an enclosed building.
49 **e.** Compliance with county stormwater and erosion control standards under Chapter 11 or
50 Chapter 14, Dane County Code.
51 **f.** Sanitary facilities, including adequate private onsite wastewater treatment systems and
52 any manure storage or management plans approved by the Madison & Dane County Public
53 Health Agency and/or the Dane County Land and Water Resources Department.

- 54 g. Facilities for managing and removal of trash, solid waste and recyclable materials.
- 55 h. Anticipated daily traffic, types and weights of vehicles, and any provisions, intersection or
- 56 road improvements or other measures proposed to accommodate increased traffic.
- 57 i. A listing of hazardous, toxic or explosive materials stored on site, and any spill
- 58 containment, safety or pollution prevention measures taken.
- 59 j. Outdoor lighting and measures taken to mitigate light-pollution impacts to neighboring
- 60 properties.
- 61 k. Signage, consistent with ss. 10.800.
- 62 5. Third Party Consultation. If necessary expertise is not available from county staff, public
- 63 academic institutions or from appropriate regional, state or federal agencies, the committee may
- 64 consult with a third party to effectively evaluate a conditional use permit application. The zoning
- 65 administrator, or his or her designee, will select the consultant. The applicant for the conditional
- 66 use permit shall bear all reasonable costs and expenses associated with such consultation.
- 67 Applicants retain the right to withdraw a pending conditional use permit application if they choose
- 68 not to pay consultant fees.
- 69 6. Property Owner Consent. If the applicant for any conditional use permit is not the owner of
- 70 the property, the applicant must provide a signature(s) of the property owner(s) on the application
- 71 form or a written statement from the property owner(s) granting authorization to proceed with the
- 72 conditional use permit application.
- 73 (c) Approval/Review process.
- 74 1. Hearing on application.
- 75 a. Upon receipt of a complete and acceptable application, statement, site plan and
- 76 operational plan, the zoning committee shall hold a public hearing on each application for
- 77 conditional use. The zoning committee shall establish, by rule, a regular schedule and location for
- 78 public hearings. The zoning committee may prescribe or amend rules for the conduct of the
- 79 hearing and preserving a publicly-accessible recording of the proceedings.
- 80 b. The Department of Planning Development will publish a Class 2 notice of each public
- 81 hearing, as provided in Chapter 985 of the Wisconsin Statutes. The Department will also provide
- 82 direct notice to the Town Clerk of any towns affected by the proposed conditional use. The zoning
- 83 committee shall establish policies governing notice to other parties of interest.
- 84 ~~2. Zoning Committee Action.~~
- 85 ~~a. — The zoning committee is authorized by s. 59.69(2)(bm), Wis. Stats. to grant conditional use~~
- 86 ~~permits.~~
- 87 ~~b. — The zoning committee, after a public hearing, shall, within a reasonable time, grant, grant~~
- 88 ~~with conditions or deny any application for conditional use.~~
- 89 ~~c. — The zoning committee shall not take action on the application for conditional use until it~~
- 90 ~~receives action from the town board or the time period for action by the town board described in~~
- 91 ~~s. 10.101(7)(c)3. has expired.~~
- 92 ~~i. — If the town board denies the conditional use permit within the timeframes described in s.~~
- 93 ~~10.101(7)(c)3, the zoning committee need take no further action.~~
- 94 ~~ii. — The zoning committee may approve or deny a conditional use permit without town action if~~
- 95 ~~the town board fails to act within the time period set forth in s. 10.101(7)(c)3 below.~~
- 96 ~~d. — The zoning committee may postpone action on any conditional use permit until any~~
- 97 ~~unresolved violations of this Chapter or Chapters 11, 12, 13, 14, 17, 74, 75 or 78 are corrected~~
- 98 ~~and the property brought into full compliance with applicable standards.~~
- 99 ~~e. — Prior to granting or denying a conditional use, the zoning committee shall make written~~
- 100 ~~findings of fact based on evidence presented and issue a determination whether the proposed~~
- 101 ~~conditional use, with any recommended conditions, meets all of the following standards:~~
- 102 ~~i. — General standards for approval of a conditional use under s. 10.101(7)(d);~~
- 103 ~~ii. — Any prescribed standards specific to the applicable zoning district.~~
- 104 ~~iii. — Any prescribed standards specific to the particular use under s. 10.103.~~
- 105 ~~f. — The zoning committee must deny a conditional use permit if it finds that the standards for~~
- 106 ~~approval are not met.~~
- 107 ~~g. — The zoning committee must approve a conditional use permit if it finds that the standards~~
- 108 ~~for approval are met.~~
- 109 ~~32. Town Board Action.~~

- 110 a. The Department of Planning and Development shall provide direct notice to the town clerk
 111 of the town where a conditional use is proposed.
- 112 b. The town board may, at a properly noticed public meeting, grant, grant with conditions or
 113 deny any application for conditional use.
- 114 i. The town board shall communicate its position in writing on the conditional use application
 115 within sixty (60) days of the date of the county zoning committee public hearing.
- 116 ii. The town board may request an extension of the review period of up to forty (40) days by
 117 submitting a written request to the zoning committee.
- 118 c. Prior to granting or denying a conditional use, the town board shall make written findings of
 119 fact based on evidence presented and issue a determination whether the proposed conditional
 120 use, with any recommended conditions, meets all of the following standards:
- 121 i. General standards for approval of a conditional use under s. 10.101(7)(~~dh~~);
- 122 ii. Any prescribed standards specific to the applicable zoning district.
- 123 iii. Any prescribed standards specific to the particular use under s. 10.103.
- 124 d. The town board must deny a conditional use permit if it finds that the standards for
 125 approval are not met.
- 126 e. The town board must approve a conditional use permit if it finds that the standards for
 127 approval are met.
- 128 **3. Zoning Committee Action.**
- 129 **a. The zoning committee, after a public hearing, shall, within a reasonable time, grant, grant**
 130 **with conditions or deny any application for conditional use.**
- 131 **b. The zoning committee shall not take action on the application for conditional use until it**
 132 **receives action from the town board or the time period for action by the town board described in**
 133 **s. 10.101(7)(c)2. has expired.**
- 134 **i. If the town board denies the conditional use permit within the timeframes described in s.**
 135 **10.101(7)(c)2., the zoning committee need take no further action.**
- 136 **ii. The zoning committee may approve or deny a conditional use permit without town action if**
 137 **the town board fails to act within the time period set forth in s. 10.101(7)(c)2.**
- 138 **c. The zoning committee may postpone action on any conditional use permit until any**
 139 **unresolved violations of this Chapter or Chapters 11, 12, 13, 14, 17, 74, 75 or 78 are corrected**
 140 **and the property brought into full compliance with applicable standards.**
- 141 **d. Prior to granting or denying a conditional use, the zoning committee shall make written**
 142 **findings of fact based on evidence presented and issue a determination whether the proposed**
 143 **conditional use, with any recommended conditions, meets all of the following standards:**
- 144 **i. General standards for approval of a conditional use under s. 10.101(7)(h);**
- 145 **ii. Any prescribed standards specific to the applicable zoning district.**
- 146 **iii. Any prescribed standards specific to the particular use under s. 10.103.**
- 147 **e. The zoning committee must deny a conditional use permit if it finds that the standards for**
 148 **approval are not met.**
- 149 **f. The zoning committee must approve a conditional use permit if it finds that the standards**
 150 **for approval are met.**
- 151 **4(d). Appeals to Circuit Court of Conditional Use Permit Decisions.**
- 152 **a. Any person aggrieved by the grant or denial of a conditional use permit may appeal the**
 153 **decision to the circuit court as authorized by Wis. Stat. s. 59.69(5e)(e) using the procedures**
 154 **contained in Wis. Stat. s. 59.694(10).**
- 155 **(e) Resubmittal of a Conditional Use Permit Application.**
- 156 **No application that is the same as, or similar to, an application that has been denied under this**
 157 **section, and affecting the same property or portion thereof, may be submitted for a period of one**
 158 **(1) year from the date of said denial, or if appealed, the court decision, unless the applicant**
 159 **provides substantial new evidence or proof of a change of conditions that would support approval**
 160 **or conditional approval of the application found valid by the county zoning committee. This**
 161 **prohibition also applies to an application that is withdrawn within 30 days of, or any time after, the**
 162 **county public hearing.**
- 163 **(f) Failure to Commence or Abandonment of A Conditional Use.**

164 If any use allowed by an approved conditional use permit is not commenced within one year of
165 issuance of the permit or is abandoned for one year or more, the associated conditional use
166 permit shall be terminated by the zoning administrator. Future re-establishment of an abandoned
167 conditional use shall require approval of a new conditional use permit.

168 (g) Revocation of Conditional Use Permit.

169 1. Application for a conditional use permit constitutes consent to inspection of the permitted
170 premises by the zoning administrator or designee to assure permit compliance.

171 2. If a landowner or holder of the conditional use permit is found to be in violation of the permit
172 conditions, the landowner or holder of the permit shall be notified in writing of the said violation(s)
173 and given 10 days to correct the violation.

174 3. If the violation is not corrected within the assigned correction period, a report shall be filed with
175 the zoning committee documenting the violation.

176 4. If the zoning committee finds that the conditions stipulated in the conditional use permit are not
177 being complied with, the zoning committee, after a public hearing, may revoke the conditional use
178 permit. Appeals from the action of the zoning committee may be as provided in s. 10.101(7)(d).

179 **(dh)** Requirements and standards for conditional use permits.

180 **1.** Standards for approval. Before approving any conditional use permit, the town board and
181 zoning committee must find that all of the following conditions are met:

182 **a.** That the establishment, maintenance or operation of the conditional use will not be
183 detrimental to or endanger the public health, safety, comfort or general welfare;

184 **b.** That the uses, values and enjoyment of other property in the neighborhood for purposes
185 already permitted shall be in no foreseeable manner substantially impaired or diminished by
186 establishment, maintenance or operation of the conditional use;

187 **c.** That the establishment of the conditional use will not impede the normal and orderly
188 development and improvement of the surrounding property for uses permitted in the district;

189 **d.** That adequate utilities, access roads, drainage and other necessary site improvements
190 have been or are being made;

191 **e.** That adequate measures have been or will be taken to provide ingress and egress so
192 designed as to minimize traffic congestion in the public streets; and

193 **f.** That the conditional use shall conform to all applicable regulations of the district in which it
194 is located.

195 **g.** That the conditional use is consistent with the adopted town and county comprehensive
196 plans.

197 **h.** If the conditional use is located in a Farmland Preservation Zoning district, the town board
198 and zoning committee must also make the findings described in s. 10.220(1).

199 **2.** Conditions.

200 **a.** Standard conditions. The town board and zoning committee shall impose, at a minimum,
201 the following conditions on any approved conditional use permit:

202 **i.** Any conditions required for specific uses listed under s. 10.103.

203 **ii.** The physical development and operation of the conditional use must conform, in all
204 respects, to the approved site plan, operational plan and phasing plan.

205 **iii.** New and existing buildings proposed to house a conditional use must be constructed and
206 maintained to meet the current requirements of the applicable sections of the Wisconsin
207 Commercial Building Code or Uniform Dwelling Code.

208 **iv.** The applicant shall apply for, receive and maintain all other legally required and applicable
209 local, county, state and federal permits. Copies of approved permits or other evidence of
210 compliance will be provided to the zoning administrator upon request.

211 **v.** Any ongoing business operation must obtain and continue to meet all legally required and
212 applicable local, county, state and federal licensing requirements. Copies of approved licenses or
213 other evidence of compliance will be provided to the zoning administrator upon request.

214 **vi.** Existing onsite wastewater sewage disposal systems, if any, serving the conditional use
215 must be inspected by a licensed plumber to determine its suitability for the proposed or expanded
216 use. Deficient systems must be brought, at the owner's expense, into full compliance with the
217 current requirements for new development of the state plumbing code and Chapter 46, Dane
218 County Code.

- 219 **vii.** All vehicles and equipment must access the site only at approved locations identified in the
220 site plan and operations plan.
- 221 **viii.** Off-street parking must be provided, consistent with s. 10.102(8).
- 222 **ix.** If the Dane County Highway, Transportation and Public Works Department or the town
223 engineer determine that road intersection improvements are necessary to safely accommodate
224 the conditional use, the cost of such improvements shall be borne by the landowner. Costs borne
225 by the landowner shall be proportional to the incremental increase in traffic associated with the
226 proposed conditional use.
- 227 **x.** The Zoning Administrator or designee may enter the premises of the operation in order to
228 inspect those premises and to ascertain compliance with these conditions or to investigate an
229 alleged violation. Zoning staff conducting inspections or investigations will comply with any
230 applicable workplace safety rules or standards for the site.
- 231 ~~**xi.** The owner must post, in a prominent public place and in a form approved by the zoning
232 administrator, a placard with the approved Conditional Use Permit number, the nature of the
233 operation, name and contact information for the operator, and contact information for the Dane
234 County Zoning Division.~~
- 235 **xii.** The owner or operator must keep a copy of the conditional use permit, including the list of
236 all conditions, on the site, available for inspection to the public during business hours.
- 237 **xiii.** Failure to comply with any imposed conditions, or to pay reasonable county costs of
238 investigation or enforcement of sustained violations, may be grounds for revocation of the
239 conditional use permit. ~~The holder of a conditional use permit shall be given 30 days from the
240 date of a written notice of violation to correct any violations prior to revocation.~~
- 241 ~~**xiv.** If any use allowed by an approved conditional use permit is not commenced within one
242 year of issuance of the permit or is abandoned for one year or more, the associated conditional
243 use permit shall be terminated. Future re-establishment of an abandoned conditional use shall
244 require approval of a new conditional use permit.~~
- 245 **b.** Other conditions. In addition to the standard conditions listed above, the town board and
246 zoning committee may, at their discretion, impose any other conditions as necessary to meet the
247 standards for approval described in s. 10.101(7)(d)1. above, including but not limited to:
- 248 **i.** Expiration dates on conditional use permits, except for permits for communication towers
249 under s. 10.103(9). Continuation or extension of an expired conditional use requires re-
250 application and approval by the town board and zoning committee.
- 251 **ii.** Limits on hours or days of operation, or number of events each year.
- 252 **iii.** Limits on numbers of employees.
- 253 **iv.** Limits on numbers of total people, vehicles or animals on the premises at any one time.
- 254 **v.** Limits on total quantity or volume of product on the premises at any one time.
- 255 **vi.** Limits on square footage of buildings or outdoor areas devoted to the proposed use.
- 256 **vii.** Requirements for screening, berms or minimum setbacks as necessary to minimize
257 disturbance to neighboring properties.
- 258 **viii.** Noise limits, set to a decibel [db(a)] level appropriate for the particular use and location, as
259 provided in s. 10.102(6).
- 260 **ix.** Controls, limits or setbacks to control odor or fumes.
- 261 **x.** Surety bonds or other financial guarantees, to dismantle equipment, buildings or structures
262 that may pose a hazard or nuisance after a conditional use permit is abandoned or revoked.
263 Unless otherwise required under applicable state statute or administrative code:
- 264 • Any bond or other financial instrument shall expressly state that it will remain in full force
265 and effect for a period of at least six months after the surety provides Dane County written
266 notification of expiration or termination of the surety's obligation under the bond.
- 267 • Applicant shall remove any equipment or structure placed or erected pursuant to the
268 conditional use permit no less than 30 days prior to the termination or expiration of the guarantee.
- 269 • Bonds or other financial instruments shall not exceed \$20,000 unless it is conclusively
270 demonstrated that a higher amount is necessary to protect the public health, safety and welfare.

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ARTICLE 3. Section 10.101(8) is amended to read as follows:
(8) Petitions to Rezone. (Zoning Map Amendments.)

274 (a) Who ~~m~~May ~~p~~Petition to ~~r~~Rezone. As described in s. 59.69(5)(e), Wis. Stats., petitions to
275 amend the zoning map to change the zoning district of any new or existing parcels, or to modify
276 the boundaries of any zoning district may be submitted by any of the following:
277 1. A property owner in the area affected by the proposed amendment;
278 2. The town board affected by the proposed amendment;
279 3. Any member of the zoning committee, or
280 4. Any county board supervisor.

281 (b) Resubmittal of Rezoning Petitions. No petition to rezone that is the same as, or similar
282 to, a petition that has been denied under this section and affecting the same property or portion
283 thereof shall be resubmitted for a period of one (1) year from the date of said denial or, if
284 appealed, from the date of the court decision, except on the grounds of new evidence or proof of
285 change of conditions found to be valid by the zoning committee. This prohibition also applies to a
286 rezone petition that is withdrawn within 30 days of, or any time after, the county public hearing.

287 ~~(bc)~~ Petition requirements.

288 1. Town consultation. Prior to submitting a rezone petition, applicants must consult with the
289 affected town clerk, town plan commission or town board, as determined by the town.

290 2. Application form. Zoning petitions must be submitted in a form approved by the zoning
291 administrator, and must include, at a minimum, the following:

292 a. The name, address and other contact information for the owner(s) of all properties affected
293 by the rezone;

294 b. The name, address and other contact information for anyone acting as the owner's agent
295 on the application;

296 c. A written legal description accurately describing the area to be rezoned;

297 d. A scaled drawing of the proposed rezone area, including area in acres or square feet;

298 e. The town(s) in which the proposed rezone is located;

299 f. Parcel ID numbers affected by the proposed rezone;

300 g. A written narrative describing the proposed use.

301 3. Site plan. For rezones to the HAM-R, HAM-M, LC, ~~LGC~~, HC, RI or MI zoning districts, the
302 applicant must provide site plans as described in s. 10.101(6);

303 4. Land division application. If required under Chapter 75, Dane County Code, the applicant
304 must provide draft certified survey maps, preliminary plats, land division applications and any
305 associated fees;

306 5. Fees. The applicant must provide payment of all applicable fees as described in Chapter
307 12, Dane County Code.

308 6. Other information. Any other information the zoning administrator, or designee, determines
309 necessary to evaluate the nature, location or intensity of the proposed use or consistency with the
310 Dane County Comprehensive Plan or the Dane County Farmland Preservation Plan.

311 7. Incomplete applications will not be accepted.

312 ~~(ed)~~ Approval/Review process.

313 1. Zoning committee, town board and county board action.

314 a. The zoning committee, town board and county board shall follow the process for public
315 hearing, recommendations, amendment, approval, denial and re-referral of petitions to rezone as
316 described in s. 59.69(5)(e), Wis. Stats.

317 b. The zoning committee may postpone action on any rezone petition until any unresolved
318 violations of this Chapter or Chapters 11, 12, 13, 14, 17, 74, 75 or 78 are corrected and the
319 property brought into full compliance with applicable standards.

320 c. The zoning committee or county board may adopt additional rules and procedures for
321 petitions to rezone under the authority of Chapter 7, Dane County Code.

322 2. County executive action. The county executive shall, within a reasonable time of county
323 board action, take action on the proposed rezone petition. The county executive may sign, refuse
324 to sign or veto the rezone petition within the timelines described in s. 59.17(6), Wis. Stats.

325 ~~(de)~~ Conditions on rezone petitions.

326 1. The zoning committee may recommend and the county board may adopt an ordinance
327 effecting an amendment of the zoning district map containing conditions of approval that may be
328 appropriate or necessary to ensure compliance with the requirements of the ordinance and/or
329 consistency with applicable town and county comprehensive planning policies.

- 330 2. The zoning map amendment shall indicate that the change in the map will take effect
331 within a specified period of time from the date of county board approval, by which time all
332 required conditions must be satisfied.
- 333 3. Conditions on zoning map amendments may include, but are not limited to:
- 334 a. Limits of permitted or conditional uses to less than the full range of uses otherwise
335 allowable in the district into which the land is being placed.
- 336 b. Limitations on the size, scope, number of employees, size of buildings or quantity of
337 materials associated with a particular use.
- 338 c. Requirements that the landowner record a final Certified Survey Map, Subdivision Plat, or
339 Condominium Plat with the Register of Deeds.
- 340 d. Requirements that the landowner record, with the Register of Deeds, restrictive covenants
341 to enforce required conditions. The covenant controls shall be amendable or repealable upon
342 petition of the owner of the lands subject to the controls and approval by the county board after a
343 hearing similar to a rezoning hearing. Except as amended or repealed, the covenants shall run
344 with the land.
- 345 4. Failure to satisfy all required conditions within the specified time period shall result in the
346 zoning map amendment becoming null and void.

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348 *[EXPLANATION: This amendment revises the review process for conditional use*
349 *permits and rezones with the following changes: change wording of approval*
350 *process to “review” process; move the CUP Town process before the ZLR*
351 *process to reflect actual process; renumber appeal language section to fall in line*
352 *with the layout of the section; add language regarding 1-year resubmittal of a*
353 *CUP proposals; add language regarding the revocation process of a conditional*
354 *use permit; remove condition of posting of CUP placard; add language regarding*
355 *1-year resubmittal of rezone proposal.]*