

Town of Herman, WI  
Monday, February 20, 2023

## Chapter 375. Wind Energy Systems

[HISTORY: Adopted by the Town Board of the Town of Herman 1-16-2014 by Ord. No. 14-02. Amendments noted where applicable.]

### GENERAL REFERENCES

Zoning — See Ch. **384**.

### § 375-1. Authority; findings of fact.

- A. These regulations are adopted under the authority granted pursuant to § 66.0401, Wis. Stats.<sup>[1]</sup>  
[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- B. The Town Board has established that wind energy systems are a permitted land use in the A-1 and A-2 Agricultural Districts of Chapter **384**, Zoning, of this Code and are uses consistent with agricultural use.<sup>[2]</sup>  
[2] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- C. The Town Board finds that wind energy systems operating in the Town require special licensing by the Town in order to protect and preserve the health, safety, and welfare of the citizens of the Town and people in general.
- D. Licensing is a legitimate and reasonable means of accountability to ensure that the construction of and operation by employees of wind energy systems comply with reasonable regulations and to ensure that operators and employees do not allow their establishments to be hazardous to the public health or safety.
- E. It is not the intent of this chapter to significantly increase the cost of the system or significantly decrease the efficiency of any wind energy system proposed to be located in the Town.

### § 375-2. Purpose and intent.

Based upon the findings stated above, it is the intended purpose of the Town to regulate wind energy systems to promote the health, safety, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize potentially dangerous effects of these systems on the community.

### § 375-3. Definitions.

The following terms have the meanings indicated:

#### APPLICANT

The individual or business entity that seeks to secure a license under this chapter of the Town Municipal Code.

#### BOARD

The Town Board for the Town of Herman, Dodge County, Wisconsin.

**EMPLOYEE**

Any and all persons, including but not limited to operators, who work in or at or render any services directly related to operation of wind energy systems.

**GOOD UTILITY PRACTICE**

Any of the practices, methods and acts with respect to the safe operation of the wind energy system facility engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. "Good utility practice" is not intended to be limited to the optimum practice, method, or act to the exclusion of all others but rather to be acceptable practices, methods or acts generally accepted in the region.

**NONPARTICIPATING RESIDENT**

All residences which are not subject to an agreement, authorization or lease with the wind energy system facility developer.

**OPERATOR**

The person who is designated on the license application to be the person in charge of the daily operation of the premises and who is to be the wind energy system's contact person for the municipality.

**PERSON**

An individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

**STRAY VOLTAGE**

Neutral-to-earth voltage measured from the electrical system neutral and/or any structure bonded to this neutral to earth that adversely affects humans or animals.

**WIND ENERGY SYSTEM**

Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes all of the land, buildings, structures and equipment used by the wind energy system and its support facilities, including the wind turbine, tower, access roads, control and office facilities, meteorological towers, maintenance and all power collection and transmission systems.

**WIND ENERGY SYSTEM TOWER**

Any structure that is designed and constructed primarily for the purpose of supporting the wind turbine.

**WIND ENERGY SYSTEM TOWER SITE**

The land area encompassing a tower and all related equipment, structures, paved or graveled areas, safe clearance areas, fencing and other items used in connection with said tower.

**WIND TURBINE**

A mechanical device which captures the kinetic energy of the wind and converts it into electricity. The primary components of a wind turbine are the blade assembly, electrical generator and tower.

**§ 375-4. License required; transfer of license.**

- A. License required. From and after the effective date of this chapter, no wind energy systems shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town.
- B. Effect of other licenses. The fact that a person possesses any other valid license or permit required by law does not exempt that person from the requirement of obtaining a wind energy system license

under this chapter.

- C. Transferability of licenses. Licenses may be transferred pursuant to § PSC 128.32(4), Wis. Adm. Code.

## § 375-5. License application procedure.

- A. Any person desiring to secure a wind energy system license shall file an application together with two additional copies of the application with the Town Clerk.
- B. The application shall be in the form prescribed at § PSC 128.30(2), Wis. Adm. Code.
- C. Each application shall be accompanied by payment of a nonrefundable application fee to be determined from time to time by separate resolution of the Town Board.
- D. The Town Clerk shall date the filing of the application on the face of the application.
- E. Upon receipt of the application, the Town Clerk shall distribute a copy of the application to the Town Board, Building Inspector and Town Fire Departments.
- F. The Town Board may refer the application to the Town Engineer or a qualified consulting engineer for further review. The reasonably necessary costs associated with the engineering review shall be the responsibility of the applicant, in accord with the terms of this chapter.
- G. The Town Board may but shall not be obligated to refer the application to the Plan Commission for review and recommendation.
- H. Hearing.
  - (1) The Town Board shall hold a public hearing for the purpose of receiving public comment and providing information regarding the wind energy system application.
  - (2) The Town Board will receive written comments through the 15th business day following the public hearing. The written comments will be considered by the Board in making its determination on the application.
  - (3) The Town Board shall place a copy of the application for public review at two locations as established from time to time by resolution.
- I. Following review, the Town Board shall either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this chapter and under state law. A decision granting the license shall be made in writing, including findings of fact supported by evidence in the record. A copy of the decision, whether granted or denied, shall be filed with the Public Service Commission. If granted, a duplicate original must be given to the owner/applicant. The application shall be processed within the time frames established by § 66.0401(4), Wis. Stats.
- J. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
- K. If the Town Board decides to deny the application for a license, the Board shall immediately notify the applicant in writing of the reasons for denial. Such notice shall be sent to the applicant within five days of the decision by certified mail, return receipt requested.
- L. Appeal of the Board's determination shall proceed as directed in § 66.0401(5), Wis. Stats.
- M. Each license issued for a wind energy system shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

## § 375-6. Technical requirements for licensing.

This chapter is intended to require implementation of restrictions through licensing regarding the design, construction and operation of wind energy systems. It is recognized that the restrictions herein are neither exclusive nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a wind energy system, additional and/or more restrictive conditions may be included in the license to address such concerns.

- A. Aircraft protection. The wind turbine generator tower shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the outside of the tower other than what is required by the FAA or other applicable authority or as otherwise agreed in connection with the issuance of the license. Notwithstanding the foregoing, this restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The tower shall be connected to an uninterruptible backup power source to ensure continuous compliance with FAA regulations. To the extent consistent with FAA regulations, shrouding for the lights shall direct reflection of light up.
- B. Blasting. The licensee shall not undertake any blasting in connection with the construction of the facility unless the applicant shall have notified the Town and submitted a blasting plan consistent with applicable laws and regulations.
- C. Color. Except as may be required by the FAA, the coloration of the exterior components and each wind turbine tower shall be of a conventional or unobtrusive finish, including the blades. The licensee throughout the term of this license shall maintain the required coloration and finish.
- D. Electromagnetic interference. The licensee shall not operate the facility so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission regulations or other law.
- E. Emergency shutdown. The licensee shall be required to immediately cease operations for the duration of any emergency. "Emergency" shall mean a proven condition or situation caused by the facility that presents an imminent physical threat of danger to life or significant threat to property.
- F. Groundwater protection. The licensee shall operate the facility so as not to cause groundwater contamination in violation of applicable law.
- G. Noise. The noise design limit for each wind turbine shall be as set forth at § PSC 128.14, Wis. Adm. Code.
- H. Public roads. The licensee shall, prior to the initiation of construction and use of haul roads, consult with the Town Road Superintendent, the Wisconsin state police and the Dodge County Sheriff's Office for load paths and restrictions on their respective roads or bridges. At the licensee's expense, the licensee shall provide the Town Road Superintendent with a videotape documenting the condition of all haul roads in the Town prior to beginning and after completing construction of the facility. At the licensee's expense, the licensee shall contract with qualified contractors to repair any damage to the haul roads due to transportation of equipment and facility components ("road repair obligations"). In the event that a hazardous road condition exists that is not promptly corrected by the licensee, the Town Road Superintendent may order emergency road repairs to be performed by qualified contractors, and the licensee shall promptly reimburse the Town for reasonable emergency road repair costs. The licensee shall assure funding of the road repair obligations by a letter of credit or guaranty from a contractor of the applicant. Weather permitting, the final road repair obligations shall be completed to the reasonable satisfaction of the Town Road Superintendent within six months after completion of construction of the facility, or as soon thereafter as weather conditions permit.
- I. Screening. The facility shall be designed to minimize shadow flicker as set forth in § PSC 128.15, Wis. Adm. Code.
- J. Setback. Wind turbines shall be set back pursuant to the regulations set forth in § PSC 128.13, Wis. Adm. Code.

#### K. Signage and fencing.

- (1) The licensee shall provide reasonable signage at the facility, identifying the premises as being part of the facility and providing appropriate safety notices and warnings against trespassing. The "No Trespassing" signs shall be posted around the entire premises at an appropriate distance for posting but no fewer than two conspicuous places for every 40 acres within the facility.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- (2) No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the wind turbines. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

#### L. Stray voltage. The licensee shall utilize good utility practice to minimize, to the extent practicable, the impact, if any, of stray voltage caused by the facility.

#### M. Reporting and complaint resolution procedure. The licensee shall report to the Town as follows:

- (1) Extraordinary events. Within 24 hours of any extraordinary event, the licensee shall notify the Town. "Extraordinary event" shall include tower collapse, catastrophic turbine failure, unauthorized entry to the tower base, thrown blade or hub, any injury to a facility worker or other person that requires emergency medical treatment, or other event that in the licensee's opinion reasonably impacts the public health and safety of the Town.

#### (2) Complaints.

(a) Parties shall follow the procedures established in § PSC 128.40, Wis. Adm. Code.

(b) Upon petition from an aggrieved person, the Town may undertake an investigation of the alleged problem and attempted resolution by the wind energy system owner. If reasonably necessary, the Town may hire a qualified individual to assist in the investigation, the cost of which shall be reimbursed by the wind energy system owner. Upon review of the complaint or an investigative report, the Town may order operational changes, additional mitigation measures or other reasonable resolution of the complaint.

## § 375-7. Insurance and indemnification.

#### A. Insurance.

- (1) All licensees shall maintain the following insurance coverages commencing upon construction of the facility:
  - (a) The licensee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring the applicant and participating landowners against loss or liability caused by the applicant's occupation and use of the property under the lease, in an amount not less than \$5,000,000 of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. The Town shall be named as an additional insured on the policy.
  - (b) Workers' compensation coverage in an amount required by Wisconsin law. The applicant shall require subcontractors and others not protected under its insurance to obtain and maintain workers' compensation and employers' liability insurance.
- (2) Certificates of insurance evidencing compliance with these requirements shall be provided upon request of the Town. The insurer will provide notice to the Town in the event there is a lapse in coverage exceeding 30 days. All policies other than workers' compensation shall be written on an occurrence and not on a claim made basis.

#### B. Defense of land use decision and indemnity.

- (1) Defense of land use decision. In addition to the indemnification described below, the licensee shall reimburse the Town its reasonable attorney fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this chapter or any portion thereof, or the issuance of a license by the Town pursuant to this chapter. If the Town seeks reimbursement, it shall notify the licensee in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 120 days after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it which may give rise to a claim for a land use defense reimbursement. The licensee shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails to notify the licensee thereof in accordance with the provisions of this section in sufficient time, including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify the licensee has actually resulted in prejudice or damage to the licensee. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this section, the licensee shall be entitled to assume and control (with counsel of its choice) the defense of such action, lawsuit, proceeding, investigation or other claim at the licensee's expense; provided, however, that the Town shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third party any and all cross claims and counterclaims the Town may have, subject to the licensee's consent, which consent shall not be unreasonably withheld. If the licensee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either such settlement provides an unconditional release of the Town or the licensee shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld). If the licensee elects to assume the defense of any claim, the Town shall fully cooperate with the licensee and its counsel in such defense.
- (2) Indemnification. The licensee shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney fees (such liabilities together known as "liability") arising out of the licensee's selection, construction, operation and removal of the wind turbines and affiliated equipment, including, without limitation, liability for property or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

## § 375-8. Standards.

- A. Construction standards. Wind turbines shall be constructed in compliance with good utility practice for wind turbines. In the event that, after inspection by a qualified expert in good utility practice, the Town concludes that any of the wind turbines were not constructed in compliance with good utility practice or constitute a danger to persons or property, then upon notice being provided, the licensee shall have 90 days to bring the noncompliant wind turbine(s) into compliance with such standards or, if 90 days is insufficient time to cure the noncompliance, the licensee shall present a plan to the Town describing the reason for the delay and the time frame for the cure to be put in place. Failure to bring such noncompliant wind turbine(s) into compliance or failure to provide a plan for compliance within 90 days shall constitute grounds for the Town to request removal of said wind turbine(s) at the licensee's expense.
- B. Performance standards. Any wind energy system or wind energy system facility shall be operated and maintained consistent with good utility practice for comparable facilities.
- C. State and federal standards. Construction of wind turbines shall meet or exceed current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate wind-powered generators. If such standards and regulations are changed and retroactive application is required for the change, then the licensee shall bring the wind turbine(s) into

compliance with such applicable revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is permitted by the controlling state or federal agency or approved by the Town. A determination of no hazard for each wind turbine must be obtained from the FAA as a condition precedent for the installation of each turbine.

- D. Wind turbine safety standards. The licensee shall comply with the following safety standards:
- (1) All wiring between the wind turbines and the substation shall be underground;
  - (2) The outside of wind turbines shall not be climbable;
  - (3) All access doors to the towers and electrical equipment shall be locked; and
  - (4) Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances.

## § 375-9. Repair and replacement.

The licensee shall be authorized to repair and replace the wind turbine generator and associated equipment consistent with good utility practice during the term of this license as needed to keep the facility in good repair and operating condition. However, no such repair or replacement shall entitle the licensee to any extension of the term of this license, even if it extends the useful life of the facility. If the licensee desires to extend the term of this license in the future, the licensee shall be required to apply for such extension or amendment of this license in accordance with the terms of this chapter.

## § 375-10. Removal.

- A. Cessation of operation. Upon expiration of this license or should removal of all or part of the wind energy system facility otherwise be required under this chapter, the licensee shall effectuate the removal of the whole or part of the wind energy system affected. Further, if the licensee ceases commercial operation of the facility for a continuous period of one year, the licensee shall take all measures necessary to accomplish such removal. Unless otherwise agreed to with landowners in a recordable form, said removal shall be to a depth of 48 inches beneath the soil surface, and the licensee shall restore the premises to substantially the same physical condition which existed immediately before the construction of the facility (the "removal obligations"). Any agreement for removal of a foundation to a lesser depth or for no removal of the foundation shall be recorded with the Dodge County Register of Deeds and shall show the locations of all such foundations.
- B. Financial assurance.
- (1) The owner shall provide financial assurance of the ability to pay the actual and necessary cost to decommission the wind energy system before blasting or foundation construction as provided in § PSC 128.19(3), Wis. Adm. Code.
  - (2) Notwithstanding the surety, in the event that the licensee has failed, refused or neglected to comply with the removal requirements herein within 12 months of the Town's written notice, the Town or its agents shall be licensed to enter onto the premises for purposes of razing and removing the subject structures. All costs associated with the Town's efforts in this regard shall be placed upon the real estate tax bill of the site as a special charge. The removal obligations shall be completed within 12 months after decommissioning of the facility, cessation of the commercial operation regarding the facility, or the expiration of this license, whichever first occurs.

## § 375-11. Alteration of licensed premises; revocation of license.

- A. Amendment. Following the granting of a license, any licensee who wishes to materially alter any aspect of the licensed premises which was required to be described in the building plan or site plan required under this chapter shall apply to the Town Board for an amendment to the license. The application shall explain the nature of the alteration and the reasons therefor and include a nonrefundable application fee. The applicant shall pay the reasonably necessary engineering expenses, if any, associated with the review. The Town Board shall act on the amendment application consistent with the terms of this chapter.
- B. Revocation of license. Each of the following occurrences shall constitute a violation of the terms and conditions of this license (a "violation"), and any such violation shall be grounds for revocation of this license (whatever the reason for such an event of default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, order or regulation) after the expiration of the notice and cure period and revocation hearing as set forth below:
- (1) If the licensee abandons the wind turbine generators located on the premises for a period of one year or more;
  - (2) If the licensee fails to observe or perform any material condition or provision of this license for a period of 30 days after it has received written notice of such failure from the Town; provided, however, that a violation shall not occur if the licensee commences performance of such obligation within such thirty-day period and is diligently proceeding to complete such performance; or
  - (3) If there is a material failure by the licensee to comply with any statute, regulation, rule, or license administered by any federal, state or county department, agency, or commission directly related to the operation of the wind turbine generator, and if the licensee fails to cure the material failure to comply for a period of 30 days after the date the licensee receives written notice of such failure from the Town or the federal, state or local governmental body or agency with jurisdiction; provided, however, that a violation shall not occur if the licensee commences performance of such obligation within such thirty-day period and is diligently proceeding to complete such performance.
- C. Hearing. The Town shall not revoke any license without first providing the licensee a hearing and the right to respond, including the right to present evidence regarding any defenses or extenuating circumstances (such as the applicant's prompt commencement of remedial measures that cannot reasonably be concluded within 30 days) regarding the alleged violations.
- D. Judicial review. The licensee shall have the right to appeal any revocation to Circuit Court within 30 days of the date of the revocation.

## § 375-12. Term of license.

Unless the Town Board authorizes a different term based upon analysis of the useful life of the wind energy system facility, every license issued pursuant to this chapter will terminate upon the expiration of 30 years from the date of issuance.

## § 375-13. Location of wind energy system.

If all the requirements for a license as stated in this regulation are met, a wind energy system shall only be allowed to locate in the zoning district(s) provided for by the Town and shall not be allowed to locate in any other district.

## § 375-14. Revenue payments; professional fees.

- A. Guarantee of state revenue payments. The Town may require assurance of continued revenue from the licensee in the event and to the extent the state shared revenue payments are reduced or



eliminated.

- B. Professional fees. The licensee shall agree to reimburse the Town's reasonable attorney and qualified engineering fees relating to the evaluation, preparation and issuance by the Town of the license.

## Chapter 384. Zoning

[HISTORY: Adopted by the Town Board of the Town of Herman 9-21-2010; amended 10-18-2011; 5-29-2012. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. **170**.

Comprehensive Plan — See Ch. **188**.

Land division and development — See Ch. **251**.

Wind energy systems — See Ch. **375**.

## Article I. Introduction

### § 384-1. Authority.

The provisions of this chapter are adopted by the Town of Herman pursuant to the authority granted by §§ 60.62, 61.35 and 62.23(7), Wis. Stats.

### § 384-2. Purpose and intent.

This chapter is adopted for the following purposes:

- A. To promote and protect the public health, safety, morals, comfort, convenience and general welfare.
- B. To minimize congestion in the public rights-of-way, promote safety from natural and man-made disasters, provide for adequate light and air, and avoid undue concentration of population.
- C. To facilitate the adequate, efficient and cost-effective provision of public services and facilities.
- D. To encourage the use of lands and natural resources in accordance with their character and adaptability by utilizing special land features, such as slope, topography, soils, vegetation, wetland areas and wildlife.
- E. To conserve the natural scenic beauty and attractiveness of the Town and to enhance the aesthetic desirability of the environment.
- F. To divide the Town into districts within which the location, sizes and uses of buildings and minimum open spaces shall be regulated.
- G. To prohibit the use of buildings, structures and lands that are incompatible with the intended use or development of lands within the specified districts.
- H. To provide regulations pertaining to preexisting lots, structures and uses that do not conform to provisions of this chapter.
- I. To provide for the compatible and appropriate use of land throughout the Town.
- J. To provide for the administration of this chapter and its amendments.
- K. To prescribe penalties for the violation of provisions of this chapter or any of its amendments.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-3. Abrogation and greater restrictions.

It is not intended by this chapter to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, ordinances, rules, regulations or permits previously adopted or issued pursuant to law. However, wherever this chapter imposes greater restrictions, the provisions of this chapter shall govern.

## § 384-4. Interpretation.

The provisions of this chapter shall be interpreted and applied as minimum requirements, shall be liberally construed in favor of the Town, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

## § 384-5. Title.

This chapter shall be known as, referred to or cited as the "Town of Herman Zoning Ordinance."

## § 384-6. When effective.

The power to adopt a Town zoning ordinance having been approved by referendum vote of the electors of the Town held at the time of a regular annual Town meeting and a public hearing having been held regarding this chapter following the giving of requisite notice, the adoption by the Town Board of the original ordinance was named effective following approval by the Dodge County Board of Supervisors and publication.<sup>[1]</sup>

[1] *Editor's Note: The original ordinance was adopted by the Town Board 9-21-2010 and approved by the Dodge County Board of Supervisors 10-19-2010.*

## Article II. General Provisions

### § 384-7. Jurisdiction.

The jurisdiction of this chapter shall include all lands and waters within the boundaries of the Town of Herman. In the shoreland and floodplain areas under the dual jurisdiction of the Town of Herman and Dodge County, this chapter and the Land Use Code, Dodge County, Wisconsin, shall be in full effect and all requirements shall be met.

### § 384-8. Compliance required.

No structure, land, or water shall hereafter be used and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered except in conformity with the regulations herein specified for the district in which it is located.

### § 384-9. Duties of Zoning Administrator.

The Town Zoning Administrator is hereby designated as the administrative and enforcement officer for the provisions of this chapter. The duty of the Zoning Administrator shall be to interpret and administer this chapter and to issue, after on-site inspection, all permits required by this chapter. The Zoning Administrator shall further:

- A. Maintain records of all permits issued, inspections made, work approved, and other official actions.
- B. Inspect all structures, lands, and waters as often as necessary to assure compliance with this chapter. Access to premises and structures shall be permitted during reasonable hours to make those inspections as deemed necessary by him to ensure compliance with this chapter. If, however, he is refused entry after presentation of his identification, he may procure a special inspection warrant in accordance with § 66.0119, Wis. Stats.
- C. Investigate all complaints made relating to the location of structures and the use of structures, lands, and waters; give notice of all violations of this chapter to the owner, resident, agent, or occupant of the premises; and report uncorrected violations to the Town Attorney in a manner specified by him.
- D. Assist the Town Attorney in the prosecution of violations of this chapter.
- E. Prohibit the use or erection of any structure, land or water until the Zoning Administrator has inspected and approved such use or erection.
- F. Attend all meetings of the Town Plan Commission and the Town Board of Appeals.
- G. At the request of the Town Board, Town Board Chairperson, Plan Commission or Board of Appeals, present to such persons or bodies facts, records or reports that may assist them in making decisions, or assist them in any way as requested.<sup>[1]</sup>

[1] *Editor's Note: Throughout this chapter, "Chair" and "Chairman" were amended to "Chairperson" at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-10. Land use permit required.

No structure shall hereafter be located, erected, moved, reconstructed, extended, enlarged, or structurally altered until after the owner or his agent has secured a land use permit from the Zoning Administrator, unless otherwise exempted pursuant to § 384-11 of this chapter.

- A. Applications for a land use permit shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following where applicable:
  - (1) Name and addresses of the applicant, owner of the site, architect, professional engineer, and contractor.
  - (2) Description of the subject site by lot, block and recorded subdivision, or metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
  - (3) Plat of survey prepared by a professional land surveyor showing the location, boundaries, dimensions, and elevations or, where deemed appropriate by the Zoning Administrator, a location sketch drawn to scale. The scale shall not be smaller than one inch equals 40 feet. The plat or sketch shall show uses and sizes of the following: subject site; existing and proposed structures; existing and proposed easements, streets, and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; and existing and proposed street, side, and rear yards. In addition, the plat of survey shall show the location, elevation, and use of any abutting lands and their structures within 40 feet of the subject site. Place stakes painted orange at the exterior corners of the proposed building on the lot on which the applicant desires to build.<sup>[2]</sup>

[2] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
  - (4) A photocopy of any necessary shoreland or floodplain zoning permits secured from the Dodge County Land Resources and Parks Department.<sup>[3]</sup>

[3] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- (5) A photocopy of any necessary sanitary permits secured from the Dodge County Land Resources and Parks Department.
  - (6) Proposed water supply plan, showing the location of any private well, if municipal water service is not available.
  - (7) Additional information as may be required by the Town Board, Plan Commission, or the Town Zoning Administrator or Building Inspector.
- B. A land use permit in a residential district shall be granted or denied in writing by the Zoning Administrator within nine working days. Business and industrial land use permits shall be granted or denied in writing within 31 calendar days. If denied, the reasons for such denial shall clearly appear upon the face of the notification of denial. Land use permits shall expire six months after issuance unless substantial work has commenced. Any permit issued in conflict with the provisions of this chapter shall be null and void. Building construction shall be in a location in accordance with the sketched and staked area and inspection by the Zoning Administrator; otherwise the permit shall be null and void.<sup>[4]</sup>
- [4] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- C. Fees in the amount set from time to time by resolution of the Town Board shall be paid for each permit.<sup>[5]</sup>
- [5] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- [1] *Editor's Note: Throughout this chapter, "zoning permit" was amended to "land use permit" at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-11. Uses exempt from land use permit requirement.

- A. No land use permit shall be required for any of the following cases:
  - (1) For building an accessory building less than 100 square feet in area.
  - (2) For any improvement or alteration to an existing building less than 100 square feet in area which does not effect a change in use.
  - (3) For repairs that do not alter the size or position of an existing structure on a lot. Such repairs shall not include the replacement or alteration of bearing walls.
  - (4) A portable structure.
- B. However, any work that qualifies for an exemption under this section shall be required to comply with the applicable setback, yard, height, and other requirements set forth in this chapter.

## § 384-12. Certificate of land use compliance.

- A. No land or building, or addition thereto, constructed after the effective date of this chapter and no addition, alteration, reconstruction, extension, enlargement, conversion or structural alteration to a previously existing building shall be occupied or used for any purposes unless in conformity with the plans and specifications upon which the land use permit was issued. A certificate of land use compliance may be issued by the Zoning Administrator upon request of the applicant. Every certificate of land use compliance shall state that the use or occupancy complies with all the provisions of this chapter.
- B. Any person, firm, or corporation having a legal or equitable interest in a property which is a legal nonconforming use may request a certificate of land use compliance. The applicant shall present documentary proof that said use was a permitted use at the time it originated and was made nonconforming by the adoption of this chapter or amendment thereto. After verifying that the use in

question is in fact a legal nonconforming use, the Zoning Administrator shall issue a certificate of land use compliance stating the use in question and the zoning of the property.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-13. Conditional use permit.

See Article IV, Conditional Use.

## § 384-14. Developer's agreement required.

All development which occurs in any business or industrial district shall require the execution of a developer's agreement which covers in some detail the manner and methods by which the land will be developed. The Town Board may impose time limits for the completion of projects and may require the execution of an irrevocable letter of credit or other appropriate surety to guarantee that the project will be completed on schedule.

## § 384-15. Permit for signage.

A sign permit is required for any signage as regulated under Article VII of this chapter.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-16. Other permits.

It is the responsibility of the permit applicant to secure all other necessary permits required by any state, federal, or county agency.

## § 384-17. Site restrictions.

No land shall be used or structure erected where the land is unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low percolation rate or bearing strength, erosion susceptibility, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of this community. The Town Zoning Administrator, in applying the provisions of this section, shall in writing recite the particular facts upon which he bases his conclusion that the land is not suitable for certain uses. The applicant shall have an opportunity to present evidence contesting such unsuitability if he so desires. Thereafter the Town Plan Commission may affirm, modify, or withdraw the determination of unsuitability. In addition:

- A. All principal structures shall be located on a lot, and only one principal structure shall be located, erected or moved onto a lot.
- B. No land use permit shall be issued for a lot which abuts a public street dedicated to only a portion of its proposed width and located on that side thereof from which the required dedication has not been secured.
- C. Dimensions of building sites.
  - (1) Lots not served by public sewer.
    - (a) Minimum area and width. Except as otherwise specifically required or permitted the minimum lot area shall be 1 1/2 acres and the minimum lot width 150 feet at the building line and 150 feet at the water's edge.

- (b) Side yards. There shall be a fifteen-foot side yard for each principal building.
- (2) Lots served by public sewer.
  - (a) Minimum area and width. Except as otherwise specifically required or permitted the minimum lot area shall be 10,000 feet and the minimum lot width 65 feet at the building line and 65 feet at the water's edge.
  - (b) Side yards. There shall be an eight-foot minimum side yard for each principal building.
- (3) Multifamily dwellings. Minimum lot sizes for multifamily dwellings shall not be less than required in this Subsection C and shall be increased as shown in Table 384-17-1 below.

**Table 384-17-1: Increases in Minimum Lot Area for Each Multifamily Dwelling**  
**Minimum Lot Area Per Dwelling Unit**  
**(square feet)**

Number of Bedrooms in Each Unit	Public Sewer	On-Site System
3 or more bedrooms	4,000	12,000
2 bedrooms	3,500	10,000
1 bedroom	3,000	8,000

- D. Rear yards. There shall be a twenty-five-foot minimum rear yard for each principal building.
- E. Height limitation. The maximum height for all residential structure shall be 40 feet. The maximum height for all commercial and industrial structure shall be 60 feet. The maximum height for all nonfarm accessory structures shall be 35 feet. Agricultural structures, such as barns and silos, shall not exceed in height twice their distance from the nearest lot line.  
 [Amended 11-13-2018 by Ord. No. 18-03]
- F. Street yard setbacks. All new structures shall have a street yard in accordance with § 384-46 of this chapter.
- G. Street grade. Every building hereafter erected, structurally altered, or relocated shall be at a grade approved by the Zoning Administrator or Building Inspector as being in satisfactory relationship with the existing street grade, with particular consideration for proper drainage and safe vehicular access.
- H. Preservation of topography. In order to protect the property owner from possible damage due to change in the existing grade of adjoining land and to aid in preserving and protecting the natural beauty and character of the landscape, no change in the existing topography of any land shall be made which would result in increasing any portion of the slope to a ratio greater than 1 1/2 horizontal to one vertical within a distance of 20 feet from the property line, except with the written consent of the abutting property owner and with the approval of the Plan Commission, or which would alter the existing drainage or topography in any way as to adversely affect the adjoining property. In no case shall any slope exceed the normal angle of slippage of material involved, and all slopes shall be protected against erosion.

## § 384-18. Use restrictions.

The following use restrictions and regulations shall apply:

- A. Principal uses. Only those principal uses specified for a district, their essential services, and the following uses shall be permitted in the district.
- B. Accessory uses. Accessory uses and structures are permitted in any district, but not until their principal structure is present or under construction. Residential accessory uses shall not involve the

conduct of any business, trade, or industry except home occupations and professional home offices as defined in this chapter.

- C. Conditional uses. Conditional uses and their accessory uses are those which require review, public hearing, and approval by the Town Board in accordance with Article **IV**. The only conditional uses and structures permitted by this chapter shall be those enumerated in Article **III** of this chapter. [Amended 1-13-2015 by Ord. No. 15-01]
- D. Temporary uses. Temporary uses such as real estate field offices or shelters for materials and equipment being used in the construction of a permanent structure may be permitted by the Zoning Administrator through the issuance of a certificate of land use compliance for a period not to exceed six months. This temporary certificate may be renewed semiannually, but in no case shall the effective time span of the certificate exceed two years.<sup>[1]</sup>  
<sup>[1]</sup> *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- E. Animals. Dogs and cats are permitted in any district. In platted residential subdivisions no animals other than household pets shall be allowed, except as provided in Chapter **150**, Article **II**, Exotic Animals, of this Code. All dogs five months of age or older must be licensed by the Town of Herman subject to guidelines in Chapter **150**, Article **I**, Dogs and Other Animals, of this Code.<sup>[2]</sup>  
<sup>[2]</sup> *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- F. Livestock outside the agricultural districts. No more than one animal unit is allowed per three acres of land within the Single-Family Residential or General Residential Zoning District or 1.5 acres of land in the Conservancy, Business/Commercial or Manufacturing/Industrial Zoning Districts. An animal unit as referenced to livestock outside an agricultural district is defined as one bovine or equine over the age of six months, five swine, 10 sheep, 10 goats or 100 fowl. After the minimum lot size herein is met, one additional animal unit is allowed for each additional acre. A combination of animals, except for bovines or equines, may be kept as the "animal unit" as long as the number of animals kept meets a ratio of 1:2.
- G. Swimming pools are a permitted accessory use in any district, provided that:
- (1) All swimming pools shall be surrounded by a fence not less than four feet nor more than six feet in height. Side walls of aboveground pools four feet high may be used in lieu of a fence.
  - (2) Access to the swimming pool shall be controlled by a self-latching gate, and all such gates shall be kept securely closed and locked at all times when the owner or occupant is not present at the pool. For an aboveground pool, a tip-up ladder may be provided in lieu of a gate.
  - (3) Swimming pools shall not be constructed directly over or under electric transmission lines. All electrical connections to a swimming pool shall be properly grounded so that no electrical current can be discharged into any part of the swimming pool or the surrounding fence.
  - (4) No water drained from a swimming pool shall be discharged onto or into any on-site sanitary sewerage system or directly into a navigable body of water.
  - (5) No lighting installed around swimming pools shall throw any rays onto adjacent properties.
  - (6) Swimming pools shall comply with the yard requirements for principal structures in the district in which they are located.
- H. Junked vehicles and other materials. See Chapter **289**, Article **I**, Junked Vehicles and Appliances, of this Code.<sup>[3]</sup>  
<sup>[3]</sup> *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- I. No mobile home park or trailer camp shall be placed or moved onto lands lying within the Town of Herman.
- J. Gas and electric utility uses which have been issued a certificate of public convenience and necessity pursuant to § 196.491(3), Wis. Stats., are exempt from the requirements of this chapter and shall not be required to obtain a land use permit.

## § 384-19. Performance standards.

Standards listed in Article XIV shall be complied with by all uses in all districts.

## § 384-20. Reduction or joint use.

No lot, yard, parking area, building area, or other space shall be reduced in area or dimension so as not to meet the provisions of this chapter. No part of any lot, yard, parking area, or other space required for a principal use and accessory structure(s) or use shall be used jointly or for any other structure or use, unless otherwise approved herein.

## § 384-21. Enforcement.

It shall be unlawful to construct any structure or building or to use any structure, building, land or water in violation of any of the provisions of this chapter. In case of any violation, the Town of Herman, the Zoning Administrator, or any property owner who would specifically be damaged by such violation may institute appropriate action or proceeding to enjoin a violation of this chapter.

## § 384-22. Violations and penalties.

Any person, firm, or corporation who or which fails to comply with the provisions of this chapter shall, upon conviction thereof, forfeit \$50 and costs of prosecution for each violation and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until payment thereof, for a period not to exceed 30 days. Each day a violation exists or continues shall constitute a separate offense.

# Article III. Zoning Districts

## § 384-23. Districts established.

For the purpose of this chapter, the following primary use districts are hereby established with the Town of Herman:

### Primary Use Districts

CO	Conservancy
A-1	Farmland Preservation
A-2	General Agricultural
R-1	Single-Family Residential
R-2	General Residential
P-1	Park/Recreational
B-1	Business/Commercial
M-1	Manufacturing/Industrial

## § 384-24. Official Zoning Map.

- A. A certified copy of the Official Zoning Map is adopted and approved with the text of this chapter. Said map and any certified amendments or changes thereto are as much a part of this chapter as this text and shall have full force and effect on the adoption of this chapter.



- B. The boundaries of the zoning districts enumerated in § 384-23 are hereby established as shown on the Official Zoning Map of the Town of Herman, Dodge County, Wisconsin, adopted and incorporated herewith by reference. The Official Zoning Map shall be on file and available for public inspection at the office of the Town Clerk, Town of Herman. The Official Zoning Map shall be revised promptly upon the approval of any Zoning Map amendment requests.

## § 384-25. Interpretation of district boundaries.

When uncertainty arises concerning the boundaries of the zoning districts, the following rules shall apply:

- A. Where district boundaries are depicted as approximately following the center lines of streets or highways, or road right-of-way lines, or center lines of streams or drainageways, such center lines or road right-of-way lines shall be construed to be such boundaries.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- B. Where district boundaries are depicted as approximately following lot lines, such lot lines shall be construed to be such boundaries.<sup>[2]</sup>

[2] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- C. Where district boundaries are depicted as running parallel to center lines of streets, highways or road right-of-way lines, such parallel lines shall be construed to be such boundaries at a distance from the center lines that fulfills the intent of drawing such lines.<sup>[3]</sup>

[3] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- D. Where boundaries do not follow property lines and distances are not specified, boundaries shall be reviewed and interpreted by the Herman Town Board.

## § 384-26. Uses regulated.

No building, structure or use of land shall hereafter be initiated or altered except in conformity with the regulations specified for the district in which it is located. Uses not specified in this chapter may, nonetheless, be allowed by the Town Board after application, only if such uses are substantially similar in character to specific permitted or conditional uses in the applicable district.

## § 384-27. CO Conservancy District.

The primary purpose of this district is for uses compatible with protecting, preserving and enhancing the lakes, rivers, wetlands, floodplains and other significant natural areas within the Town, such as wooded areas of environmental importance, archaeological sites of significant importance or other areas which the public has an interest in preserving. Uses and structures may be subject to shoreland-wetland and floodplain regulations prescribed by Dodge County, where applicable.

- A. Permitted uses.

- (1) Agricultural use, provided that no farm buildings are constructed.
- (2) Boathouses.
- (3) Harvesting of any wild crop such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds.
- (4) Hiking trails, bridle paths and walkways, including those built on pilings.
- (5) Hunting preserves and hunting blinds.

- (6) Nonresident buildings used solely in conjunction with the raising of waterfowl, fish or other wetland or aquatic animals.
  - (7) Parks, picnic areas, golf courses and similar uses.
  - (8) Piers and docks.
  - (9) Sustained yield forestry.
  - (10) Telephone and electrical power transmission lines.
  - (11) Wildlife ponds.
- B. Conditional uses. All conditional use permits shall be granted only upon a finding by the Town Board that such use or structure will not restrict a floodway or destroy the storage capacity of a floodplain.
- (1) Dams.
  - (2) Filling, drainage or dredging.
  - (3) Relocation of any watercourse.
  - (4) Removal of topsoil or peat.
  - (5) Utilities.
- C. Area, height and yard requirements. See § 384-17.

## § 384-28. A-1 Farmland Preservation District.

The purpose of this district is to promote areas for uses of a generally exclusive agricultural nature in order to protect farmland, allow participation in the state's farmland preservation program, and accommodate changing practices in the agricultural industry, subject to appropriate standards.

### A. Permitted uses.

- (1) Agriculture uses, including livestock facilities housing more than 500 animal units of cattle, poultry, swine, sheep, or goats or any other animal confinement facilities housing other types of animals (e.g., mink).  
[Amended 11-18-2014 by Ord. No. 14-04]
- (2) Accessory uses that qualify under § 91.01(1), Wis. Stats.
- (3) Nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster as a conditional use.
- (4) Prior legal nonconforming residential uses that were existing as of October 19, 2010, subject to the nonconforming use provisions of this chapter.
- (5) Transportation, utility, communication, or other uses that are required under state or federal law to be located in a specific place or that are authorized to be located in a specific place under a state or federal law that preempts the requirement of a conditional use permit for those uses.
- (6) Undeveloped natural resource and open space areas.
- (7) A wind energy system that meets the requirements of accessory use under § 91.01(1), Wis. Stats., unless it qualifies as a utility use under § 91.44(1)(f), Wis. Stats. In addition, a license to operate a wind energy system pursuant to Chapter 375, Wind Energy Systems, of this Code shall be obtained. The height, setback, side yard, yard, building area, access, signage and other general location regulations of this chapter shall not apply to wind energy systems; rather, the Town Board may implement more restrictive site criteria as set forth in Chapter 375 so as to ensure the preservation and protection of the public health and safety.

**B. Conditional uses.****(1) (Reserved)<sup>[1]</sup>**

[1] *Editor's Note: Former Subsection B(1), regarding livestock facilities housing more than 500 animals, was repealed 11-18-2014 by Ord. No. 14-04.*

**(2) Agriculture-related uses.****(3) Governmental, institutional, religious, or nonprofit community uses that qualify under § 91.46(5), Wis. Stats.****(4) New nonfarm residences or a proposal to convert a farm residence to a nonfarm residence through a change in occupancy if all of the following apply:**

(a) The ratio of nonfarm residential acreage to farm acreage on the base farm tract on which the residence is located will not be greater than one to 20 after the residence is constructed or converted to a nonfarm residence.

(b) There will not be more than four dwelling units in nonfarm residences, nor, for a new residence, more than five dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.

(c) The location and size of the proposed nonfarm residential parcel and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel will not do any of the following:

[1] Convert prime farmland from agricultural use or convert land previously used as cropland, other than a woodlot, from agricultural use if on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or nonfarm residence.

[2] Significantly impair or limit the current or future agricultural use of other protected farmland.

(d) A new nonfarm residential parcel shall be in accordance with the density standards and requirements of § **384-55** of this chapter.

**(5) Nonfarm residential clusters if all of the following apply:**

(a) The parcels on which the nonfarm residences would be located are contiguous.

(b) Legal restrictions are imposed on the construction of the nonfarm residences so that if all of the nonfarm residences were constructed, each would satisfy the requirements for a nonfarm residence under Subsection **B(4)**.

**(6) Nonmetallic mineral extraction that qualifies under § 91.46(6), Wis. Stats.****(7) Oil and gas exploration or production that is licensed by the Department of Natural Resources under Subchapter II of Ch. 295, Wis. Stats., and that meets the requirements of § 91.46(6), Wis. Stats.****(8) Prior legal nonconforming uses other than residential uses that were existing as of October 19, 2010, subject to the nonconforming use provisions of this chapter.****(9) Transportation, communications, pipeline, electric transmission, utility, or drainage uses that qualify under § 91.46(4), Wis. Stats.****C. Area, height and yard requirements.****(1) Minimum area and width. Except as otherwise specifically required or permitted the minimum lot area shall be 1 1/2 acres and the minimum lot width 150 feet at the building line and 150 feet at the water's edge. All lots created must conform to the regulations found at § **384-55** of this chapter.**

- (2) Side yards. There shall be a fifteen-foot side yard for each principal building.
- (3) Rear yards. There shall be a twenty-five-foot minimum rear yard for each principal building.
- (4) Street yard setbacks. All new structures shall have a street yard in accordance with § **384-46** of this chapter.
- (5) Height limitations. See § **384-17E**.  
[Amended 11-13-2018 by Ord. No. 18-03]

## § 384-29. A-2 General Agricultural District.

The purpose of this district shall be to promote an area for uses of a generally agricultural nature on lands of good agricultural quality.

### A. Permitted uses.

- (1) Agriculture uses, including livestock facilities housing more than 500 animal units of cattle, poultry, swine, sheep, or goats or any other animal confinement facilities housing other types of animals (e.g., mink).  
[Amended 11-18-2014 by Ord. No. 14-04]
- (2) Accessory uses that qualify under § 91.01(1), Wis. Stats.
- (3) Farm family businesses, including home occupations and professional home offices which qualify as a farm family business.  
[Amended 1-13-2015 by Ord. No. 15-01]
- (4) Roadside stands for the sale of farm products produced on the premises.
- (5) Telephone and electrical power transmission lines and necessary accessory structures.
- (6) A wind energy system, provided that a license to operate the system pursuant to Chapter **375**, Wind Energy Systems, of this Code has been obtained. The height, setback, side yard, yard, building area, access, signage and other general locational regulations of this chapter shall not apply to wind energy systems; rather, the Town Board may implement more restrictive site criteria as set forth in Chapter **375** so as to ensure the preservation and protection of the public health and safety.

### B. Conditional uses.

[Amended 1-13-2015 by Ord. No. 15-01]

- (1) Agricultural-related uses such as:
  - (a) Airstrips or landing fields used by a farmer for personal or agricultural-related business purposes.
  - (b) <sup>[1]</sup>Animal hospitals or veterinarians serving primarily farm livestock.  
*[1] Editor's Note: Former Subsection B(1)(b), listing animal confinement facilities as an agricultural-related use, was repealed 11-18-2014 by Ord. No. 14-04. This ordinance also provided for the renumbering of Subsections **B(1)(c)** through B(1)(e) as **B(1)(b)** through **B(1)(d)**, respectively.*
  - (c) Livestock sale barns and slaughter or processing facilities.
  - (d) Storage and sale of seed, feed, fertilizer and other products essential to agricultural operation.
- (2) Single-family dwellings and their accessory buildings, provided that:
  - (a) The lot exists as of October 19, 2010, and is at least 1 1/2 acres in size; or

(b) A conditional use was issued for the construction of a single-family residence and/or an accessory building prior to October 19, 2010.

- (3) New nonfarm single-family dwellings.
- (4) Bed-and-breakfast establishments.
- (5) Campgrounds.
- (6) Churches; cemeteries.
- (7) Commercial greenhouse, landscape and nursery business.
- (8) Dog kennels.
- (9) Duplexes.
- (10) Farm machinery repair.
- (11) Farms operated for the disposal or reduction of garbage, sewage or any other waste material.
- (12) Governmental and cultural uses such as town halls, fire and police stations, community centers, libraries, public emergency shelters, parks and playgrounds.
- (13) Horse boarding and riding facilities.
- (14) Public, parochial and private elementary and secondary schools.
- (15) Quarries and earth borrow pits; mineral extraction.
- (16) Self-service storage facility.
- (17) Trap and sporting clay shooting facilities; shooting ranges.
- (18) Utilities.
- (19) Veterinary clinics.

C. Area, height and yard requirements:

- (1) Minimum area and width. Except as otherwise specifically required or permitted the minimum lot area shall be five acres and the minimum lot width 150 feet at the building line and 150 feet at the water's edge.
- (2) Side yards. There shall be a fifteen-foot side yard for each principal building.
- (3) Rear yards. There shall be a twenty-five-foot minimum rear yard for each principal building.
- (4) Street yard setbacks. All new structures shall have a street yard in accordance with § **384-46** of this chapter.
- (5) Height limitations. See § **384-17E**.  
[Amended 11-13-2018 by Ord. No. 18-03]

## § 384-30. R-1 Single-Family Residential District.

The primary purpose of this district shall be exclusive single-family residential nature.

A. Permitted uses.

- (1) Single-family dwellings and accessory buildings, including private garages and buildings clearly incidental to the residential use of the property, provided that no such accessory buildings may be used as dwelling units.

- (2) Telephone and electrical power distribution poles and lines and necessary accessory equipment and structures.
- (3) Home occupations when such occupations are incidental to the residential use of the premises and do not involve any exterior alteration that would effect a substantial change in the residential character of the building, provided further that no article is sold or offered for sale that is not produced by such home occupation.
- (4) Professional home offices, where such office is conducted solely by a member or members of the occupant family entirely within the residence and incidental to the residential use of the premises.  
[Amended 1-13-2015 by Ord. No. 15-01]

B. Conditional uses.

- (1) Churches; cemeteries.
- (2) Golf courses.
- (3) Governmental and cultural uses such as fire and police stations, community centers, libraries, public emergency shelters, parks and playgrounds.
- (4) Planned unit development.
- (5) Public, parochial and private elementary and secondary schools.
- (6) Utilities.
- (7) Any similar use subject to the approval of the Town Board.

C. Area, height and yard requirements. See § **384-17**.

## § 384-31. R-2 General Residential District.

The primary purpose of this district shall be to promote an area of mixed residential uses.

A. Permitted uses.

- (1) Duplexes.
- (2) Single-family dwellings and accessory buildings, including private garages and buildings clearly incidental to the residential use of the property, provided that no such accessory buildings may be used as dwelling units.
- (3) Telephone and electrical power distribution poles and lines and necessary accessory equipment and structures.
- (4) Home occupations when such occupations are incidental to the residential use of the premises and do not involve any exterior alteration that would effect a substantial change in the residential character of the building, provided further that no article is sold or offered for sale that is not produced by such home occupation.
- (5) Professional home offices, where such office is conducted solely by a member or members of the occupant family entirely within the residence and incidental to the residential use of the premises.  
[Amended 1-13-2015 by Ord. No. 15-01]

B. Conditional uses.

- (1) Bed-and-breakfast establishments.
- (2) Churches; cemeteries.

- (3) Golf courses and driving ranges.
- (4) Governmental and cultural uses such as fire and police stations, community centers, libraries, parks and playgrounds.
- (5) Group living facilities.
- (6) Multifamily dwellings.
- (7) Planned unit development.
- (8) Public, parochial and private elementary and secondary schools.
- (9) Utilities.
- (10) Any similar use subject to the approval of the Town Board.

C. Area, height and yard requirements. See § **384-17**.

## § 384-32. P-1 Park/Recreational District.

The purpose of this district is to allow a variety of recreational uses on a permitted basis and more recreational businesses on a conditional basis. The Park/Recreational District is intended to provide for areas where the recreational needs, both public and private, of the populace can be met without undue disturbance of natural resources and adjacent uses.

A. Permitted uses.

- (1) Uses permitted in the R-2 General Residential District.
- (2) Arboretum.
- (3) Boating, boat storage, sale of boats, motors, fuel, and marine supplies and the servicing of boats and motors but not the manufacture of boats or motors.
- (4) Boat launching areas.
- (5) Fishing.
- (6) Orchards, vineyards and related retail stores.
- (7) Playgrounds.
- (8) Public and private parks.
- (9) Sale of bait for fishing and sporting goods and supplies, excluding camping trailers and tents.
- (10) Skating.
- (11) Skiing.
- (12) Sledding.
- (13) Soil and water conservation.
- (14) Sustained yield forestry.
- (15) Swimming beaches.
- (16) Vegetable stands.
- (17) Water control facilities and essential services.
- (18) Wildlife preserves.

**B. Conditional uses.**

(1) Any conditional uses allowed in the R-2 General Residential District.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

(2) Archery ranges.

(3) Camps and campgrounds.

(4) Commercial greenhouse, landscape and nursery business.

(5) Conservatories.

(6) Hiking trails and bridle paths.

(7) Horse and riding stables and riding academies.

(8) Hunting.

(9) Ice skating rinks.

(10) Motels and resorts.

(11) Planned unit development.

(12) Public swimming pools, provided that the lot area is not less than three acres and all structures are not less than 50 feet from any district boundary.

(13) Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business; single-family residences in conjunction with and accessory to another permitted use.

(14) Restaurants.

(15) Sporting fields.

(16) Taverns.

(17) Any similar use subject to the approval of the Town Board.

**C. Area, height and yard requirements. See § 384-17.****§ 384-33. B-1 Business/Commercial District.**

The purpose of this district shall be to promote an area for retail and service-oriented establishments.

**A. Permitted uses.**

(1) Agricultural use.

(2) Commercial greenhouse, landscape and nursery business.

(3) Motels and resorts.

(4) Parking lots.

(5) Personal and business service establishments, excluding motor vehicle and farm equipment repair, with no more than 3,500 square feet of floor space.

(6) Professional offices with no more than 3,500 square feet of floor space.

(7) Restaurants.



- (8) Retail businesses, excluding motor vehicle and farm equipment sales, with no more than 3,500 square feet of floor space.
- (9) Sale of bait for fishing and sporting goods and supplies, camping trailers and tents.
- (10) Self-service storage facility.
- (11) Taverns.

B. Conditional uses.

- (1) Archery ranges.
- (2) Contractor's storage yard.
- (3) Farm equipment sales and service.
- (4) Fireworks sales.
- (5) Hospitals, clinics and nursing homes.
- (6) Motor vehicle sales and service.
- (7) Planned unit development.
- (8) Residential quarters for the owner, commercial tenant, employee or caretaker located in the same building as the business.
- (9) Retail businesses, professional offices and personal and business service establishments exceeding 3,500 square feet in floor space.
- (10) Any similar use subject to the approval of the Town Board.

C. Area, height and yard requirements. See § 384-17.

## § 384-34. M-1 Manufacturing/Industrial District.

The purpose of this district shall be to promote an area for manufacturing and industrial operations.

A. Permitted uses.

- (1) A licensed adult-oriented establishment as provided in Subsection **C** below.<sup>[1]</sup>  
 [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- (2) Agricultural use.
- (3) Automobile repair facilities.
- (4) Boat storage; sale of boats, motors, fuel, and marine supplies; servicing of boats and motors; and the manufacture of boats or motors.
- (5) Contractor's office and/or storage yard.
- (6) Farm machinery sales, service and storage facilities.
- (7) Food storage warehouses.
- (8) Freight yards and trucking terminals.
- (9) Gas stations.
- (10) Governmental uses such as but not limited to police or fire stations, community centers or buildings used for the storage or repair of road maintenance equipment.

- (11) Manufacturing establishments engaged in the fabrication, processing, assembly or packaging of a product which is not specified as a conditional use in the Manufacturing/Industrial District.
- (12) Nurseries, greenhouses and landscaping businesses.
- (13) Parking lots.
- (14) Printing and publishing establishments.
- (15) Processing and packaging of food products.
- (16) Processing and packaging of recyclable materials.
- (17) Recycling collection point.
- (18) Retail sale of products if accessory to and in the same structure as the principal use.
- (19) Self-service storage facility.
- (20) Telephone and electrical power distribution poles and lines.
- (21) Warehousing, except the storage of chemicals, explosives, flammables and radioactive materials.
- (22) Wholesale establishments.

B. Conditional uses and structures.

- (1) Airports, aircraft landing fields and hangers.
- (2) Dumps and waste disposal areas.
- (3) Farms operated for the disposal of sewage, rubbish or any waste material.
- (4) Feed mills, granaries and elevators.
- (5) Incinerators.
- (6) Manufacturing, processing, packaging or storage of chemicals, explosives, batteries, asphalt, cement, flammables, paint, poison, rubber, dyes, plastics and radioactive materials.
- (7) Mineral extraction; quarrying.
- (8) Planned unit development.
- (9) Salvage yards and storage of inoperable vehicles.
- (10) Sanitary landfill operations.
- (11) Sewage treatment facilities.
- (12) One single-family residence per site for the owner or proprietor, caretaker and his/her family, which is incidental to a permitted or conditional use.
- (13) Utilities.
- (14) Any similar use subject to the approval of the Town Board.

C. Adult-oriented establishments.

- (1) Findings of fact.
  - (a) The Board finds that adult-oriented establishments, as defined and otherwise regulated by the Town in Article **IX** of this chapter, require special zoning in order to protect and preserve the health, safety, and welfare of the Town.

- (b) Based on its review of studies conducted in Phoenix, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington, and the findings incorporated in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986) and *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976), the Board finds that there is convincing evidence that the secondary effects of adult-oriented establishments include an increased risk of prostitution, high-risk sexual behavior, crime, and other deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.
  - (c) The Board intends to control the impact of these secondary effects in order to protect the health, safety, and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, and preserve the property values and character of surrounding neighborhoods and areas.
  - (d) It is not the intent of the Board to suppress any speech activities protected by the First Amendment but to enact a content-neutral ordinance which addresses the secondary effects of adult-oriented establishments while providing an outlet for First Amendment protected activities.
  - (e) In order to minimize and control the secondary effects of adult-oriented establishments upon the Town, it is the intent of the Board to prevent the concentration of adult-oriented establishments within a certain distance of each other and within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of adult-oriented establishments.
  - (f) Based upon its review of materials linking alcohol consumption and high-risk sexual behavior and materials linking alcohol consumption and crimes such as sexual assault, the Board finds that a geographic separation of adult-oriented establishments from alcohol beverage licensed premises is warranted.
  - (g) The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that adult-oriented establishments, as defined and otherwise regulated by the Town, are entitled to certain protections, including the opportunity to locate in the Town. Therefore, if an adult-oriented establishment license has been granted by the Town, and if all the requirements of this § 384-34C are met, an adult-oriented establishment shall be an allowed use in the M-1 Zoning District and shall be a prohibited use in any other zoning district. No other requirements of this chapter need be satisfied, but for those required in order to obtain an adult-oriented entertainment license from the Town and the district regulations.
- (2) Adult-oriented establishments shall be located at least 500 feet from:
- (a) Any residential district line, playground lot line, or public park lot line.
  - (b) Any structure used as a residence, place of religious worship, public or private school, or youth facility as defined in Article IX of this chapter.
  - (c) Any other structure housing an adult-oriented establishment.
  - (d) Any structure housing an establishment which holds an alcohol beverage license.
- (3) Distance requirements are to be measured in a straight line in any direction, regardless of intervening structures, from the structure housing the adult-oriented establishment to the above residential district boundary line, to the lot line of any lot used for a park or playground, or the lot line of any structure listed in Subsection C(2)(b), (c) and (d) above.
- (4) The measurements from a structure shall be taken from the farthest point a structure extends in the direction of the measurement, including overhanging roofs or similar projections.

- (5) For adult-oriented establishments located in conjunction with other buildings and clearly separate from other establishments, such as in a shopping center, measurements shall be taken from the boundaries of the space occupied by the adult-oriented establishment.
- (6) For any adult-oriented establishment located above ground level in a multistory structure and clearly separate from other establishments within the structure, the distance measurements shall be taken from the ground floor public entrance/exit nearest the adult-oriented establishment (excluding emergency exits).
- (7) A licensed adult-oriented establishment is not disqualified from holding an adult-oriented establishment license by the location subsequent to the grant or renewal of its license of any of the establishments described in Subsection **C(2)** above within 500 feet of the licensed premises. This provision applies only to the renewal of an existing license and does not apply when an application for a license is submitted after a license for that location has not been renewed or has been revoked.

D. Area, height and yard requirements. See § **384-17**.

## Article IV. Conditional Uses

### § 384-35. General requirements.

The Town Board of the Town of Herman may authorize the Zoning Administrator to issue a conditional use permit for conditional uses after review and public hearing by the Plan Commission, provided that such conditional uses or structures are in accordance with the purpose and intent of this chapter and are found not to be hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the area.

### § 384-36. Application for permit.

- A. Applications for conditional use permits shall be made to the Zoning Administrator on forms provided by his or her office. Such applications shall be forwarded to the Plan Commission Secretary on receipt by the Zoning Administrator for distribution to the Plan Commission and Town Board. Such applications shall be preceded by an application for a land use permit, including all the information as required in § **384-10** for a land use permit.
- B. Additional information shall be provided as may be required by the Town Board, Plan Commission or other boards, commissions, or officers.<sup>[1]</sup>  
*[1] Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- C. Fee in the amount set from time to time by resolution of the Town Board shall be paid to the Town of Herman.

### § 384-37. Evaluation.

- A. When evaluating a conditional use permit, the Town Board and Plan Commission shall evaluate the proposed use on:
  - (1) The maintenance of safe and healthful conditions.
  - (2) The prevention and control of water pollution, including sedimentation.
  - (3) Existing topographic and drainage features and vegetation cover of the site.
  - (4) The location of the site with respect to floodplains and floodways of rivers or streams.

- (5) The erosion potential of the site based upon degree and direction of slope, soil type and vegetation cover.
  - (6) The location of the site with respect to existing or future access roads.
  - (7) The need of the proposed use for a shoreline location.
  - (8) Its compatibility with uses on adjacent land.
  - (9) The amount of liquid wastes to be generated and the adequacy of the proposed disposal system.
  - (10) Locational factors under which:
    - (a) Domestic uses shall be generally preferred.
    - (b) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.
    - (c) Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase the possibility.
- B. In order to secure information upon which to base its determination, the Town Board and/or Plan Commission may require the applicant to furnish, in addition to the information required for a land use permit, the following information:
- (1) A plan of the area showing contours, soil types, high-water mark, groundwater conditions, bedrock, slope and vegetative covers.
  - (2) Location of buildings, parking areas, traffic access, driveways, walkways, open spaces, landscaping, and lighting.
  - (3) Plans for buildings, sewage disposal facilities, water supply systems, and arrangements of operations.
  - (4) Specifications for areas of proposed filling, grading, lagooning, or dredging.
  - (5) Other pertinent information necessary to determine if the proposed use meets the requirements of this chapter.
- C. The Town Board and/or Plan Commission in evaluating each application may request assistance from other local, county, state or federal agencies.

## § 384-38. Conditions.

The Town Board and/or Plan Commission may attach such conditions, in addition to those required elsewhere in this chapter, that it deems necessary in furthering the purpose of this chapter. Violation of any of these conditions shall be deemed a violation of this chapter. Such conditions may include specifications for, without limitation because of specific enumeration, type of shore cover; increased setback and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; hours of operation; operational control; sureties; deed restrictions; locations of piers, docks, parking, and signs; type of construction; or any other requirement necessary to fulfill the purpose and intent of this chapter.

## § 384-39. Public hearing.

Public hearings shall be held by the Plan Commission within 45 days of receiving a complete conditional use permit application. There shall be a published Class 1 notice as provided in Ch. 985, Wis. Stats. The Plan Commission Secretary shall notify all abutting or opposite property owners as listed by the

applicant in the original application of the time, date and subject matter of the hearing. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application.

## § 384-40. Time frame for action.

The Plan Commission shall forward a recommendation for approval, denial, or approval with conditions to the Town Board within 30 days after the public hearing on the application, unless an agreement with the applicant is made to extend such time period. Within 30 days after receiving a recommendation from the Plan Commission, the Town Board may either approve, deny, or approve with conditions the conditional use permit application, unless an agreement with the applicant is made to extend such time period. Failure to act shall not be deemed as a grant of the conditional use permit.

## § 384-41. Compliance with other regulations.

Compliance with all other provisions of this chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access, and performance standards, shall be required of all conditional uses except as modified by this article. Variances shall only be granted as provided in Article X of this chapter. No permit shall be granted where the proposed use is deemed to be inconsistent or conflicting with neighboring uses for reasons of smoke, odors, noise, vibration, lighting, health hazards, or possibly of accident.

## § 384-42. Expiration of conditional use permits.

- A. A conditional use permit shall expire one year after its issuance date or at such alternate time as specified in the approval unless:
- (1) Construction has been diligently pursued;
  - (2) A certificate of land use compliance has been issued;  
[Amended 1-13-2015 by Ord. No. 15-01]
  - (3) The use is established; or
  - (4) The conditional use permit is renewed by the Town Board for a period not to exceed one year.
- B. A conditional use permit also shall expire upon termination of a project or if the rights granted by the permit are discontinued for 180 consecutive days.

## § 384-43. Planned unit development.

[Amended 12-11-2014 by Ord. No. 14-05]

Planned unit developments (PUD) are permitted as conditional uses in all zoning districts except the Conservancy Zoning District and the Agricultural Zoning Districts. PUD is intended to permit planned developments generally containing not less than 40 contiguous acres under one ownership or control.

- A. The procedure for obtaining a permit for the development of a PUD shall be as outlined in §§ **384-35** through **384-42** of this chapter, except that the following requirements shall also apply:
- (1) The applicant shall provide proof that the site under consideration contains a minimum land area of not less than 40 acres under one ownership or control. If the development is for a religious institution's use (for example, churches, cemeteries and associated uses), the minimum land area requirement does not apply. Additional land area may be added to an existing PUD if it is adjacent or forms a logical addition to an existing PUD. The procedure for additional land shall be the same as if an original application was filed, and all of the requirements of this article shall apply except the minimum acreage requirements.

- (2) The applicant shall furnish with his application 15 copies of a preliminary plan, prepared or certified by a surveyor or engineer duly authorized by the state to practice as such, showing the proposed general layout, the general location of the various types of land uses, the proposed densities of population in residential areas, major thoroughfare plan, a public utility plan if public utilities are proposed or required, a storm drainage plan and a plan showing the location of recreation spaces, parks, schools and other public or community uses.
- B. Following approval by the Town Board and Plan Commission of a preliminary plan, the applicant shall furnish 15 copies of a final plan, prepared or certified by a surveyor or engineer duly authorized by the state to practice as such, showing the layout of all major and local thoroughfares and local streets, the location of all buildings, parking areas, pedestrianways, utility easements, lot lines, open spaces, parks, recreation areas, school sites, and playgrounds, the proposed use of all buildings and the metes and bounds of all dedicated areas and lots, including any recommendations or conditions of the Town Board. The applicant shall also furnish a proposed deed of dedication, including restrictions safeguarding the use of open spaces and preventing encroachment upon open spaces between buildings. The applicant shall furnish a deed, or deeds, to land determined by the Town to be needed for public elementary and intermediate school purposes. When the final plan and deed of dedication shall have been approved by the Town Board as being in conformity with this section and with any changes or requirements of the Town Board or Plan Commission on the preliminary plan and it has been determined that the applicant has complied with the requirements of the Dodge County Land Use Code, whether or not it is a subdivision, it shall be approved for recordation and recorded. Thereafter, no modification may be made in any final plan except by an amended final plan submitted as provided for the original plan.
- C. In granting a permit for the development of a PUD the Town Board shall make the following determinations:
- (1) That the overall population density shown on the PUD plan for residential and associated industrial and commercial uses shall not exceed an average density of 11 persons per acre. In computing population density, a factor of 3.7 persons shall be used per one-family dwelling.
  - (2) That a maximum of three residential density areas are shown on the PUD plan. Such density areas shall be designated low, medium and high.
    - (a) The population density within a low-density area shall not exceed 3.8 persons per acre of gross residential area.
    - (b) The population density within a medium-density area shall not exceed 14 persons per acre of gross residential area.
    - (c) The population density within a high-density area shall not exceed 60 persons per acre of gross residential area.
  - (3) That in computing average density on any final plan of a part of a PUD, which at the time of its creation was under one ownership or control, any excess in land area over that required to support an average density of 13 persons per acre of gross residential area in any final plan previously recorded may be included. In other words, as each successive final plan is submitted, the overall density of all areas shown on recorded final plans within the proposed PUD as approved by the Town Board shall be recomputed so that the average population density of the developed areas within the recorded sections of the PUD shall never at any time in the history of the development exceed a density of 13 persons per acre.
  - (4) That the uses shall be as shown on the preliminary plans.
  - (5) That the location of all structures and designated building envelopes shall be as shown on final plans. Building envelopes must be protected by adequate covenants running with the land, conveyances or dedications.
  - (6) That the proposed location and arrangement of structures shall not be detrimental to existing or prospective adjacent dwellings or to the existing or prospective development of the

neighborhood. Open spaces between structures shall be protected where necessary by adequate covenants, running with the land, conveyances or dedications. There shall be no minimum lot size, no minimum setback lines, no maximum percentage of lot coverage and no minimum lot width in a PUD. However, every single-family dwelling shall have access to a public street, court, walkway or other area dedicated to public use, and no single-family dwelling (except a townhouse or semidetached dwelling) and no addition to any single-family dwelling shall be erected within a distance of less than 16 feet from any other single-family dwelling.

## § 384-44. Campgrounds.

Prior to granting a permit for the development or improvement of a campground the Town Board and Plan Commission shall make the following determination:

- A. The minimum size of a campground shall be five acres.
- B. The maximum number of campsites shall be 15 per acre.
- C. Minimum dimensions of a campsite shall be 25 feet wide by 40 feet long.
- D. Each campsite must be separated from other campsites by a yard not less than 15 feet wide.
- E. There shall be one automobile parking space for each campsite.
- F. In addition to the requirements of Article **V** of this chapter, there shall be a minimum yard setback of 40 feet from all exterior lot lines of the campground.
- G. It shall conform to the requirements of the Wisconsin Administrative Code which shall apply until amended and then apply as amended.

## § 384-45. Conditional uses in A-1 Farmland Preservation District.

- A. The Town Board may authorize the Zoning Administrator to issue a conditional use permit for those conditional uses listed under § **384-28B** of this chapter, provided that such conditional uses are in accordance with this Article **IV** and § 91.46, Wis. Stats.
- B. In granting a conditional use permit for residential uses in the agricultural zoning districts, the Town Board and Plan Commission will consider the following:
  - (1) The proposed residential use should be generally located so as to limit impacts upon agricultural operations in the surrounding area or be situated in a location that minimizes, to the extent practicable, impacts upon future inhabitants of such residence by agricultural operations in the surrounding area.
  - (2) The site(s) of the proposed residential use, to the extent practicable, should be selected in areas not well suited for agricultural use by virtue of wooded areas, topography, shape of parcel, soil characteristics, and similar factors.

## Article V. Setbacks, Loading Areas and Off-Street Parking

### § 384-46. Highway and road setbacks.

For the purpose of determining the distance structures shall be set back from highways and roads, the following setbacks shall apply unless the yard regulations or modifications allow a lesser yard or setback requirement. This section shall not be interpreted so as to prohibit the planting and harvesting of field crops, shrubbery or trees; provided, however, that no building or structure, trees or shrubbery shall be



so located, maintained or permitted to grow so that the view across the sectors at intersections shall be obstructed.

A. Highway and road setback distances. The setback distance shall be as follows:

- (1) Town roads: minimum 100 feet from the center line of the road or 67 feet from the edge of the right-of-way, whichever distance is greater, except in platted subdivisions where the setback distance shall be 30 feet from the edge of the right-of-way as shown on the recorded plat.
- (2) State or county highways: minimum 100 feet from the center line of the highway or 67 feet from the edge of the right-of-way, whichever distance is greater.
- (3) Urbanized highways or roads: minimum 60 feet from the center line of the highway or road or 27 feet from the edge of the right-of-way, whichever distance is greater. The urbanized highways or roads in the Town are as follows:
  - (a) Village of Woodland: beginning at a point in the junction of Woodland Road and WS, thence north along WS to its junction with the Chicago, Milwaukee, St. Paul and Pacific Railroad (C. M. St. P. & P. RR.).

## § 384-47. Building setbacks from water.

For lots that abut on navigable waters:

- A. There shall be setbacks from both the road and water.
- B. All buildings and structures, except piers, wharves, boat hoists, open fences, and boathouses, shall be set back at least 75 feet from all points along the normal high-water mark of all navigable bodies of water, unless otherwise specified by this chapter.
- C. The Zoning Administrator shall determine the normal high-water mark where not established.
- D. A setback of less than 75 feet for a principal structure may be permitted by the Zoning Administrator where there is at least one principal structure on either side of the applicant's lot within 200 feet of the proposed site that is less than the seventy-five-foot setback. In such case, the reduced setback for the principal structure shall be the average of the nearest principal structures on each side of the proposed site or, if there is no building on one side of the proposed site, the reduced setback shall be the average setback from the existing principal structure on one side of the applicant's site and the required seventy-five-foot setback. In no case shall the setback for the principal structure be less than 50 feet.
- E. A setback of less than 75 feet may be permitted by the Zoning Administrator for a detached accessory structure if done in accordance with the Dodge County Shoreland Regulations and a county land use permit is obtained.

## § 384-48. Loading requirements.

Adequate loading areas shall be provided so that all vehicles loading, maneuvering, or unloading do not project into traffic lanes.

## § 384-49. Off-street parking.

- A. Each use shall provide the following minimum off-street parking spaces. Each parking space shall be at least 200 square feet in area.
  - (1) Dwellings: two spaces for each dwelling unit.

- (2) Restaurants, taverns and similar establishments: one space for each 50 square feet of floor space devoted to patrons.
  - (3) Motels and resorts: one space for each unit.
  - (4) Retail business and service establishments: one space for each 200 square feet of floor area.
  - (5) Industrial uses and warehouses: one space for each two employees on the premises at a maximum employment on the main shift.
  - (6) Convenience stores: one space for each 200 square feet of floor area plus two spaces for each gas pump.
  - (7) Any use not specifically named shall be assigned to the most appropriate classification by the Zoning Administrator.
  - (8) Combinations of any of the above uses shall provide the total of the number of spaces required for each individual use.
- B. Location of off-street parking shall be on the same lot as the principal use or on a lot adjacent to the principal use.

## Article VI. Modifications

### § 384-50. Height.

The district height limitations elsewhere in this chapter may be exceeded, but such modification shall be in accord with the following:

- A. Architectural projections, such as spires, belfries, parapet walls, cupolas, domes, flues and chimneys, are exempt from the height limitations of this chapter.
- B. Special structures, such as elevator penthouses, gas tanks, grain elevators, scenery lofts, manufacturing equipment and necessary mechanical appurtenances, cooling towers, fire towers, substations, smokestacks, and flagpoles, are exempt from the height limitations of this chapter.  
[Amended 1-13-2015 by Ord. No. 15-01]
- C. Essential services, utilities, water towers, and electric power and communication transmission lines are exempt from the height limitations of this chapter.
- D. Communication structures, such as radio and television transmission and relay towers, aerials, cellular telephone towers and observation towers, shall not exceed in height three times their distance from the nearest lot line. In addition, no tower, structure or projecting aerial shall exceed 500 feet in height.
- E. Public or semipublic facilities, such as schools, churches, hospitals, monuments, sanitariums, libraries, governmental offices and stations, may be erected to a height of 60 feet, provided that all required yards are increased not less than one foot for each foot the structure exceeds the district's maximum height requirements.
- F. Agricultural structures, such as barns and silos, shall not exceed in height twice their distance from the nearest lot line.

### § 384-51. Yards.

The yard requirements elsewhere in this chapter may be modified as follows:

- A. Uncovered stairs, landings, and fire escapes may project into any yard but not to exceed six feet and not closer than three feet to any lot line.
- B. Architectural projections, such as chimneys, flues, sills, eaves, belt courses, and ornaments, may project into any required yard, but such projection shall not exceed two feet.
- C. Residential fences are permitted on property but shall not in any case exceed a height of six feet, shall not exceed a height of four feet in the street yard and shall not be closer than two feet to any public right-of-way.
- D. Security fences are permitted on the property lines but shall not exceed 10 feet in height and shall be of an open type similar to woven wire or wrought iron fencing.
- E. Accessory uses and detached accessory structures.  
[Amended 11-18-2014 by Ord. No. 14-03]
  - (1) Accessory uses and detached accessory structures are permitted in the rear and side yards only, except as provided in Subsection **E(2)** below, in compliance with the provisions of Subsection **E(3)**.
  - (2) Detached accessory structures may be permitted in the street yard as long as they are not directly in front of the principal structure, are located 250 feet from the centerline of the of the road or 217 feet from the edge of the road way, and in compliance with the provisions of Subsection **E(3)**.
  - (3) Accessory uses and detached accessory structures shall not be closer than 10 feet to the principal structure, they shall not exceed 20 feet in height, shall not occupy more than 20% of the rear, or street (if allowed), yard area, and shall not be closer than three feet to any lot line, nor five feet to any alley line.
- F. Essential services, utilities, and electric power and communication transmission lines are exempt from setback requirements, provided that the owner who wishes to locate such structures within street yards shall file with the Town Board an agreement in writing to the effect that the owner will remove all new construction, additions, and replacements erected after the adoption of this chapter at his expense when necessary for the improvement of the highways.
- G. Landscaping and vegetation are exempt from the yard requirements of this chapter.

## § 384-52. Additions.

Additions in the street yards of existing structures shall not project beyond the average of the existing street yards on the abutting lots or parcels.

## § 384-53. Average street yards.

The required street yards may be decreased to the average of the existing street yards of the abutting structures on each side but in no case less than 30 feet.

## § 384-54. Noise.

Sirens, whistles, and bells, which are maintained and utilized solely to serve a public purpose, are not subject to highway or road setbacks and are not to be enjoined under the performance standards section of this chapter (Article **XIV**).

## § 384-55. Small residential land divisions in A-1 Farmland Preservation District (SRLD).

[Amended 1-13-2015 by Ord. No. 15-01]

In order to allow property owners in the A-1 Farmland Preservation District the ability to generate income while at the same time preserving lands best suited for agricultural use, the Town will allow a limited number of land divisions for residential use. Such divisions must conform to the regulations found herein.

- A. A conditional use permit from the Town Board shall be required before the creation of any lots under this section is allowed. The permit application shall be completed and filed with the Town Clerk along with an application fee in an amount set from time to time by resolution of the Town Board. Prior to the Board's determination, the Town Plan Commission shall review and comment on the application. Upon approval by the Town Board, the Zoning Administrator shall issue the permit.
- B. A certified survey map (CSM) meeting the requirements of § 236.34, Wis. Stats., shall be required for the division of lands under this section. The failure to record a CSM and file a recorded copy with the Town Clerk within six months of the date the conditional use permit is issued shall render the permit void and no land division may be created. The property owner must submit a copy of the recorded CSM to the Clerk's office in a timely fashion.
- C. The number of SRLD lots allowed is shown in Table 384-55-1 and is based on the presumption that all other applicable standards will be met. The maximum number of SRLD lots possible is not a guarantee that such number will be allowed nor a valid justification for varying other dimensional or development standards.
- D. No SRLD lot created under this provision shall be less than 1 1/2 acres in area.
- E. The available SRLD shown in Table 384-55-1 are applicable only within the A-1 Farmland Preservation District in the Town of Herman.

**Table 384-55-1: Small Residential Land Divisions in the A-1 District**

<b>Base Farm Tract</b>	<b>Maximum Number of Additional Lots Allowed</b>
Less than 80 acres	0
80 acres up to 199.999 acres	1
200 acres or more	2

- F. A restriction shall be placed on the certified survey map which prohibits further divisions of the original and new lots. The Plan Commission may authorize removal of this restriction if the land is rezoned out of the A-1 Farmland Preservation District.
- G. A development concept plan may be required by the Plan Commission for the subject acreage even though further divisions will not be completed at the time of application. Such plan shall include future road locations as well as the location, number and size of potential lots allowed in the future under this chapter. A development concept plan is recommended if further development is anticipated. The plan will be useful in determining if the current proposed lot layout would be compatible with future lots and if future road rights-of-way need to be reserved.

## Article VII. Signs

### § 384-56. General requirements.

Except for those specified in § 384-57, no signs shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered without a sign permit and without being in conformity with the provisions of this chapter. The sign shall also meet all the structural requirements of other applicable codes and ordinances of the Town of Herman.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-57. Signs allowed in all zoning districts without permit.

- A. The following signs are allowed in all zoning districts without a sign permit but are subject to the following regulations:<sup>[1]</sup>
- (1) Over show windows or doors of a nonconforming business establishment announcing without a display or elaboration only the name and occupation of the proprietor and not to exceed two feet in height and 10 feet in length.
  - (2) Real estate signs not to exceed eight square feet in area on any one side nor 16 square feet in display area on all sides which advertise the sale, rental, or lease of the premises upon which said signs are temporarily located and limited to one such sign for each premises.
  - (3) Name, occupation, and warning signs not to exceed four square feet on any one side nor eight square feet in display area on all sides and limited to one such sign for each premises.
  - (4) Bulletin boards for public, charitable or religious institutions not to exceed 12 square feet in area on all sides and limited to one such sign for each premises.
  - (5) Memorial signs, tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of metal and affixed flat against the structure.
  - (6) Official signs, such as traffic control, parking restrictions, information, and notices.
  - (7) Temporary signs. The Zoning Administrator may permit the temporary use of a portable sign for advertising purposes in any district, provided that the portable sign will not be located in any public right-of-way, will not be located closer than 10 feet to an adjacent property, and will not cause a hazard to traffic or adjoining properties. Portable sign permits shall not be granted for a period of more than 90 days in any three-hundred-sixty-five-day period.
  - (8) Home occupation and professional home office signs, not to exceed two square feet in area and mounted flush against the dwelling.
  - (9) Agricultural signs, pertaining to the sale of agricultural products on a farm or to membership in agricultural or agricultural-related organizations, not to exceed 32 square feet in display area on all sides for any one farm.
  - (10) Election campaign signs, provided that permission shall be obtained from the property owner, renter or lessee, and provided that such sign shall not be erected prior to the first day of the election campaign period as defined in § 12.04, Wis. Stats., and shall be removed within four days following the election.
  - (11) Rummage sale and garage sale signs, provided that no such signs shall be erected or placed within a public right-of-way and further provided that such signs are removed within 24 hours following the sale.
- [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- B. No such sign mentioned in this section shall be located closer than two feet to any public road right-of-way or exceed 10 feet in height. These requirements shall not apply to official signs.

## § 384-58. Signs permitted in B-1, M-1 and P-1 Districts with sign permit.

- A. The following signs are permitted in the Business/Commercial, Manufacturing/Industrial, and Park/Recreational Districts with a sign permit and are subject to the following regulations:
- (1) Wall signs placed against the exterior walls of buildings shall not extend more than six inches outside of a building's wall surface, shall not exceed 300 square feet in area for any one

premises, and shall not exceed 20 feet in height above the mean center-line street grade.

- (2) Projecting signs fastened to, suspended from, or supported by structures shall not exceed 100 square feet in area for any one premises, shall not extend more than six feet into any required yard, shall not extend more than three feet into any public right-of-way, and shall not be less than 10 feet above the sidewalk nor 15 feet above a driveway or an alley.
- (3) Ground signs, limited to one sign for each premises, shall not exceed 20 feet in height above the mean center-line street grade, shall not be located closer to the road right-of-way than 27 feet, and shall not exceed 100 square feet in area on any one side nor 200 square feet in display area on all sides.
- (4) Pole signs shall not exceed 100 square feet on one side nor more 200 square feet on all sides for any one premises, shall not extend more than three feet into any public right-of-way, shall not be less than 10 feet from all side lot lines, shall not exceed 35 feet in height above the mean center-line street grade, and shall be not less than 10 feet above the lot grade or sidewalk grade and not less than 15 feet above a parking lot, driveway, or other area used by motor vehicles.
- (5) Window signs shall be placed only on the inside of commercial buildings and shall not exceed 25% of the glass area of the pane upon which the sign is displayed.
- (6) Roof signs shall not exceed 10 feet in height above the roof, shall meet all the yard and height requirements for the district in which they are located, and shall not exceed 300 square feet on all sides for any one premises.
- (7) Combinations of any of the above signs shall meet all the requirements for the individual sign.

B. The total number of signs on any premises shall be limited as follows:

- (1) Shopping centers may provide one ground or pole sign displaying the name of the shopping center, lists of individual stores, hours of operation, and/or special sales information for each 500 feet of street upon which the shopping center abuts. The shopping center may also provide one wall sign and/or one canopy sign for each business in the shopping center.
- (2) Gasoline and/or service stations may provide one ground or pole sign displaying the name of the station and the brand of gasoline sold. In addition, a maximum of two ground signs may be provided which list products sold and services offered. One wall sign may also be provided.
- (3) For all other freestanding businesses and industries, total signs shall be limited by the following table:

**Table 384-58-1 Sign Requirements**

Floor Area (square feet)	Maximum Number of Signs Permitted
0 to 5,000	2
5,001 to 20,000	3
20,001 to 50,000	4
More than 50,000	5

### § 384-59. Signs allowed in all zoning districts with sign permit.

The following signs are allowed in all zoning districts, provided that a sign permit has been issued, and shall be located a minimum of 40 feet from the edge of the traveled way or two feet from the road right-of-way, whichever distance is greater:

- A. Off-premises directional signs which contain only the name of the establishment, logo or directional information useful to the traveler in locating the site, such as mileage, route numbers or exit numbers, provided that:
- (1) No more than two such signs relating to any one establishment shall be located in the approaching direction along any one highway.
  - (2) Such sign shall be located within five air miles of the subject site.
  - (3) No two directional signs facing the same direction of travel shall be spaced less than one mile apart. However, more than one sign may be placed on the same support, provided that the total square footage does not exceed the allowable area.
  - (4) No such sign shall be located within 300 feet of a highway interchange, intersection at grade, rest area or wayside.
  - (5) No such sign shall exceed 10 feet in height.
  - (6) No such sign or signs in aggregate if facing the same direction of travel shall exceed 12 square feet in display area.
- B. On-premises identification signs for residential subdivisions, parks, multifamily dwelling units, mobile home parks, industrial parks, schools, town halls, hospitals and for community identification not to exceed 24 square feet in display area on all sides, limited to one such sign for each premises, and shall indicate only the name and/or address of the premises, logo, slogan, motto or other information pertinent to identifying the premises. Community identification signs may include service club organization symbols as part of the sign.

## § 384-60. Effect on traffic signs or devices; restrictions on location.

Signs shall not resemble, imitate, or approximate the shape, size, form, or color of railroad or traffic signs or devices. Signs shall not obstruct or interfere with the effectiveness of railroad or traffic signs, signals, or devices. No sign shall be erected, relocated, or maintained so as to prevent free ingress to or egress from any door, window, or fire escape, and no sign shall be attached to a standpipe or fire escape. No sign shall be placed so as to obstruct or interfere with traffic visibility.

## § 384-61. Existing signs.

A sign lawfully existing at the time of the adoption or amendment of this chapter may be continued although the use, size, or location does not conform to the provisions of this chapter. However, it shall be deemed a nonconforming use or structure, and the provisions of Article VIII shall apply.

## § 384-62. Moving or flashing signs.

No sign shall be erected which has any flashing, rotating or brilliant intermittent parts or lights or bare reflecting-type bulbs, except those giving public service information, such as time, date, temperature, weather or similar information, or where allowed by conditional use permit. No signs, billboards or other advertising media which create a hazard or dangerous distraction to vehicular traffic or a nuisance to adjoining residential property shall be permitted in any district.

## § 384-63. Removal of signs.

Signs which advertise or identify a business or similar activity must be removed within 60 days of the date said business or similar activity ceases operation or vacates the premises. The removal of the sign shall be the responsibility of the owner of the property on which the sign is located.

## § 384-64. Proximity to right-of-way or body of water.

No sign mentioned in this article shall be located in, on or above a public road right-of-way or navigable body of water, except for official signs.

## § 384-65. Determining area of sign.

In calculating the area of a sign to determine whether it meets the requirement of this chapter, the Zoning Administrator shall include the sign copy and any border or frame surrounding that copy. Supporting members of a sign shall be excluded from the area calculation. Area of irregular-shaped signs or signs containing two or more detached elements shall be determined by the area of the smallest regular polygon that will encompass all elements of the sign.

# Article VIII. Nonconforming Uses, Structures and Lots

## § 384-66. Existing nonconforming uses.

The lawful nonconforming use of a structure, land, or water existing at the time of the adoption or amendment of this chapter may be continued although the use does not conform to the provisions of this chapter; however, only the portion of the land in actual use may be so continued, and the structure housing the nonconforming use may not be extended, enlarged, reconstructed, substituted, moved, or structurally altered if it extends or enlarges the nonconforming use except when required to do so by law or order or so as to comply with the provisions of this chapter.

- A. Total lifetime structural repairs or alterations to the structure housing the nonconforming use shall not exceed 50% of the assessed value of the structure at the time of its becoming nonconforming unless it is permanently changed to conform to the use provisions of this chapter.
- B. Substitution of new equipment may be permitted by the Board of Appeals if such equipment will reduce the incompatibility of the nonconforming use with the neighboring uses.

## § 384-67. Abolishment or replacement.

- A. If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, land, or water shall conform to the provisions of this chapter. When a nonconforming use or structure is damaged by fire, explosion, flood, public enemy, or other calamity to the extent of more than 50% of its current assessed value, it shall not be restored except so as to comply with the use provisions of this chapter.
- B. A current file of all nonconforming uses shall be maintained by the Zoning Administrator listing the following: owner's name and address; use of the structure, land, or water; and assessed value at the time of its becoming a nonconforming use.

## § 384-68. Existing nonconforming structures.

A lawful nonconforming structure existing at the time of the adoption or amendment of this chapter may be continued although its size or location does not conform to the lot width, lot area, yard, height, parking, loading, and access provisions of this chapter; however it shall not be extended, enlarged,



reconstructed, moved or structurally altered except when required to do so by law or order or so as to comply with the provisions of this chapter.

- A. Additions and enlargements to existing nonconforming structures are permitted so long as they do not increase the extent of nonconformity and shall conform to the required building setback lines along roads, water and highways and the yard, height, parking, loading and access provisions of this chapter.
- B. Existing nonconforming structures which are damaged or destroyed by fire, explosion, flood or any other event may be reconstructed and insofar as is practicable shall conform to the required building setback lines along streets and highways and the yard, height, parking, loading and access provisions of this chapter.

## § 384-69. Changes and substitutions.

Once a nonconforming use or structure has been changed to conform, it shall not revert to a nonconforming use or structure. Once the Board of Appeals has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as a legal nonconforming use and become subject to all the conditions required by the Board of Appeals.

## § 384-70. Substandard lots.

A lot which does not contain sufficient area to conform to the dimensional requirements of this chapter but which is at least 50 feet wide and 7,500 square feet in area may be used as a building site for a single-family dwelling upon issuance of a land use permit, subject to the following conditions:

- A. Such use is permitted in the zoning district.
- B. The lot is on record in the County Register of Deeds office prior to the effective date of this chapter.
- C. The lot is in separate ownership from abutting lands. If abutting lands and the substandard lot are owned by the same owner, the substandard lot shall not be sold or used without full compliance with the terms of this chapter.
- D. All the dimensional requirements of this chapter are complied with insofar as practical.
- E. If such lot is located in the A-1 Farmland Preservation District or A-2 General Agricultural District, such single-family dwelling shall be considered a conditional use subject to the provisions of Article **IV** of this chapter.

## Article IX. Adult-Oriented Establishments

### § 384-71. Findings of fact.

- A. The Town Board finds that adult-oriented establishments operating in the Town require special licensing by the Town in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town.
- B. Based on a review of studies conducted in Phoenix, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington and the findings incorporated in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986), and Coleman A. Young v. American Mini-Theaters,

Inc., 427 U.S. 50 (1976), the Town finds that adult-oriented establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities, including prostitution.

- C. It has been documented that entertainers in adult-oriented establishments offer to perform sexual acts for patrons, and that sexual contact occurs between patrons and other employees of adult-oriented establishments.
- D. There is convincing documented evidence that booths, rooms or cubicles in adult-oriented establishments have been used by patrons for the purpose of engaging in specified sexual activities or in high-risk sexual behavior and configuration of the interior of the premises is an important factor in combating such activities.
- E. The Wisconsin Department of Health Services has published reports that have been considered by the Town relating to the subject of sexually transmitted diseases and the concern over sexually transmitted diseases is a legitimate concern of the Town in order to protect the health and well-being of its citizens.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- F. The state has seen a steady increase in several types of sexually transmitted diseases since 1986.
- G. Researchers have found that contracting sexually transmitted diseases may increase a person's vulnerability to Human Immunodeficiency Virus (HIV), the virus that causes AIDS (Acquired Immune Deficiency Syndrome) and some types of cancer.
- H. AIDS is a sexually transmitted disease which destroys the body's immune system.
- I. The Wisconsin Department of Health Services reports that as of June 30, 1999, 4,217 cases of AIDS were reported in the state, including 2,507 that resulted in death, and new cases of HIV infection have been reported in Wisconsin each year.<sup>[2]</sup>

[2] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- J. The Town is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses.
- K. Licensing is a legitimate and reasonable means of accountability to ensure that the operators and employees of adult-oriented establishments comply with reasonable regulations and to ensure that operators and employees do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
- L. Information relating to pending charges and convictions of the applicants is desired to further the Town's interest in controlling the secondary effects of adult-oriented establishments.
- M. There is convincing documented evidence that adult-oriented establishments have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.
- N. The Town Board has reviewed studies of the secondary effects of adult-oriented establishments and has concluded that, if unregulated, they present an increased risk of prostitution, high-risk sexual behavior and crime, deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.
- O. The Town Board desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods.
- P. It is not the intent of this article to suppress any speech activities protected by the First Amendment but to enact a content-neutral ordinance which addresses the secondary effects of adult-oriented establishments.
- Q. It is not the intent of the Town Board to condone or legitimize the promotion of obscene material, and the Town Board recognizes that the law prohibits the promotion of obscene materials. The

Town Board expects and encourages law enforcement officials to enforce anti-obscenity laws against any such illegal activities in the Town.

- R. Restricted hours of operation will allow law enforcement personnel to concentrate on crime prevention during high crime hours and/or low staffing hours by relieving them of enforcement duties relative to prostitution, loitering, and criminal activity associated with adult-oriented establishments.
- S. Prohibition of alcohol beverages on the premises will reduce the need for law enforcement resources to respond to alcohol-related problems upon the premises, will reduce high-risk sexual activity and will contribute to the reduction of secondary effects of adult-oriented establishments.

## § 384-72. Purpose and intent.

Based upon the findings stated above, it is the intended purpose of the Town to regulate adult-oriented establishments to promote the health, safety, morals, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize secondary effects of these establishments on the community. The provisions of this article have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials, protected by the First Amendment to the Constitution of the United States. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to adult-oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market. The promotion of obscene materials which is not protected by the First Amendment is subject to criminal sanctions under the state's penal code.

## § 384-73. Definitions.

The following terms have the meanings indicated within this article:

### **ADULT ARCADE**

Any place to which the public is permitted or invited wherein coin, slug, electronically, or mechanically controlled or operated still- or motion-picture machines, projectors, computers, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.

### **ADULT BATHHOUSE**

A commercial establishment which provides a bath as a service and which provides to its patrons an opportunity for engaging in specified sexual activities.

### **ADULT BODY PAINTING STUDIO**

A commercial establishment wherein patrons are afforded an opportunity to be painted or to paint images on specified anatomical areas. An adult body painting studio does not include a tattoo parlor.

### **ADULT BOOKSTORE**

Any commercial establishment having as its stock-in-trade the sale, rental or lease, for any form of consideration, of any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, videocassettes, video reproductions, slides, or other visual representations which are distinguished or characterized by their emphasis on specified sexual activities or specified anatomical areas.

- B. Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.
- C. Facilities for the presentation of adult entertainment as defined herein, including adult-oriented films, motion pictures, videocassettes, video reproductions, slides or other visual representations for observation by patrons therein.

#### **ADULT CABARET**

A nightclub, bar, restaurant, or similar commercial establishment which features:

- A. Live performances which are characterized or distinguished by the exposure of specified anatomical areas or the removal of articles of clothing; or
- B. Films, motion pictures, videocassettes, video reproductions, slides or other visual representations which are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.

#### **ADULT ENTERTAINMENT**

Any exhibition of any motion picture, live performance, display or dance of any type which has as its dominant theme or is distinguished or characterized by any one or more of the following:

- A. Specified sexual activities;
- B. Specified anatomical areas; or
- C. Removal of articles of clothing.

#### **ADULT MESSAGE PARLOR**

A commercial establishment with or without sleeping accommodations which provides the service of massage or body manipulation, including exercise, heat and light treatment of the body, and any form or method of physiotherapy, which also provides its patrons with the opportunity to engage in specified sexual activities.

#### **ADULT MOTEL**

A hotel, motel or other similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, film, motion pictures, videocassettes, video reproductions, slides, or other visual reproductions characterized by depicting or describing specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this type of adult entertainment;
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.

#### **ADULT-ORIENTED ESTABLISHMENT**

Includes an adult arcade, adult bathhouse, adult body painting studio, adult bookstore, adult cabaret, adult massage parlor, adult motel, adult theater, and any commercial establishment presenting adult entertainment, whether or not such establishment is operated or maintained for a profit.<sup>[1]</sup>

#### **ADULT THEATER**

An enclosed building such as a theater, concert hall, auditorium or other similar commercial establishment which is used for presenting adult entertainment.

#### **APPLICANT**

The individual or business entity that seeks to secure a license under this article.

**BOARD**

The Town Board for the Town of Herman, Dodge County, Wisconsin.

**EMPLOYEE**

Any and all persons, including but not limited to operators, entertainers, clerks, managers, janitors or other persons, who work in or at or render any services directly related to the day-to-day operation of an adult-oriented establishment. "Employee," as used in this article, specifically excludes independent contractors who are responsible for the improvement or repair of the physical premises or who provide supplies to the establishment, provided that these persons are not also in the position of providing any other day-to-day services for the adult-oriented establishment.

**ENTERTAINER**

Any person who provides entertainment within an adult-oriented establishment, whether or not a fee is charged or accepted for the entertainment and whether or not the entertainment is provided by the person as an employee of the adult-oriented establishment or as an independent contractor.

**OPERATOR**

The person who is designated on the license application to be the person in charge of the daily operation of the premises and who is to be the adult-oriented establishment's contact person for the municipality.

**PERSON**

An individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

**PUBLIC AREA**

Includes all areas of an adult-oriented establishment except a public rest room to the extent it is used for its proper purpose, individual rooms rented in an adult motel, or areas to which patrons have no physical or visual access.

**SPECIFIED ANATOMICAL AREAS**

- A. Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or
- B. Human male genitals in a discernibly turgid state, even if opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES**

Includes any of the following, simulated or actual:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.
- B. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus, or anilingus.
- C. Showing of human genitals in a state of sexual stimulation or arousal.
- D. Excretory functions during a live performance, display or dance of any type.

**TRANSFER OF OWNERSHIP OR CONTROL OF AN ADULT-ORIENTED ESTABLISHMENT**

Includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or other means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the

death of the person possessing the ownership or control.

## YOUTH FACILITY

Any facility where minors gather for educational or recreational activities, including but not limited to playgrounds, swimming pools, libraries, licensed child-care facilities, or youth clubs.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## § 384-74. Licensing procedure.

### A. Licenses required.

- (1) License required for all adult-oriented establishments. From and after the effective date of this article, except as provided in Subsection **A(3)** below, no adult-oriented establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town. A license may be issued only for one adult-oriented establishment located at a fixed and certain place. Any person desiring to operate more than one adult-oriented establishment must have a license for each.
- (2) License required for all employees of adult-oriented establishments. In addition to the license required by the establishment, all employees of an adult-oriented establishment must also be licensed.
- (3) Licenses for existing adult-oriented establishments. All adult-oriented establishments existing at the time of the passage of this article must submit an application for a license within 90 days of the effective date of this article. Any establishment that submits an application within the ninety-day period shall be allowed to continue to operate until the license application is acted upon by the Town Board. Any establishment which fails to submit an application within the ninety-day period must cease operation upon expiration of the ninety-day period unless and until a valid license is timely issued by the Town Board. The Town shall act upon any such license application in accordance with the provisions of this article.
- (4) Licenses for employees of existing adult-oriented establishments. All employees already working in an adult-oriented establishment existing at the time of the passage of this article must submit an application for a license within 90 days of the effective date of this article. Any employee that submits an application within the ninety-day period shall be allowed to continue his or her employment until the license application is acted upon by the Town Board. Any employee who fails to submit an application within the ninety-day period must cease employment upon expiration of the ninety-day period unless and until a valid license is issued by the Town Board. The Town shall act upon any such license application in accordance with the provisions of this article.
- (5) Change of name form. Any licensed adult-oriented establishment which desires to change its name from that as listed on the original license application must file a change of name form with the Town Clerk and pay a fee in an amount set from time to time by resolution of the Town Board at least 30 days prior to effectuating the name change.
- (6) Effect of other licenses. The fact that a person possesses any other valid license or permit required by law does not exempt that person from the requirement of obtaining an adult-oriented establishment license under this article.
- (7) Nontransferability of licenses. No license or interest in a license may be transferred to any person. Any change in location for an adult-oriented establishment shall require a new license application for that location.

### B. License application procedure for adult-oriented establishments.

- (1) Any person desiring to secure an adult-oriented establishment license shall file an application together with two additional copies of the application with the Town Clerk.

- (2) The application shall be on a form provided by the Town Clerk.
- (3) The following information shall be required of each applicant and must be provided under oath or affirmation:
  - (a) Name, including any aliases, address, and phone number.
  - (b) If the applicant is a corporation, partnership, limited liability corporation or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address of the registered agent where applicable; and the names and addresses of all officers and directors, operating or managing partners or general partners, members or managers, whichever is applicable for the particular form of business entity.
  - (c) If the applicant is an individual, written proof that the applicant is at least 18 years of age and two copies of a recent photo.
  - (d) If the applicant is a business entity, a statement that no officer, director, partner, general partner, owner or manager is less than 18 years of age.
  - (e) Name, address and phone number of the adult-oriented establishment for which a license is being secured.
  - (f) Name and address of any other current or past adult-oriented establishments operated by the applicant whether in this state or any other state or district within the United States.
  - (g) For any current adult-oriented establishments operated by the applicant, the applicant shall describe the status of any required license for the establishment.
  - (h) Nature and date of offense if the applicant has charges pending or has been convicted of violating any of the terms of this article.
  - (i) Nature and date of offense if the applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

Prostitution (§ 944.30, Wis. Stats.)

Patronizing prostitutes (§ 944.31, Wis. Stats.)

Soliciting prostitutes (§ 944.32, Wis. Stats.)

Pandering (§ 944.33, Wis. Stats.)

Keeping place of prostitution (§ 944.34, Wis. Stats.)

Sexual assault (§ 940.225, Wis. Stats.)

Sexual gratification (§ 944.17, Wis. Stats.)

Lewd and lascivious behavior (§ 944.20, Wis. Stats.)

Obscene material or performance (§ 944.21, Wis. Stats.)

Sexual assault of a child (§ 948.02, Wis. Stats.)

Engaging in repeated acts of sexual assault of the same child (§ 948.025, Wis. Stats.)

Sexual exploitation of a child (§ 948.05, Wis. Stats.)

Causing a child to view or listen to sexual activity (§ 948.055, Wis. Stats.)

Incest with a child (§ 948.06, Wis. Stats.)

Child enticement (§ 948.07, Wis. Stats.)

Soliciting a child for prostitution (§ 948.08, Wis. Stats.)

Exposing a child to harmful material or harmful descriptions or narrations (§ 948.11, Wis. Stats.)

Possession of child pornography (§ 948.12, Wis. Stats.)

**Child sex offender working with children (§ 948.13, Wis. Stats.)**

The statute numbers listed above are for reference purposes only. In the event that one or more of the crimes listed above are renumbered or categorized differently by an act of the Legislature, the applicant shall list those crimes for which the applicant has been convicted that are similar in nature to those listed above.

- (j) Nature and date of offense if the applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in Subsection **B(3)(i)** above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
  - (k) Name, address and phone number of an individual who is responsible for the day-to-day operation of the establishment, who will be deemed the operator for purposes of this article, and who will be the contact person for the municipality.
  - (l) A statement that the applicant is familiar and in compliance with the provisions of this article.
  - (m) When the applicant is a business entity, the information requested of the applicant shall include the information required in this section for each of the officers and directors, partners and general partners, or other owners and managers of the business entity applying for the license. This provision shall not apply to any owner of any kind who holds an ownership interest of less than 10%.
- (4) Each application shall be accompanied by:
- (a) A building plan which meets all the requirements of this article and this chapter, if the requirements of this chapter for the zoning district impose any building plan requirements in addition to those in this article. Each application shall be accompanied by a sketch or diagram showing the floor plan of the interior of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a one-fourth-inch scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
  - (b) A written plan of operation which meets all the requirements of this article and this chapter, if the requirements of this chapter for the zoning district impose any plan of operation requirements in addition to those in this article.
  - (c) A written site plan which meets all the requirements of this article and this chapter, if the requirements of this chapter for the zoning district impose any site plan requirements in addition to those in this article.
- (5) Each application shall be signed by the applicant.
- (6) Each application shall be accompanied by payment of the license fee in an amount as set from time to time by resolution of the Town Board. Filing of the application does not occur until this fee has been paid.
- (7) The Town Clerk shall date the filing of the application on the face of the application.
- (8) Upon filing of the application, each applicant shall place a sign at the proposed business location providing notification of the application. Each sign shall be at least 24 inches by 36 inches in size. The sign shall state "Adult-Oriented Establishment License Application Pending" and "Application Filed On (fill in the date)." The letters on the sign shall be no less than 1 1/2 inches high by two inches wide. The sign must be placed in a conspicuous location so that it is clearly visible to all passersby, whether on the public road, highway, sidewalk or parking lot.
- (9) Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Zoning Administrator, Building Inspector, Dodge County Sheriff's Department, and the Town Board.



- (10) The Sheriff's Department shall notify the Town Board in writing of any information bearing on the applicant's qualifications within 20 business days of the filing of the application.
- (11) The Zoning Administrator shall notify the Town Board in writing as to whether or not the applicant's building plan, site plan, and plan of operation comply with this article and this chapter, if the requirements of this chapter for the zoning district impose any requirements in addition to those in this article, within 20 business days of the filing of the application.
- (12) The Town Board shall, within 45 days of the filing of the application with the Town Clerk, either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this article. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
- (13) If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
- (14) If the Town Board decides to deny the application for a license, the Board shall immediately notify the applicant in writing of the reasons for denial. Such notice shall be sent to the applicant within five days of the decision by certified mail, return receipt requested.
- (15) Any applicant aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in Circuit Court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town explicitly elects not to be governed by Ch. 68, Wis. Stats., and to provide the review procedures described in this section.
- (16) Each license issued for an adult-oriented establishment shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

C. License procedures for employees in adult-oriented establishments.

- (1) Any individual desiring to secure an employee license shall file an application together with two additional copies of the application with the Town Clerk.
- (2) The application shall be on a form provided by the Town Clerk.
- (3) The following information shall be required of each applicant and must be provided under oath or affirmation:
  - (a) Name, including any aliases, and address. Pursuant to § 19.35(1)(a)2a, Wis. Stats., the name and address of any entertainer shall be considered as exempt from disclosure under the public records law of the State of Wisconsin because of potential danger to the life and safety of such individuals from such disclosure.
  - (b) Written proof that the individual is at least 18 years of age and two copies of a recent photo.
  - (c) Nature and date of offense if the applicant has charges pending or has been convicted of any violations of any of the terms of this article.
  - (d) Nature and date of offense if the applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

Prostitution (§ 944.30, Wis. Stats.)

Patronizing prostitutes (§ 944.31, Wis. Stats.)

Soliciting prostitutes (§ 944.32, Wis. Stats.)

Pandering (§ 944.33, Wis. Stats.)

Keeping place of prostitution (§ 944.34, Wis. Stats.)

Sexual assault (§ 940.225, Wis. Stats.)

Sexual gratification (§ 944.17, Wis. Stats.)

Lewd and lascivious behavior (§ 944.20, Wis. Stats.)

Obscene material or performance (§ 944.21, Wis. Stats.)

Sexual assault of a child (§ 948.02, Wis. Stats.)

Engaging in repeated acts of sexual assault of the same child (§ 948.025, Wis. Stats.)

Sexual exploitation of a child (§ 948.05, Wis. Stats.)

Causing a child to view or listen to sexual activity (§ 948.055, Wis. Stats.)

Incest with a child (§ 948.06, Wis. Stats.)

Child enticement (§ 948.07, Wis. Stats.)

Soliciting a child for prostitution (§ 948.08, Wis. Stats.)

Exposing a child to harmful material or harmful descriptions or narrations (§ 948.11, Wis. Stats.)

Possession of child pornography (§ 948.12, Wis. Stats.)

Child sex offender working with children (§ 948.13, Wis. Stats.)

The statute numbers listed above are for reference purposes only. In the event that one or more of the crimes listed above are renumbered or categorized differently by an act of the Legislature, the applicant shall list those crimes for which the applicant has been convicted that are similar in nature to those listed above.

- (e) Nature and date of offense if the applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in Subsection **C(3)(d)** above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
  - (f) A statement that the applicant is familiar with the provisions of this article and is in compliance with them.
  - (g) A list of other similar or analogous adult entertainer or employee licenses issued by any other municipalities, the name and state of the municipality and the status of the license.
- (4) Each application shall be signed by the applicant.
  - (5) Each application shall be accompanied by payment of the license fee in an amount set from time to time by resolution of the Town Board. Filing of the application does not occur until this fee has been paid.
  - (6) The Town Clerk shall date the filing of the application upon the face of the application.
  - (7) Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Dodge County Sheriff's Department and the Town Board.
  - (8) The Sheriff's Department shall notify the Town Board in writing of any information bearing on the applicant's qualifications as required herein within 20 business days of the filing of the application.
  - (9) The Town Board shall, within 45 days of the filing of the application with the Town Clerk, either issue the license or deny the application after reviewing the application for compliance with the licensing standards found in this article. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
  - (10) If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
  - (11) If the Town Board decides to deny the application for a license, the Board shall notify the applicant in writing of the reasons for denial. Such notice shall be sent to the applicant within five days of the decision by certified mail, return receipt requested.

- (12) Any applicant aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in Circuit Court. Such an appeal must be made within 30 days of the receipt by the applicant of the written decision of the Board. The Town explicitly elects not to be governed by Ch. 68, Wis. Stats., and to provide the review procedures described in this section.
- D. Procedures for alterations of licensed premises. Following the granting of a license, any licensee who wishes to alter any aspect of the licensed premises which was required to be described in the building plan, site plan or plan of operations required under this article shall be required to apply for a new license.
- E. Licensing standards for initial licenses. The Town Board shall grant an initial license to an applicant unless it finds one or more of the following to be true:
- (1) The applicant is less than 18 years of age.
  - (2) The applicant has charges pending or has been convicted of violating a provision of this article or an analogous ordinance of another municipality within the five years immediately preceding the date of application.
  - (3) Convictions.
    - (a) The applicant has charges pending or has been convicted of a crime specified in Subsection **B(3)(i)** or Subsection **C(3)(d)** and, if convicted, for which:
      - [1] Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense.
      - [2] Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a felony offense.
      - [3] Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses, or combination of misdemeanor offenses, occurring within any twenty-four-month period.
    - (b) The fact that an appeal has been taken from any of the above-mentioned convictions shall have no effect.
  - (4) The applicant provides false information on the application.
  - (5) The applicant fails to provide information, to post the required notice, or to pay any fee required by this article.
  - (6) The adult-oriented establishment does not submit plans which meet the requirements of Subsection **B(4)**.
- F. License expiration and renewal.
- (1) Transfer of ownership or control of an adult-oriented establishment shall result in automatic expiration of the existing license. Upon transfer of ownership or control, the procedures for a new license application must be followed. In order to ensure continuous operation, such procedures may also be commenced by a new applicant prior to the expiration of the prior license.
  - (2) Every license issued pursuant to this article will terminate upon the expiration of one year from the date of issuance unless sooner revoked. Any licensee desiring to renew an initial license shall make application to the Town Clerk. The application procedures governing new licenses shall be followed by an applicant for a renewal license except for those found in Subsection **B(9), (13), (14), (15)** and **(16)** for adult-oriented establishment licenses and Subsections **C(9)**,

**(10), (11) and (12)** for employee licenses. The application fee for a renewal license shall be in an amount set from time to time by resolution of the Town Board.

- (3) Any licensee desiring to renew an initial license shall file the application for renewal no later than 60 days before the license expires. Any licensee who fails to apply for a renewal license at least 60 days before the license expires shall pay the same fee as if the licensee were applying for an initial license.
- (4) An existing license shall be allowed to continue until such time as the Town Board acts upon the renewal license application. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
- (5) The Town Board will not expedite the renewal procedure to ensure that a license will not expire when the expiration of the license is due to the licensee's untimely filing of a renewal application. Upon expiration of a license under these circumstances, the licensee is prohibited from operating or serving as an employee until the new license is granted.
- (6) A license may not be renewed if the Board, following the procedures found in this article, finds that a violation of this article has occurred or that the applicant is no qualified to hold the license.
- (7) If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.

## § 384-75. Location.

If all the requirements for a license as stated in this regulation are met, an adult-oriented establishment shall only be allowed to locate in the zoning district(s) provided for by the Town and shall not be allowed to locate in any other district.<sup>[1]</sup>

[1] *Editor's Note: See § 384-34, M-1 Manufacturing/Industrial District.*

## § 384-76. Operating standards.

- A. No adult-oriented establishment is permitted to operate between the hours of 2:00 a.m. and 8:00 a.m. Further, no adult-oriented establishment is permitted to operate between the hours of 8:00 a.m. and midnight on any Sunday or legal holiday as defined in § 995.20, Wis. Stats.
- B. No operator or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow patrons to perform any specified sexual activity in the establishment or on the site. This provision does not apply to adult motels, to the extent that such specified sexual activity is not prohibited by law.
- C. No operator or employee of an adult-oriented establishment shall allow any minor to enter into, loiter around or to frequent an adult-oriented establishment or to view adult entertainment.
- D. The operator shall maintain the premises in a clean and sanitary manner at all times.
- E. The operator shall maintain at least 10 footcandles of illumination in the public areas of the establishment, with the following exceptions:
  - (1) In a booth, room, or cubicle, if a lesser level of illumination is necessary to enable a patron to view the adult entertainment, but at no time shall there be less than 0.01 footcandle of illumination as measured 30 inches from the floor.
  - (2) In an aisle adjacent to a booth, room, or cubicle, if a lesser amount of illumination is necessary to allow the occupant to view the adult entertainment, but at no time shall there be less than 1 1/2 footcandles of illumination as measured 30 inches from the floor.

(3) Adult theaters must maintain five footcandles of illumination in the auditorium during intermission and no less than 0.01 footcandle during a picture.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- F. All employees while engaged in the display or exposure of any specified anatomical area shall maintain a three-foot distance from any patron or other employee.
- G. No rest room shall be designed, operated or maintained so that a patron can view adult entertainment therein.
- H. No employee or patron in an adult cabaret shall be permitted to have physical contact with any employee or patron on the premises.
- I. All performances in an adult cabaret shall be conducted upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest employee or patron.
- J. The selling, serving, possession, or consumption of alcohol beverages is strictly prohibited at all times in all adult-oriented establishments.
- K. No employee or operator shall knowingly work in or about or knowingly perform any service directly related to the operation of any unlicensed adult-oriented establishment.
- L. All employees shall carry their license upon their person at all times while working in the adult-oriented establishment and shall produce said license upon demand for inspection by any law enforcement authority. Entertainers are exempt from carrying their license upon their person while providing entertainment but shall be readily able to produce said license upon demand for inspection by any law enforcement authority.
- M. The license for the adult-oriented establishment shall be displayed in a conspicuous public place in the adult-oriented establishment.
- N. No employee, operator, or owner may refuse law enforcement officials or the Zoning Administrator entry into an adult-oriented establishment for purposes of inspecting the adult-oriented establishment for compliance with these operational standards during business hours, or at other times at a reasonable hour, with reasonable notice.
- O. The operator shall be responsible for compliance with the provisions of this section by the adult-oriented establishment, its employees and patrons.
- P. Every act or omission by any employee constituting a violation of the provisions of this section shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be accountable for such act or omission in the same manner as if the operator committed the act or caused the omission.

## § 384-77. Design and layout.

- A. External visibility. At no time should any adult entertainment inside the premises be visible to any persons who are outside the premises.
- B. Booths. Any adult-oriented establishment having available for patrons any booth, room or cubicle for the private viewing of adult entertainment must comply with the following requirements:
  - (1) Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock or other control-type devices.
  - (2) Construction. Every booth, room or cubicle shall meet the following construction requirements:

- (a) Each booth, room or cubicle shall be separated from adjacent booths, room or cubicles and any nonpublic areas by a wall.
  - (b) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet, and be light colored.
  - (c) Each booth, room or cubicle shall have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth.
  - (d) Booths must be separated at least 12 inches from the exterior walls of any other viewing booths by open space.
- (3) Visibility. The interior of the booth, room or cubicle shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever.
- (4) Lighting. Lighting for the booth, room or cubicle shall comply with the provisions of § 384-76E of this article.
- (5) Occupants. Only one individual shall be permitted to occupy a booth, room or cubicle at any time. No occupant of the booth, room or cubicle shall be permitted to engage in any specified sexual activity, cause any bodily discharge or litter while in the booth. No individual shall be permitted to damage or deface any portion of the booth.
- (6) Exception. This Subsection **B** does not apply to the individual rooms located in adult motels.

## § 384-78. Exemptions.

All private and public schools as defined in Ch. 115, Wis. Stats., located within the Town are exempt from obtaining a license hereunder when instructing pupils in sex education as part of their curriculum.

## § 384-79. Enforcement; violations and penalties.

### A. License nonrenewal, suspension or revocation.

- (1) Causes for license nonrenewal, suspension or revocation. The Town Board may refuse to renew, suspend or revoke a license for any violations of this article or if the applicant is not qualified to hold the license.
- (2) License nonrenewal, suspension and revocation procedures.
  - (a) In order to commence the procedure for a license nonrenewal, suspension or revocation, the Town shall notify the licensee in writing by certified mail, return receipt requested, of the alleged violation or cause and the intent of the Town to seek a nonrenewal, suspension or revocation of the license.
  - (b) The licensee shall be entitled to a public hearing before the Town Board regarding the license nonrenewal, suspension or revocation, upon written request to the Town Clerk within 10 days of receipt of the notification required in Subsection **A(2)(a)**.
  - (c) Any public hearing requested pursuant to Subsection **A(2)(b)** shall take place within 10 days of the filing of such written request.
  - (d) At the hearing both the Town and the aggrieved party may be represented by an attorney, present evidence, call and examine witnesses, cross-examine witnesses of the other party, and make opening and closing statements. Such witnesses shall be sworn. The Town Chairperson shall be the presiding officer at the hearing.
  - (e) Attorneys may issue subpoenas to compel attendance of witnesses or the production of evidence. Subpoenas issued must be in substantially the same form as provided in

§ 805.07(4), Wis. Stats., and must be served in the manner provided in § 805.07(5), Wis. Stats. Copies of the subpoenas must be served on the opposing party.

- (f) The Board shall cause the proceedings to be recorded by a stenographer, the expense thereof to be paid by the Town. Costs for copies of any transcripts or transcription of a recording shall be paid by the party requesting the transcript or transcription. All exhibits shall be marked and preserved.
- (g) Within 10 days of the completion of any hearing the Town Board shall determine if cause for nonrenewal, suspension or revocation exists. If no public hearing is requested, the Town Board shall make a determination within 20 days of the notification date.
- (h) The Town Board shall issue its determination in writing and provide it within five days to the licensee by certified mail, return receipt requested.
- (i) If a license period expires while a nonrenewal, suspension or revocation procedure is pending, then the expiration date of any license shall be stayed pending the issuance of a determination by the Town Board. The nonrenewal, suspension or revocation of a license shall become effective 30 days following the issuance of a decision by the Town Board, if judicial review is not commenced as provided in this section.
- (j) If judicial review of such determination by the Town Board is timely commenced, then license nonrenewal, suspension or revocation shall not become effective until judgment is entered.
- (k) Any person aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in Circuit Court. Such an appeal must be made within 30 days of the licensee's receipt of the written decision by the Board. The Town explicitly elects not to be governed by Ch. 68, Wis. Stats., and to provide the review procedures described in this section.
- (l) Any person whose license is nonrenewed, suspended or revoked initiated by the Town shall not be eligible to receive a license for a period of five years from the effective date of the suspension or revocation.

#### B. Violations.

- (1) Penalties. Any person who violates this article will be subject to a monetary forfeiture in the amount of \$500 for each violation. Each day that a violation exists shall constitute a separate violation and be punishable as such.
- (2) Injunction. Compliance with the provisions of this article may also be enforced by an injunction properly issued by a court of competent jurisdiction upon the request of the Town.
- (3) Nonexclusivity. The imposition of any penalty under this section or the seeking of an injunction shall not impair the right of the Town to seek a nonrenewal, suspension or revocation of a license as provided in this section.

## Article X. Board of Appeals

### § 384-80. Establishment.

There is hereby established a Board of Appeals for the Town of Herman. The Board of Appeals shall consist of five members appointed by the Town Chairperson and confirmed by the Town Board.

- A. Terms. Terms shall be for three years, except that of those first appointed one shall serve one year, two shall serve two years and two for three years.
- B. Chairperson. The Chairperson shall be designated by the Town Chairperson.

- C. Alternates. Two alternate members shall be appointed by the Town Chairperson for a term of three years. The Town Chairperson shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent. The second alternate shall so act only when the first alternate so refuses or is absent or when more than one member of the Board so refuses or is absent. The provisions of § 62.23(7)(e), Wis. Stats., with regard to removal of members and the filling of vacancies shall apply to such alternates.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- D. Secretary. The Secretary shall be as designated by the Board of Appeals.
- E. Vacancies. Vacancies shall be filled for the unexpired terms of members whose terms become vacant.

## § 384-81. Organization.

The Board of Appeals shall organize and adopt rules of procedure in conformance with § 62.23(7)(e)1 to 15, Wis. Stats.

## § 384-82. Rules of procedure.

- A. The Board of Appeals shall meet at the call of the Chairperson and at such other times as the Board of Appeals may determine, at a fixed time and place.
- B. All meetings of the Board of Appeals shall be open to the public.
- C. Any public hearings which the Board of Appeals is required to hold shall be held where Town Board meetings take place or other place convenient to the location or locations to be considered at such public hearing, and a full description of the location of such place of hearing by name, address or other commonly known means of identification shall be included in the notice given of such hearing. Other matters upon which the Board of Appeals is required to act may also be heard at any such hearing, provided that no undue hardship is created for any appellant by reason of the location of such hearing, and provided further that such matters are included in the notice given of such hearing.<sup>[1]</sup>
- [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- D. The Board of Appeals shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Appeals and shall be a public record.
- E. The Board of Appeals may adopt such other rules as are necessary to carry into effect the regulations of the Town Board.
- F. In the case of all appeals, the Board of Appeals may call upon the Town Board or Zoning Administrator for all information pertinent to the decision appealed from.

## § 384-83. Powers.

- A. The Board of Appeals shall have the following powers:
- (1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter.
  - (2) To hear and decide special exceptions to the terms of this chapter upon which such Board is required to pass under this chapter.



- (3) To authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done.
- B. The Board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
- C. The Board may reverse, affirm, or wholly or partly modify the requirements appealed from and may issue or direct the issuance of a permit.
- D. Assistance. The Board may request assistance from other Town or county officers, departments, commissions and boards.
- E. Oaths. The Chairperson may administer oaths and compel the attendance of witnesses.

## § 384-84. Appeals and applications.

Appeals from the decision of the Zoning Administrator concerning the literal enforcement of this chapter may be made by any person aggrieved or by an officer, department, board or bureau of the Town. Such appeals shall be filed with the Secretary and the officer from whom the appeal is taken within 30 days after the date of written notice of the decision or order of the Zoning Administrator or the Town Board. Applications may be made by the owner or lessee of the structure, land or water to be affected at any time and shall be filed with the Zoning Administrator. Such appeals and applications shall include the following:

- A. Names and addresses of the appellant or applicant and all abutting and opposite property owners of record.
- B. Sketch showing all the information required under § 384-10 for a land use permit.
- C. Additional information which was required for the decision appealed from or may be required by the Board of Appeals.
- D. Fee in the amount as set by resolution of the Town Board to be paid to the Town at the time of application.

## § 384-85. Hearings.

The Board of Appeals shall fix a reasonable place for the hearing and hold a hearing within 45 days or less, give a Class 1 notice thereof as provided in Ch. 985, Wis. Stats., and give due notice to the parties in interest, the Zoning Administrator and the Town Board. At the hearing the applicant or the appellant may appear in person, by agent, or by attorney.

## § 384-86. Decisions.

- A. The Board of Appeals shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, the Zoning Administrator and the Town Board.
- B. Conditions may be placed upon any land use permit ordered or authorized by this Board.
- C. The concurring vote of a majority of the five-member Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the

applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter. The grounds of every such determination shall be stated.

## § 384-87. Review by court of record.

Any person or persons aggrieved by any decision of the Board of Appeals may commence an action seeking the remedy available by certiorari. Such action shall be commenced within 30 days after the filing of the decision in the office of the Board of Appeals.

## Article XI. Changes and Amendments

### § 384-88. Authority.

Whenever the public necessity, convenience, health, safety, or general welfare requires, the Town Board may, by ordinance, change the district boundaries or amend, change, or supplement the regulations established by this chapter or amendments hereto in accordance with § 62.23(7), Wis. Stats.

### § 384-89. Initiation.

A change or amendment may be initiated by the Town Board, Plan Commission or by a petition of one or more property owners within the area proposed to be affected.

### § 384-90. Petitions for amendment.

A petition for any change to the district boundaries or amendment to the regulations shall be filed with the Town Clerk, who shall present it to the Town Board at its next succeeding meeting; such petition shall describe the premises to be rezoned or the regulations to be amended, lists the reasons justifying the petition, specify the proposed use and have attached the following:

- A. Plot plan drawn to a scale of one inch equals 100 feet showing the area proposed to be rezoned, its location, its dimensions, the location and classification of adjacent zoning districts, and the location and existing use of all properties within 200 feet of the area proposed to be rezoned.
- B. Owners' names and addresses of all properties lying within 200 feet of the area proposed to be rezoned.
- C. Additional information required by the Plan Commission or Town Board.
- D. Fee in an amount set from time to time by resolution of the Town Board.

### § 384-91. Hearing and Town Board action.

The Town Plan Commission shall hold a public hearing upon each petition. Notice of the time and place of such a hearing shall be given by publication in the Town of a Class 2 notice under Ch. 985, Wis. Stats. Notice of the hearing should be provided to the owner, applicant, all owners of property within 200 feet of the subject site, the Zoning Administrator and the Town Board.

- A. Recommendations. Within 45 days after the public hearing, the Town Plan Commission shall act on such petition, approving, modifying or disapproving the petition. The recommendation shall be made in writing to the Town Board.

- B. Action by the Town Board. After careful consideration of the Town Plan Commission recommendation, the Town Board shall vote on the passage of the proposed change or amendment within 45 days after receiving the Plan Commission recommendation.

## § 384-92. Approval by County Board.

After approval by the Town Board, the Dodge County Board of Supervisors shall approve the proposed change or amendment.

## § 384-93. Protest.

In case of a protest against an amendment proposed duly signed and acknowledged by the owners of 20% or more either of the areas of the land included in such proposed amendment, or by the owners of 20% or more of the area 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 road frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the Town Board voting on the proposed change.

## § 384-94. Rezoning land out of A-1 Farmland Preservation District.

The Town must submit a report on A-1 Farmland Preservation District rezonings to the Department of Agriculture, Trade and Consumer Protection and to the County by March 1 of each year in accordance with § 91.48(2), Wis. Stats. Land may be rezoned out of the A-1 Farmland Preservation Zoning District if the Town Board finds that all of the following apply:

- A. The land is better suited for a use not allowed in the A-1 Farmland Preservation Zoning District.
- B. The rezoning is consistent with the Town of Herman Comprehensive Plan.
- C. The rezoning is substantially consistent with the Dodge County Farmland Preservation Plan.
- D. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

## Article XII. Plan Commission

### § 384-95. Composition.

- A. The Plan Commission shall consist of five members, all of whom shall be appointed by the Town Board Chairperson, who shall also choose the presiding officer. The Town Board Chairperson may appoint himself or herself to the Commission and may appoint other Town elected or appointed officials to the Commission, except that the Commission shall always have at least one citizen member who is not a Town official. All other provisions of §§ 61.35 and 62.23, Wis. Stats., shall apply.
- B. Members of the Commission shall be appointed to hold office for a period of three years. Appointments shall be made by the Town Board Chairperson during the month of April or at any other time if a vacancy occurs during the middle of a term. If a Town Board member has been appointed to the Commission, his or her term on the Commission shall coincide with his or her term on the Town Board.

- C. Commission members shall further perform their duties in a fair and rational manner and avoid arbitrary actions.

## § 384-96. Rules and organization.

The Plan Commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations. Such record shall be a public record. Meetings of the Commission shall be held at the call of the Chairperson and at such other times as the Commission may determine. The Plan Commission shall have the power and authority to employ experts and a staff.

- A. Chairperson. The Plan Commission Chairperson shall be appointed and serve a term as provided in § **384-95** of this chapter. The Chairperson shall, subject to Town ordinances and Commission rules:
- (1) Provide leadership to the Commission;
  - (2) Set Commission meeting and hearing dates;
  - (3) Provide notice of Commission meetings and hearings and set their agendas, personally or by his or her designee;
  - (4) Preside at Commission meetings and hearings; and
  - (5) Ensure that the laws are followed.
- B. Vice Chairperson. The Plan Commission may elect, by open vote or secret ballot under § 19.88(1), Wis. Stats., a Vice Chairperson to act in the place of the Chairperson when the Chairperson is absent or incapacitated for any cause.
- C. Secretary. The Plan Commission shall elect, by open vote or secret ballot under § 19.88(1), Wis. Stats., one of its members to serve as Secretary or, with the approval of the Town Board, designate the Town Clerk or other Town officer or employee as Secretary.

## § 384-97. Functions and duties.

- A. The Plan Commission shall have the following functions and duties:
- (1) To make a recommendation to the Town Board on a comprehensive plan for the physical development of the Town.
  - (2) To make a recommendation to the Town Board on conditional use permit applications in accordance with Article **IV**.
  - (3) To make a recommendation to the Town Board on any petition to amend this chapter or change the district boundaries.
- B. Required referrals under this chapter. In addition to referrals required by the Wisconsin Statutes, the following matters shall be referred to the Plan Commission for report:
- (1) Any proposal, under § 59.69, Wis. Stats., for the Town to approve general zoning so that it takes effect in the Town, or to remain under general county zoning.
  - (2) Proposed regulations or amendments relating to historic preservation under § 60.64, Wis. Stats.
  - (3) A proposed driveway access ordinance or amendment.
  - (4) A proposed Town official map ordinance under § 62.23(6), Wis. Stats., or any other proposed Town ordinance under § 62.23, Wis. Stats., not specifically required by the Wisconsin Statutes to be referred to the Commission.

- (5) A proposed Town zoning ordinance or amendment adopted under authority separate from or supplemental to § 62.23, Wis. Stats., including a Town construction site erosion control and stormwater management zoning ordinance under § 60.627(6), Wis. Stats., and a Town farmland preservation zoning ordinance under Subchapter III of Ch. 91, Wis. Stats.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

- (6) An application for a conditional use permit under this chapter.
- (7) A proposed site plan.
- (8) A proposed extraterritorial zoning ordinance or a proposed amendment to an existing ordinance under § 62.23(7a), Wis. Stats.
- (9) A proposed boundary change pursuant to an approved cooperative plan agreement under § 66.0307, Wis. Stats., or a proposed boundary agreement under § 66.0225, Wis. Stats., or other authority.
- (10) A proposed zoning ordinance or amendment pursuant to an agreement in an approved cooperative plan under § 66.0307(7m), Wis. Stats.
- (11) Any proposed plan, element of a plan or amendment to such plan or element developed by the regional planning commission and sent to the Town for review or adoption.
- (12) Any proposed contract for the provision of information, or the preparation of a comprehensive plan, an element of a plan or an implementation measure, between the Town and the regional planning commission, under § 66.0309, Wis. Stats., another unit of government, a consultant or any other person or organization.
- (13) A proposed ordinance, regulation or plan, or amendment to the foregoing, relating to a mobile home park under § 66.0435, Wis. Stats.
- (14) A proposed agreement, or proposed modification to such agreement, to establish an airport affected area, under § 66.1009, Wis. Stats.
- (15) A proposed Town airport zoning ordinance under § 114.136(2), Wis. Stats.
- (16) A proposal to create environmental remediation tax incremental financing in the Town under § 66.1106, Wis. Stats.
- (17) A proposed county agricultural preservation plan or amendment, under Subchapter IV of Ch. 91, Wis. Stats., referred by the county to the Town, or proposed Town agricultural preservation plan or amendment.
- (18) Any other matter required by any Town ordinance or Town Board resolution or motion to be referred to the Plan Commission.

C. Discretionary referrals. The Town Board, or other Town officer or body with final approval authority or referral authorization under the Town ordinances, may refer any of the following to the Plan Commission for report:

- (1) A proposed county development plan or comprehensive plan, proposed element of such a plan, or proposed amendment to such plan.
- (2) A proposed county zoning ordinance or amendment.
- (3) A proposed county subdivision or other land division ordinance under § 236.45, Wis. Stats., or amendment.
- (4) An appeal or permit application under the county zoning ordinance to the county zoning board of adjustment, county planning body or other county body.
- (5) A proposed intergovernmental cooperation agreement, under § 66.0301, Wis. Stats., or other statute, affecting land use, or a municipal revenue sharing agreement under § 66.0305, Wis.

Stats.

- (6) A proposed plat or other land division under the county subdivision or other land division ordinance under § 236.45, Wis. Stats.
- (7) A proposed county plan, under § 236.46, Wis. Stats., or the proposed amendment or repeal of the ordinance adopting such plan, for a system of Town arterial thoroughfares and minor streets, and the platting of lots surrounded by them.
- (8) Any other matter deemed advisable for referral to the Plan Commission for report

## Article XIII. Right to Farm

### § 384-98. Purpose.

It is the intent of this article to conserve, protect, and encourage the continued use and improvement of agricultural land in the Town of Herman for the production of agricultural products. Additionally, this article is designed to preserve the right of farmers to produce, without unnecessary interference, agricultural products using generally accepted agricultural practices.

### § 384-99. Applicability.

The provisions of this article shall apply to all land use change applications within the jurisdiction of this chapter.

### § 384-100. Limitation on private action.

- A. An agricultural use or agricultural practice is not, nor shall it become, a nuisance if the following apply:
  - (1) The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or agricultural practice; and
  - (2) The agricultural use or agricultural practice does not present a substantial threat to public health or safety.
- B. However, this section shall not apply in the case of a negligent agricultural operation.

### § 384-101. Development review.

In reviewing any application for a land use change, the Town Board and/or Plan Commission shall, to the maximum extent feasible, ensure that such change does not adversely affect any existing agricultural operation on land not subject to the land use change, including access to active agricultural operations.

### § 384-102. Noise and odors.

Farmers often work late into the night, especially during planting and harvest time, when noise from their machinery can be heard. Land preparation can cause dust, especially during windy and dry weather. The smell of organic fertilizer may be evident during field applications.

## § 384-103. Slow moving vehicles.

Moving at top speeds of 15 to 20 miles per hour, farm equipment may slow travel time on rural roads. Vigilance and patience are required. Farm equipment will display a slow moving vehicle emblem, a red-orange fluorescent triangle surrounded by a reflective red border, on the rear of the implement. This is a warning to slow down. Large farm equipment may extend into the oncoming traffic lane. Safety should be a top concern for all drivers on our township roads.

## § 384-104. Chemicals.

Fertilizers and herbicides are often used in growing crops. These products are applied by licensed applicators. Respect for a neighbor's adjacent land is shown by knowing the prevailing winds and preventing drift.

NOTE: Through § 823.08, Wis. Stats., the Wisconsin Legislature has adopted a right to farm law. This statute limits the remedies of later established residential property to seek changes to preexisting agricultural practices in the vicinity of residential property. Active agricultural operations are now taking place and may continue in the vicinity of the plat of the Town of Herman. These active agricultural operations may produce noises, odors, dust, machinery traffic, or other conditions during daytime and evening hours.

## Article XIV. Performance Standards

### § 384-105. Prohibited activities.

All activities involving the production, processing, cleaning, servicing, testing, or repair of materials, goods, or products shall be conducted in such a manner whereby there shall be no danger of fire or explosion, no offensive noise, vibration, smoke, dust, odor, glare, or heat, and no objectionable influences detrimental to the public health, safety, comfort, or general welfare of the immediate neighborhood or community.

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

### § 384-106. Enforcement.

A violation of this article which is so flagrant as to constitute a potential nuisance shall be the subject of a nuisance action brought by the Town Attorney on behalf of the Town.

## Article XV. Definitions

### § 384-107. Definitions and word usage.

For the purposes of this chapter, the following definitions shall be used. Words used in the present tense include the future, the singular number includes the plural number, and the plural number includes the singular number. The word "shall" is mandatory and not directory.

#### **ACCESSORY USE**

Within the A-1 Farmland Preservation Zoning District means any of the following land uses on a farm:

- A. A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.
- B. An activity or business operation that is an integral part of, or incidental to, an agricultural use.
- C. A farm residence.
- D. A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in Subsection **A** or **C**, that employs no more than four full-time employees annually and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.

### **ACCESSORY USE OR STRUCTURE**

A use or detached structure subordinate to the principal use of a structure, land, or water and located on the same lot or parcel serving a purpose customarily incidental to the principal structure.

### **ADULT ENTERTAINMENT**

See Article **IX**, Adult-Oriented Establishments.<sup>[1]</sup>

### **AGRICULTURAL USE**

Any of the following activities conducted for the purpose of producing an income or livelihood:

- A. Crop or forage production.
- B. Keeping livestock.
- C. Beekeeping.
- D. Nursery, sod, or Christmas tree production.
- E. Floriculture.
- F. Aquaculture.
- G. Fur farming.
- H. Forest management.
- I. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.
- J. Any other use that the Department of Agriculture, Trade and Consumer Protection, by rule, identifies as an agricultural use.

### **AGRICULTURE-RELATED USE**

An agricultural equipment dealership, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes. In addition, any use that the Department of Agriculture, Trade and Consumer Protection identifies by rule as an agriculture-related use.

### **ANIMAL CONFINEMENT FACILITY**

Any livestock or poultry operation with 500 or more animal units that are used in the production of food, fiber, or other animal products or that will be fed, confined, maintained, or stabled for a total of 45 days or more in any twelve-month period.

### **ANIMAL UNIT**

Has the following meaning that was given in § NR 243.03(3), Wis. Adm. Code, as of April 27, 2004:

<sup>[2]</sup> "Animal unit" means a unit of measure used to determine the total number of single animal types or combination of animal types, as specified in § NR 243.11, Wis. Adm. Code, which are fed, confined, maintained or stabled in an animal feeding operation. The total number of animal units for



a given type of animal shall be calculated by multiplying the number of animals for each animal type by the appropriate equivalency factor from the following table and summing the products. The number of combined animal units shall be the sum of the number of animal units for each animal type. For animal types not listed in the following table, the equivalency to animal units shall be based on live animal weights. In these cases, 1,000 pounds of live weight is equivalent to one animal unit. As referenced to livestock outside the agricultural districts, an animal unit is defined as one bovine or equine over the age of six months, five swine, 10 sheep, 10 goats or 100 fowl.

### Animal Unit Calculation Table

Number Equivalent to 500 Animal Units	Animal Type	Animal Equivalency Factor
<b>Dairy cattle:</b>		
350	Milking and dry cows	1.4
455	Heifers (800 to 1,200 pounds)	1.1
835	Heifers (400 to 800 pounds)	0.6
2,500	Calves (under 400 pounds)	0.2
<b>Beef cattle:</b>		
500	Steers or cows (600 pounds to market)	1.0
1,000	Calves (under 600 pounds)	0.5
350	Bulls	1.4
<b>Swine:</b>		
1,250	Pigs (55 pounds to market)	0.4
5,000	Pigs (up to 55 pounds)	0.1
1,250	Sows	0.4
5,000	Boars	0.5
<b>Sheep:</b>		
5,000	Per animal	0.1
<b>Horses:</b>		
250	Per animal	2.0
<b>Ducks:</b>		
2,500	Per bird (wet lot)	0.2
50,000	Per bird (dry lot)	0.01
<b>Chickens:</b>		
50,000	Layers	0.01
100,000	Broilers	0.005
50,000	Broilers (continuous overflow watering)	0.01
15,000	Layers or broilers (liquid manure system)	0.033
<b>Turkeys:</b>		
27,500	Per bird	0.018
<b>Combined animal units:</b>		
500	Calculated total	

### ARTERIAL STREET

A public street or highway used or intended to be used primarily for fast or heavy through traffic. Arterial streets and highways shall include freeways and expressways as well as arterial streets,

highways, and parkways.

**BASE FARM TRACT**

All land, whether one parcel or two or more contiguous parcels, that is in the A-1 Farmland Preservation Zoning District and that is part of a single farm on October 19, 2010, regardless of any subsequent changes in the size of the farm. Alternatively, any other tract that the Department of Agriculture, Trade and Consumer Protection by rule defines as a base farm tract. For the purposes of this definition, when determining the boundaries of the base farm tract, the term "contiguous parcel" includes those commonly owned parcels that are abutting or touching at more than one point and those commonly owned parcels that are separated only by a waterway or a transportation or utility right-of-way.<sup>[3]</sup>

**BASEMENT**

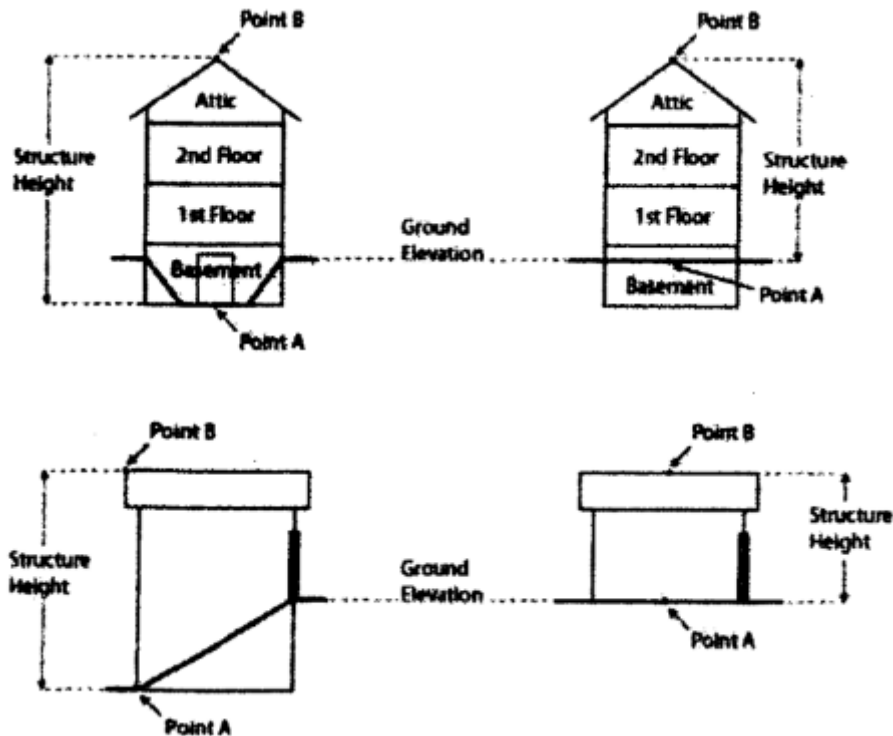
A space having half or more of its floor-to-ceiling height below the average level of the adjoining ground and with a floor-to-ceiling height of not less than 6.5 feet.

**BUILDING AREA**

Total ground coverage in square feet of all buildings and structures, including garages, carports, and other attached or accessory structures.

**BUILDING HEIGHT**

The measurement of the vertical line segment starting at the lowest point of any exposed wall and its intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this chapter.



**CERTIFIED FARMLAND PRESERVATION PLAN**

A farmland preservation plan that is certified as determined under § 91.12, Wis. Stats.

**CERTIFIED FARMLAND PRESERVATION ZONING ORDINANCE**

A zoning ordinance that is certified as determined under § 91.32, Wis. Stats.

**CONDITIONAL USES**

Uses of a special nature as to make impractical their predetermination as a permitted use in a district. Conditional uses as used in the A-1 Farmland Preservation Zoning District must meet the requirements of § 91.01(10), Wis. Stats.

**CORNER LOT**

A lot abutting two or more streets at their intersections.

**DENSITY**

Number of living units per acre allowable under Article III of this chapter.<sup>[4]</sup>

**DUPLEX**

A dwelling containing two dwelling units.

**DWELLING**

A detached building designed or used exclusively as a residence or sleeping place, but does not include boardinghouses or lodging houses, motels, hotels, tents, cabins, or mobile homes except mobile homes with the wheel assembly and hitch removed and located on and anchored to a four-foot footing or basement.

**DWELLING, MULTIFAMILY**

A dwelling containing three or more units.

**DWELLING, SINGLE-FAMILY**

A dwelling containing one dwelling unit.

**DWELLING UNIT**

One or more rooms which are arranged, designed, or used as living quarters for one family only.

**EMERGENCY SHELTER**

Public or private enclosures designed to protect people from arterial, radiological, biological, or chemical warfare, fire, flood, windstorm, riots, and invasions.

**ESSENTIAL SERVICES**

Services provided by public and private utilities necessary for the exercise of the principal use or service of the principal structure. These services include underground, surface or overhead gas, electricity, steam, water, sanitary sewerage, stormwater drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations, and hydrants, but not including buildings.

**EXPRESSWAY**

A divided arterial street or highway with full or partial control of access and with or without grade-separated intersections.

**FAMILY**

One or more persons, related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, or a number of persons living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage.<sup>[5]</sup>

**FARM**

All land under common ownership that is primarily devoted to agricultural use.

**FARM ACREAGE**

The size of a farm in acres. "Farm acreage" does not include nonfarm residential acreage.

**FARM RESIDENCE**

A single-family residence that is the only residential structure on the farm or is occupied by any of the following:

- A. An owner or operator of the farm.
- B. A parent or child of an owner or operator of the farm.
- C. An individual who earns more than 50% of his or her gross income from the farm.

### **FLOOR AREA**

Area in square feet of all floors in a building, including elevators and stairways, measured by perimeter of outside walls multiplied by the number of floors, including basements which are used in the primary function of the building.

### **FREEWAY**

An expressway with full control of access and with fully grade-separated intersections,

### **FRONTAGE**

The smallest dimension of a lot abutting a public street measured along the street line.

### **GROSS FARM REVENUES**

Gross receipts from agricultural use of a farm, excluding rent receipts, less the cost or other basis of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year.

### **HOME OCCUPATION**

Any occupation for gain or support conducted entirely within buildings by resident occupants, which is clearly incidental to the principal use of the premises and does not exceed 25% of the area of any floor.

### **HOUSEHOLD PETS**

Dogs, cats, song birds and other small animals, provided that they are not raised or reared for commercial resale or as a source of staple supplement. Household pets shall not include horses, chickens, cows, goats, sheep, hogs or other animals.

### **INTERCHANGE**

A grade-separated intersection with one or more turning lanes for travel between intersection legs.

### **KENNEL**

The use of land, with related buildings or structures, for the commercial breeding, rearing, or boarding of more than four dogs.

### **LIVESTOCK**

Bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.

### **LOADING AREA**

A completely off-street space or berth on the same lot for the loading or unloading of freight carriers, having adequate ingress and egress to a public road or alley.

### **LOT**

A contiguous and continuous quantity of land in possession of, owned by, or recorded as property of the same claimant, person, persons, or company and having frontage on a public road, occupied by a principal structure or use, and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area, and other space provisions of this chapter. For zoning purposes, tax parcel identification numbers shall not be used in defining a lot.

### **LOT LINES AND AREA**

The peripheral boundaries of a parcel of land and the total area lying within such boundaries.

**LOT WIDTH**

The width of a parcel of land measured at the rear of the specified street yard.

**MINOR STRUCTURE**

A structure which is 100 square feet in area or less and is accessory to the principal use of the lot.

**MOBILE HOME**

A transportable, single-family dwelling unit suitable for year-round occupancy and containing the same water supply, waste disposal, and electric conveniences as immobile housing.

**MOTEL**

A series of attached, semi-attached, or detached sleeping units for the accommodation of transient guests.

**NONCONFORMING USES OR STRUCTURES**

Any structure, land, or water lawfully used, occupied, or erected at the time of the effective date of this chapter which does not conform to the regulations of this chapter. Any such structure conforming in respect to use but not in respect to frontage, width, height, area, yard, parking, loading, or distance requirements shall be considered a nonconforming structure and not a nonconforming use.

**NONFARM RESIDENCE**

A single-family residence other than a farm residence.

**NONFARM RESIDENTIAL ACREAGE**

The total number of acres of all parcels on which nonfarm residences are located. If a nonfarm residence is located on one of two or more adjoining parcels owned by the same person, the adjoining parcels are also considered "nonfarm residential acreage" unless clearly devoted to nonresidential use other than open space use.

**PRIME FARMLAND**

An area with a Class I or II land capability classification as identified by the Natural Resources Conservation Service of the federal Department of Agriculture or land that is identified as prime farmland in a certified farmland preservation plan. Prime farmland soils are not necessarily associated with the boundaries of the A-1 Farmland Preservation Zoning District.

**PRINCIPAL STRUCTURE**

A structure in which is conducted the principal use of the lot on which it is located.

**PROFESSIONAL HOME OFFICE**

Residence of a doctor of medicine, practitioner, dentist, clergyman, architect, landscape architect, professional engineer, professional land surveyor, accountant, attorney, artist, teacher, author, musician, or other recognized professional person used to conduct his or her profession where the office does not exceed 1/2 the area of only one floor of the residence and no more than one nonresident person is employed.<sup>[6]</sup>

**PROTECTED FARMLAND**

Land that is located in the A-1 Farmland Preservation Zoning District, is covered by a farmland preservation agreement, or is otherwise legally protected from nonagricultural development.

**SIDE YARD**

A yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the nearest point of any structure and the lot line.

**SIGNS**

Any words, letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is made known and which are used to advertise or

promote an individual, firm, association, corporation, profession, business, commodity, or product and which are visible from any public street or highway.

**STREET or ROAD**

A public right-of-way not less than 40 feet wide providing primary access to abutting properties.

**STREET YARD**

A yard extending across the full width of the lot, the depth of which shall be the minimum horizontal distance between the existing or proposed street or highway line and a line parallel thereto through the nearest point of the principal structure. Corner lots shall have two such yards.

**STRUCTURAL ALTERATION**

Any change in the supporting members of a structure, such as foundations, bearing walls, columns, beams, or girders.

**STRUCTURE**

Any construction, excluding fills, or any production or piece of work artificially built or composed of parts joined together in some definite manner having form, shape and utility.

**SWIMMING POOL**

Any structure, portable or permanent, containing a body of water 36 inches or more in depth, intended for recreational purposes, but not including an ornamental reflecting pool or fish pond or similar type pool, located and designed so as not to create a hazard or to be used for swimming. "Swimming pool" does not include temporary, portable blowup pools, wading pools, or kiddie pools.

[7]

**TRAILER SPACE**

A parcel of land in a travel trailer parking area for the placement of a single trailer and the exclusive use of its occupants.

**TRAVEL TRAILER**

A vehicular, portable structure built on a chassis and designed as a temporary dwelling for travel, recreation and vacation.

**TURNING LANE**

An existing or proposed connecting roadway between two arterial streets or between an arterial street and any other street. Turning lanes include grade-separated interchange ramps.

**USABLE OPEN SPACE**

Space suitable for recreation, gardens, or household service activities, such as clothes drying. Such space must be at least 75% open to the sky, free of automobile traffic, parking, and undue hazards, and readily accessible by all those for whom it is intended.

**UTILITIES**

Public and private facilities such as water wells, water and sewage pumping stations, water storage tanks, power and communication transmission lines, electrical power substations, static transformer stations, telephone and telegraph exchanges, microwave radio relays, and gas regulation stations, but not including sewage disposal plants, municipal incinerators, warehouses, shops, and storage yards.

**WIND ENERGY SYSTEM**

Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes all of the land, buildings, structures and equipment used by the wind energy system and its support facilities, including the wind turbine, tower, access roads, control and office facilities, meteorological towers, maintenance and all power collection and transmission systems.

**YARD**

An open space on the same lot with a structure unoccupied and unobstructed from the ground upward except for vegetation. The street and rear yards extend the full width of the lot.

## ZONING ADMINISTRATOR

The Zoning Administrator for the Town of Herman or such person or firm designated to perform the duties of the Zoning Administrator.

- [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- [2] *Editor's Note: See now § NR 243.03(5), Wis. Adm. Code.*
- [3] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- [4] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- [5] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- [6] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- [7] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

## Article XVI. Comprehensive Plan

- [1] *Editor's Note: See Ch. 188, Comprehensive Plan.*

### § 384-108. Plan Commission proceedings.

The Plan Commission, in order to ensure that the requirements of § 66.1001(4), Wis. Stats., are met, shall proceed as follows:

- A. **Public participation verification.** Prior to beginning work on a comprehensive plan, the Plan Commission shall verify that the Town Board has adopted written procedures designed to foster public participation in every stage of preparation of the comprehensive plan. These written procedures shall include open discussion, communication programs, information services and noticed public meetings. These written procedures shall further provide for wide distribution of proposed, alternative or amended elements of a comprehensive plan and shall provide an opportunity for written comments to be submitted by members of the public to the Town Board and for the Town Board to respond to such written comments.
- B. **Resolution.** The Plan Commission, under § 66.1001(4)(b), Wis. Stats., shall recommend its proposed comprehensive plan or amendment to the Town Board by adopting a resolution by a majority vote of the entire Plan Commission. The vote shall be recorded in the minutes of the Plan Commission. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of the comprehensive plan. The resolution adopting a comprehensive plan shall further recite that the requirements of the comprehensive planning law have been met, under § 66.1001, Wis. Stats., namely that:
  - (1) The Town Board adopted written procedures to foster public participation and that such procedures allowed public participation at each stage of preparing the comprehensive plan;
  - (2) The plan contains the nine specified elements and meets the requirements of those elements;
  - (3) The (specified) maps and (specified) other descriptive materials relate to the plan;
  - (4) The plan has been adopted by a majority vote of the entire Plan Commission, which the Clerk or Secretary is directed to record in the minutes; and
  - (5) The Plan Commission Clerk or Secretary is directed to send a copy of the comprehensive plan adopted by the Commission to the governmental units specified in § 66.1001(4), Wis. Stats., and Subsection **C** of this section.
- C. **Transmittal.** One copy of the comprehensive plan or amendment adopted by the Plan Commission for recommendation to the Town Board shall be sent to:

- (1) Every governmental body that is located in whole or in part within the boundaries of the Town, including any school district, Town sanitary district, public inland lake protection and rehabilitation district or other special district.
- (2) The clerk of every city, village, town, county and regional planning commission that is adjacent to the Town.
- (3) The Wisconsin Land Council.
- (4) After September 1, 2003, the Department of Administration.
- (5) The regional planning commission in which the Town is located.
- (6) The public library that serves the area in which the Town is located.