

## CHAPTER 10

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### SETBACK ORDINANCE

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#### **10.01 Title.**

This ordinance may be referred to as the Setback Ordinance.

#### **10.02 Purpose.**

The purpose of this ordinance is to promote the public health, safety, and general welfare by establishing setback lines along all public highways and at the intersection of all public highways with other public highways or with railways.

#### **10.03 Applicability.**

- (1) This ordinance applies to all land and highways or portions of highways lying within any unincorporated territory in Manitowoc County. Where a highway is located on the boundary of a city or village or another county, this ordinance only applies to that portion of the road lying within the unincorporated territory of Manitowoc County.
- (2) This ordinance does not abrogate, annul, interfere with, impair, or repeal any pre-existing agreement, covenant, or easement between private parties.

- (3) This ordinance does not abrogate, annul, interfere with, impair, or repeal any permit, regulation, or rule adopted or issued pursuant to law, except that where this Ordinance is more restrictive, the provisions of this Ordinance shall govern.

#### **10.04 Definitions.**

In this ordinance:

“Board” means the Board of Adjustment created pursuant to sec. 2.04(1).

“Center line” means a line equidistant from the edges of the main-traveled way of a highway, a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or a line equidistant between the rails of a railway.

“Class 1 highway” means a town road.

“Class 2 highway” means a county trunk highway.

“Class 3 highway” means a state trunk highway.

“Class 4 highway” means any highway or portion of a highway on which the frontage has been developed to the extent that there is less than 300 feet between principal structures.

“Class 5 highway” means an expressway, freeway, or divided highway.

“Clear zone” means that roadside border area which is available for safe use by errant vehicles, as defined in the Wisconsin Department of Transportation Facilities Development Manual.

“Code Administrator” means the person appointed to sec. 8.18(2) or his or her designee.

“Commission” means the Planning and Park Commission.

“Highway” means a street, road, or public thoroughfare that is used for vehicular travel by the public.

“Minimum sight triangle” means a triangle formed by the center lines of two intersecting highways and a third line connecting specified points on the center lines.

“Nonconforming structure” means a dwelling or other building that existed lawfully before the current Setback Ordinance was enacted or amended but no longer conforms with any setback required by this Setback Ordinance.

“Permit” means a permit issued by the Code Administrator for a proposed excavation or structure that is subject to this ordinance.

“Right-of-way line” means the line on either side of a highway that delineates the outer limit of land, property, or an interest in property acquired, devoted, or used for highway purposes.

“Setback line” means a line which is a fixed distance outside the right-of-way on either side of a highway.

“Structure” means anything that is intended to be permanently constructed, erected, placed, or attached to something that is constructed, erected, or placed on, above, or below the surface of the ground.

### **10.05 Permit Requirements.**

- (1) A permit issued by the Code Administrator is required before any structure may be permanently constructed, erected, placed, or attached to something that is constructed, erected, or placed on, above, or below the surface of the ground.
- (2) A permit issued by the Code Administrator is required before any structure may be modified or reconstructed, but a permit is not required for ordinary maintenance or repairs such as decorating, internal and external painting, paneling, and the replacement of doors, roofs, windows, and other non-structural components or for the maintenance, repair, or replacement of private sewage systems, water supply systems, or connections to public utilities.
- (3) A permit issued by the Code Administrator is required for any excavation to a depth greater than 5 feet.
- (4) The permit must be posted on the premises where the structure is located or the excavation occurs and must be visible from the highway at all times until all work on the structure or all excavation has been completed.

### **10.06 Address Monuments and Entrance Gate Structures.**

- (1) An address monument or entrance gate structure is exempt from the minimum set back distances specified in sec. 10.10, but may not be constructed, erected, or placed within the right-of-way or clear zone of any highway.
- (2) Any address monument or entrance gate structure must be of hollow construction; not more than 30 inches wide, not more than 13 feet long, and not more than 5 feet high, and the owner must file a written statement with the Code Administrator agreeing to remove the structure at the owner's own expense if removal is required in connection with any improvements to a highway.

- (3) An address monument or entrance gate structure that was constructed, erected, or placed between the right-of-way of a highway and a setback line on or before July 30, 2007 is exempt from the requirements of sub. (2), but must be brought into compliance if it is altered in any way after that date.

#### **10.07 Maintenance, Repair, Replacement, or Remodeling of Nonconforming Structures.**

A nonconforming structure may be maintained, repaired, replaced, restored, rebuilt, or remodeled if the activity does not expand the footprint of the nonconforming structure.

#### **10.09 Permit Procedure.**

- (1) A person may apply for a permit by submitting an application to the Code Administrator on forms provided or approved by the Code Administrator. The application must provide the owner's name, the builder's name, and any other information specified on the form. The application must be accompanied by the permit fee set by county board resolution in an amount that is adequate to pay the cost of providing public notice and processing the application. The application must be accompanied by drawings in duplicate showing the location of the proposed structure with reference to the highway, the dimensions of the structure, and the distance from the center line to the nearest point on the structure, and the distance from the right-of-way line to the nearest point on the structure. In the case of an address monument or entrance gate structure, the drawings must be certified by a civil engineer and must show the location of the clear zone and the location of the structure in relation to the clear zone.
- (2) The Code Administrator shall approve, deny, or refer the application to the Board within 10 days of its receipt. The Code Administrator will issue a permit and return one copy of the drawings to the applicant if the application is approved. The Code Administrator shall provide the applicant with written notice, including the reason for the denial, if the application is denied. The Code Administrator will refer the application to the Board if the applicant requests a variance.

#### **10.10 Highway Setback Distances.**

- (1) Class 1 Highways. The minimum setback distance required from a class 1 highway is 60 feet from the center line and not less than 25 feet from the right-of-way line.
- (2) Class 2 Highways. The minimum setback distance required from a class 2 highway is 100 feet from the center line and not less than 25 feet from the right-of-way line.
- (3) Class 3 Highways. The minimum setback distance required from a class 3 highway is 100 feet from the center line and not less than 25 feet from the right-of-way line.

- (4) Class 4 Highways. The minimum setback distance required from a class 4 highway is the average distance that adjacent principal structures on each side of a proposed structure are set back from the center line and right-of-way line, but no structure may be located within 55 feet from the center line or 25 feet from the right-of-way line.
- (5) Class 5 Highways. The minimum setback distance required from a class 5 highway is 25 feet from the right-of-way line, and no structure intended for human occupancy may be located within that setback.

### **10.11 Minimum Sight Triangles.**

- (1) A minimum sight triangle must be maintained at the intersection of any highway with another highway or a railway.
- (2) The minimum sight triangle at each corner of the intersection of a class 1 highway and another class 1 highway or a railway is the area bounded by the center lines and a line connecting points on the center lines that are 110 feet from the point of intersection.
- (3) The minimum sight triangle at each corner of the intersection of a class 2 highway and a railway or a class 1 or 2 highway is the area bounded by the center lines and a line connecting points on the center lines that are 200 feet from the point of intersection.
- (4) The minimum sight triangle at each corner of the intersection of a class 3 highway and a railway or a class 1, 2, or 3 highway is the area bounded by the center lines and a line connecting points on the center lines that are 200 feet from the point of intersection.
- (5) No shrub or other plant exceeding 3 feet in height is permitted within the minimum sight triangle.
- (6) Unless expressly authorized by a permit issued pursuant to this ordinance, no object may be placed within the minimum sight triangle if the object obstructs the view within the minimum sight triangle.

### **10.12 Objects Permitted Within Setback Lines.**

The following objects may be placed between the right-of-way line and the setback line without a permit:

- (1) Annual field crops under 3 feet in height.
- (2) Open fences.

- (3) Telephone and power transmission poles and lines.
- (4) Temporary, non-illuminated signs not exceeding 10 square feet in area that are for community events, garage sales, the lease or sale of the property on which the sign is located, political candidates or issues, and similar activities or events if the sign is removed at the owner's expense within 7 days after the activity or event ends.
- (5) Underground structures that cannot be used as a foundation for an above-ground structure.

### **10.13 Objects Permitted Within Minimum Sight Triangle.**

The following objects may be placed within the minimum sight triangle without a permit.

- (1) Annual field crops under 3 feet in height.
- (2) Open fences.
- (3) Telephone and power transmission poles and lines.
- (4) Temporary, non-illuminated signs not exceeding 10 square feet in area that are for community events, garage sales, the lease or sale of the property on which the sign is located, political candidates or issues, and similar activities or events if the sign is removed at the owner's expense within 7 days after the activity or event ends.
- (5) Underground structures that cannot be used as a foundation for an above-ground structure.

### **10.14 Excavations.**

- (1) No excavation, including soil removal or fill, is permitted if the excavation will create or cause deep pits, depressions, drainage or sewerage problems, soil erosion, or other conditions that would impair the use of any neighboring property.
- (2) The minimum setback distance for an excavation greater than 5 feet in depth is 25 feet from a property line and 100 feet from an existing residence on a neighboring property.
- (3) The minimum highway setback distances established in sec. 10.10 are increased by 2 times the depth of the excavation.
- (4) Finished slopes may not exceed 30 degrees from the horizontal plane, except for a dam or swimming pool.

- (5) Lakes, ponds, streams, or other bodies of water may be permitted in accordance with a plan submitted to and approved by the Planning and Park Commission.

### **10.15 Administration.**

This ordinance will be administered by the Code Administrator and the Planning and Park Department. The Code Administrator shall:

- (1) Keep an accurate record of all permit applications, permits issued, plans, inspections, and other official actions.
- (2) Review permit applications and issue permits under this ordinance.
- (3) Perform any other duties specified in this ordinance.

### **10.16 Enforcement.**

- (1) The Code Administrator shall enforce this ordinance and may conduct inspections and investigate complaints relating to compliance with this ordinance.
- (2) Inspection Authority. The Code Administrator may request permission to inspect, at a reasonable time and date, any premises or structure for which a permit has been applied for or granted to determine compliance with this ordinance. Refusal to grant permission is grounds for denial or revocation of a permit. If permission is not given, entry onto the premises where the structure is located may be gained pursuant to Wis. Stat. sec. 66.0119.
- (3) Notice of Noncompliance. If a structure is found not to be in compliance with any provision of this ordinance, the Code Administrator may issue a written notice to the owner stating the conditions of non-compliance, directing the action required to come into compliance, and providing a reasonable amount of time within which compliance is required.
- (4) Citation Authority. The Code Administrator may issue a citation for any violation of this ordinance.
- (5) Revocation Authority. The Code Administrator may revoke a permit for substantial noncompliance with any provision of this ordinance, refusal to permit inspection of a structure for which a permit has been granted, or failure to comply with the action requirement contained in a notice of noncompliance.
- (6) Legal Referral. The Code Administrator may refer a violation of this ordinance to Corporation Counsel for legal action, including an action seeking injunctive relief.

- (7) Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

### **10.17 Board of Adjustment.**

- (1) Powers. The Board shall have the following powers:
  - (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Code Administrator, but may not hear and decide appeals from a citation issued pursuant to this ordinance.
  - (b) To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, so that the spirit of the Ordinance shall be observed and substantial justice done. In each case where a variance is granted, the Board shall issue a written decision that includes detailed, specific reasons for its determination that a literal enforcement of the provisions of the ordinance will result in unnecessary hardship.
- (2) Appeals. Any person aggrieved by a decision of the Code Administrator may appeal the decision to the Board. The appeal must be taken within a reasonable time, not to exceed 30 days from the date of the decision, by filing a notice specifying the grounds for appeal with the Code Administrator and the Board. The Code Administrator shall promptly transmit the record upon which the action appealed from was taken to the Board. The chairperson shall fix a reasonable time for hearing the appeal and give notice of the hearing to the parties in interest and the public. The Board shall decide upon the appeal within a reasonable time and shall issue a written decision that includes detailed, specific reasons for its determination.
- (3) Stays. An appeal stays the action appealed from unless the Code Administrator certifies to the Board that, for reasons stated in the certificate, a stay would cause imminent peril to life or property, in which case, the action appealed from will not be stayed except by a restraining order granted by the Board of Adjustment or by a court of record, upon application and due cause shown.

### **10.18 Violations.**

- (1) It is unlawful for any person to violate any provision of this ordinance.
- (2) It is unlawful for any person to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to a county agent, board, commission, committee, department, employee, official, or officer acting in an official capacity under this ordinance.

- (3) It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist an order issued pursuant to this ordinance.
- (4) A separate offense is deemed committed on each day that a violation occurs or continues.
- (5) The failure of any employee, official, or officer of the county to perform any official duty imposed by this code will not subject the employee, official, or officer to the penalty imposed for violation of this code unless a penalty is specifically provided.

### **10.19 Penalties.**

- (1) A person will, upon conviction for any violation of this ordinance, forfeit not less than \$25 nor more than \$100 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.
- (2) The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within any 12 month period.
- (3) A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days. In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.
- (4) A person must, within the time specified in an order upon conviction or within 30 days of a finding of default or stipulation of a violation of this ordinance, remove any structure or part of a structure that violates any provision of this ordinance. If a person fails to remove such a structure or part of a structure, the county may remove or cause the removal of the structure or part of the building or structure. The cost of removal will become a lien upon the property and may be collected in the same manner as property taxes.
- (5) The failure of any employee, official, or officer of the County to perform any official duty imposed by this code will not subject the employee, official, or officer to the penalty imposed for violation of this code unless a penalty is specifically provided.

### **10.20 Controlling Ordinance.**

Insofar as any provision of this ordinance is inconsistent with the provisions of any other ordinance, the provisions of this ordinance control.

### **10.21 Severability.**

If any provision of this ordinance or if the application of any provision of this ordinance to any person or circumstance is determined to be invalid, that invalidity will not affect any other provision or application that can be given effect without the invalid provision or application.

### **10.22 Effective Date.**

This ordinance is effective upon publication.

#### **HISTORY**

11/15/1988: Codified by Ord. No. 88/89-117 effective 11/23/1988.

10/16/2007: Repealed and recreated by Ordinance No. 2007/2008-73 effective October 25, 2007.

05/21/2019: Secs. 10.04 and 10.07 amended; sec. 10.08 deleted by Ord. No. 2018/2019-5 effective May 26, 2019.