

Report to the Manitowoc Plan Commission

Meeting Date: February 23, 2022

Request: PC 6-2022: Amendment to Chapter 15.310, C-1 Commercial District, regulating Mini-Warehouses and 15.370(2) regulating Site Plan Letter of Credit and Performance Agreements.

Report: Community Development staff is recommending two amendments to the Zoning Code.

The first amendment is removing mini-warehouses as a conditional use from the C-1 Commercial District. The definition of a mini-warehouse is

“Mini-warehouse means an unoccupied, compartmentalized warehouse building in which storage spaces of varying sizes are leased or rented to individuals for general storage purposes for varying periods of time, and providing one or more overhead doors serving each compartment. Mini-warehouses shall comply with ILHR 62.995. The following uses shall be prohibited in mini-warehouses:

- (a) Storage of flammable or hazardous materials or chemicals;*
- (b) Auctions, commercial, wholesale, or retail sales, or miscellaneous or garage sales;*
- (c) Servicing, repair or fabrication of motor vehicles, boats, trailers, lawn mowers or other similar equipment;*
- (d) The operation of power tools, spray painting equipment, table saws, lathes, compressors, welding equipment or other similar equipment;*
- (e) The establishment of a transfer or storage business; and*
- (f) Any use that is noxious or offensive because of odors, dust, noise, fumes or vibrations.”*

The C-1 Commercial Zoning District is located along some corridors with high traffic counts and high visibility such as Calumet Avenue, Dewey Street, Washington Street, N & S 10th Streets. For example, a mini-warehouse development could be established on some of the lots directly abutting onto Calumet Avenue or along 10th Street in downtown. The high visibility corridors should be encouraged to develop with uses that need visibility for their services such as restaurants, retail, and office. Mini-warehouses would still be permitted the industrial zoning districts.

The second proposed amendment addresses the timing of when a letter of credit and performance agreement will be required related to the site plan approval process. Currently, as part of the site plan approval process a letter of credit is required at the beginning of the site plan process the amendment would change the timing of a letter of credit to when the developer is asking for temporary occupancy.

The current process requires the developer to provide a letter of credit based on the total construction cost at the beginning of the project, which for some “mom and pop” businesses can be a problem to due limited funds and lines of credit. Historically the site plan items that are not completed are typically landscaping, storm water items, second course of asphalt and striping which may be unable to be completed due to the project heading into winter. In this scenario a letter of credit and site plan performance agreement could be requested by the City to insure the unfinished site plan conditions would be completed in spring. The developer can open their

building for business for an agreement stating that any unfinished site plan conditions are completed in spring of the next year. In addition, the City would still have the ability to issue citations through the final occupancy approval process if needed.

Recommendation: Approve amendments to the Zoning Code regarding Sections 15.310 related to mini-warehouses and 15.370(2) related to site plan letter of credits and performance agreements.

ORDINANCE

An Ordinance to amend Section 15.310 of the Manitowoc Municipal Code regulating Mini-Warehouses, and Section 15.370 regulating Site Plan Letter of Credit and Performance Agreement.

The Mayor and Common Council of the City of Manitowoc do ordain as follows:

Section 1. Section 15.310 is amended to read as follows:

“15.310 C-1, Commercial District.

...

(3) Conditional Uses Permitted. The following uses are permitted subject to MMC 15.370(27):

- (a) Trucking, distribution and load assembly depot;
- ~~(b) Mini-warehouse;~~
- ~~(b)~~ (b) Wrecker service;
- ~~(c)~~ (c) *Repealed by Ord. 20-719;*
- ~~(d)~~ (d) Any use authorized pursuant to MMC 15.370(29); and
- ~~(e)~~ (e) Transitional housing; and
- ~~(f)~~ (f) Continuing care communities, retirement housing, intergenerational housing, and other collaborative housing options developed pursuant to MMC 15.750.”

Section 2. Section 15.370 is amended to read as follows:

“15.370 Supplementary Regulations- Use.

...

(2) Site Plan Approval by ~~City Planning~~ Community Development Department or City Plan Commission.

- (a) All site plans for:
 - 1. New construction or additions to an existing building;
 - 2. New use or expansion of an existing use which may require additional off-street parking to comply with MMC 15.430;
 - 3. New off-street parking lot areas for five or more vehicles;
 - 4. Unimproved off-street parking lot areas (defined herein as stone or gravel surface lot areas) when they are improved with asphaltic, bituminous or concrete hard surface, and result in a parking lot for five or more vehicles;
 - 5. Existing off-street parking lot areas where there is no expansion of the gross area of the existing parking lot area, as measured from the edge of the parking lot pavement or unimproved surface and including access drives or aisles, ramps or internal moving lanes, but the total number of parking stalls in the lot is increased by 25 percent or greater than the number of stalls in the existing parking lot area and results in a parking lot for five or more vehicles; or
 - 6. The expansion of existing off-street parking lot areas when the gross area of an existing parking lot, as measured from the edge of the parking lot pavement or unimproved surface and including access drives or aisles, ramps or internal moving lanes, is increased by 25 percent or greater than the existing parking lot area and results in a parking lot for five or more vehicles;

shall be referred to the ~~City Planning~~ Community Development Department for review and approval in conformance with this subsection (2)(a). No permit shall be issued for such new construction or addition unless the site plan has been approved by the ~~City Planning~~ Community Development Department, or City Plan Commission under subsection (2)(g) of this section, which shall ensure that such construction is in accord with the City’s Official Map, zoning and subdivision ordinances, comprehensive plan, and other applicable City codes and ordinances. Residential developments having four or fewer dwelling units on a lot of record need only be submitted to the Director of Building Inspection for approval. The ~~City Planning~~ Community Development Department, after consultation with the City Engineer and Director of Building Inspection, may waive site plan approval requirements in instances where buildings are less than 1,000 square feet in area, or for the construction or expansion of parking lots for less than five vehicles.

For those projects requiring either the issuance of a building permit by the Director of Building Inspection or an erosion control permit from the City Engineer for a site plan under this subsection (2), failure to issue either permit,

if required, within 180 consecutive calendar days from the date of site plan approval by the City Planning Community Development Department, shall void the approved project site plan, and such site plan approval shall become null and void, unless the 180-day period is extended by the written authorization of the Director of Building Inspection. If there is no date extension, or upon completion of any agreed upon date extension period, if the above-referenced permits are required but not issued, a new site plan must be filed, and applicable fees must be paid.

Petitions for public works improvements, easements and street dedications shall be required, as applicable, prior to issuance of an occupancy permit. All utility and drainage easements identified on the site plan are subject to standard utility easement conditions as described in a document recorded at the Manitowoc County Register of Deeds in Volume 1252, Page 498 of Records, as document No. 798738, as may be amended from time to time.

(b) Submittal of Site Plans and Review Fee. All nonresidential developments and all residential developments having more than four dwelling units on a lot of record shall require site plan approval by the City Planning Community Development Department.

~~Fourteen~~ Four copies of site plans (three copies of site plans for residential development of four or fewer units) at a scale no smaller than 50 feet to the inch (except, for sites exceeding 10 acres, a smaller scale acceptable to the City Planning Community Development Department) shall be submitted to the City Planning Community Development Department, for City department and utility review and approval, prior to requesting a building permit. Site plans shall be prepared by a registered surveyor, civil engineer, architect or by a practicing land planner. All site plan information shall be provided on a single sheet, wherever practicable.

All site plans shall also be provided to the City in an Adobe pdf format; the City may also require the site plan in either Microstation dgn format or a standard dxf format, ~~on a three-and-one-half-inch computer diskette, compact disk or other medium specifically approved by the City Planning Department in the City's current Microstation DGN format or a standard DXF file format, wherever practicable.~~

Each site plan submitted for review and approval shall be accompanied by a nonrefundable fee as established by resolution of the Common Council, to help defray the cost of Department and utility review.

(c) Site Plan Information Requirements. The site plan shall be prepared in accordance with the following minimum standards of information:

1. Name, address, telephone, ~~fax number~~ and e-mail address ~~(if available)~~ of building owner or agent, and the individual or entity responsible for preparation of the site plan;
2. Certified property boundary map prepared by a licensed land surveyor which identifies the boundaries of the property including the staking of all land boundary corners, lot dimensions, area of lot in square feet or acreage, existing easements and rights-of-way, all in accordance with records of the Register of Deeds, as nearly as practicable;
3. Location, dimension, setbacks, maximum height, building area (in square feet) and street addresses for all existing and proposed buildings and structures on the lot;
4. Location of all existing improvements, visible encroachments upon the property, existing and proposed private roadways, dedicated and reserved Official Map streets and features, public sidewalks, driveways, utilities, and their depths, fire hydrants, waste/trash receptacles, proposed drainage structures and culverts, drainage inlets (to convey water to storm sewers rather than sheet drainage), utility connections, and general lot layout;
5. All structures and major features shall be fully dimensioned including distance between structures, distance between driveways, parking areas and structures, and the dimensions of all property lines, easements, required setbacks and open spaces;
6. The number of living units proposed, if any, indicating the unit size and number of bedrooms per unit, and associated on-site parking, plus calculation of how the planned parking complies with MMC 15.430(4);
7. Proposed grade of proposed structure(s) to verified City datum with existing topographical information at contour intervals not to exceed one foot, and showing the location of all existing trees, shrubs, hedges, and other major physical and environmental features;
8. Grades of all existing and proposed roads, drives, and sidewalks after construction is completed;
9. Grades and setback of existing and proposed water courses or drainage ditches, buildings and other structures on the site as well as on adjacent lots, if any, within 50 feet of the lot line;
10. Type of monuments at each corner of site;
11. Date, north arrow and graphic scale (not less than one-inch equals 50 feet);
12. Fire protection features, including identification of what Building Code and construction classification the building is covered by, number of building stories, description of the intended use of the building, disclosure of whether or not a smoke detection system and fire sprinkler system will be installed (sprinkler system requires a five-inch Storz type Fire Department connection), and if private hydrants will be installed;
13. Landscaping and off-street parking requirements under MMC 15.690, ~~except that this section shall not apply to any project previously approved by the City in accordance with this subsection (2) before April 1, 1999, and which project was completed in full compliance with the then-existing City ordinances, including site plan compliance conditions delineated on a site plan approved by the City Planning Department under~~

~~this subsection (2) or adjustments which have been approved by the City Planning Department. In the case of a diminishing lot size or new construction on the premises and subject to MMC 15.690(2)(h), MMC 15.690 shall only apply to parking area changes necessary to meet the changed condition, but shall not apply to the parking area and other requirements of this section which are not affected by the new change;~~

14. Parking features, including the number of current and proposed employees utilizing the parking area, the number and dimensions of off-site and on-site parking spaces, the location of handicapped parking spaces including access aisles, the location of snow removal storage areas, plus calculation of how the planned parking complies with MMC 15.430(4);

15. For shared parking arrangements, provide copies of all cross easements, leases and similar documents evidencing the parking relationship;

16. All first floor plans and elevations, drawn to a scale of not less than one-eighth inch per foot, or at a scale acceptable to the ~~City Planning~~ Community Development Department;

17. Proposed final grading at contour intervals not to exceed one foot showing proposed surface drainage; and

18. Seal and signature of surveyor, engineer, architect or land planner preparing the site plan.

(d) Irrevocable Letter of Credit. Repealed.

(e) Final “As Built” Site Plan. Prior to issuance of an occupancy permit, the project owner or their agent shall submit four copies of a final “as built” site plan reflecting any major changes or discrepancies between the original site plan and actual conditions at the site. Submittal of the “as built” site plan shall be required prior to issuance of an occupancy permit, unless this condition is waived by the ~~City Planning~~ Community Development Department.

(f) Site Plan at Construction Site. A copy of an approved site plan, signed and dated by the ~~City Planning~~ Community Development Department, must be available at the construction site until an occupancy permit has been granted by the City. Failure to have the plan on site is subject to penalties under MMC 15.630.

(g) Review of Site Plans by City Plan Commission. In the event there is a dispute or disagreement between City departments or utility review agencies regarding the relevancy or appropriateness of a condition(s) required for compliance to a site plan, the Commission will review the site plan at its next scheduled meeting, and make a final determination whether or not compliance with the condition is required. The Commission’s determination shall be final and without appeal.

The Commission’s review of a site plan shall in no way prohibit the ~~City Planning~~ Community Development Department from approving a site plan and a project commencing prior to the Commission’s review. Notwithstanding the condition(s) being reviewed by the Commission, all site plan compliance requirements shall remain in full force and effect.

In the event there is a dispute or disagreement between the property or project owner or their agent and the City regarding the relevancy or appropriateness of a condition(s) required for compliance to a site plan, the Commission will, upon written request, review the site plan at its next scheduled meeting, and make a final determination whether or not compliance with the condition is required. Unless specifically authorized by the ~~City Planning~~ Community Development Department, City Engineer and Director of Building Inspection, no work shall be permitted to proceed on a project from the date the Commission receives the written request, and shall not resume until the Commission has made its final determination. The Commission’s determination shall be final and without appeal.

(h) Review of Public Buildings. All site plans for public buildings shall require the review and approval of the Manitowoc City Plan Commission. A public building under this section refers to any building, structure, facility or complex used by the general public, whether constructed by any State, County, or municipal government agency.

(i) Performance Agreement. ~~All site plans approved after January 1, 2002, for new construction projects under subsection (2)(a)(1) of this section, building additions under subsection (2)(a)(1) of this section that add 30 percent or more building area to existing buildings, new off-street parking lots under subsection (2)(a)(3) of this section, traditional neighborhood development (TND) projects under MMC 15.730, and planned unit development (PUD) projects under MMC 15.750 shall be required to execute a performance agreement with the City Planning Department. After approval of a site plan by the City Planning Department or City Plan Commission under subsection (2)(g) or (h) of this section, and prior to the issuance of a building permit by the Director of Building Inspection, the site plan project owner or authorized representative as defined under MMC 15.730(14) and hereinafter referred to as “owner or project owner” shall execute a performance agreement with the City Planner or Deputy City Planner. If any City ordinance, State regulation or conditions of the site plan approval have not been completed at the time the project owner requests a temporary occupancy permit or final occupancy permit, the Community Development Department may require the project owner to enter into a site plan performance agreement with the City to ensure compliance of all items related to the project.~~

The performance agreement shall incorporate all compliance conditions and requirements as identified on an approved site plan to secure the implementation and completion of the site plan as approved, including, but not limited to, the following:

1. Conditions relative to financing of necessary public improvements and facilities;

2. A schedule for ~~commencement and~~ completion of the project and any phases thereof;
3. Time limits for ~~commencement and~~ completion of the development;
4. Requirements for appropriate easements, reservations and land dedications;
5. Letter of credit requirements to assure a timely completion of all landscaping and site improvements required by City ordinance including landscaping and off-street parking requirements under MMC 15.690, requirements of City departments, and State or Federal regulations; and
6. Other conditions, terms, restrictions and requirements relevant to an approved site plan including the termination and amendment of the performance agreement.

(j) Covenant Running with the Land. The performance agreement, and any amendments or modifications to the agreement, shall upon being duly executed by all parties be recorded by the City at the Register of Deeds for Manitowoc County, Wisconsin. The cost of recording fees shall be borne by the project owner, and shall be payable at the time the agreement is executed by the parties, or payable to the City within 15 calendar days of the project owner's receipt of an invoice from the City itemizing these costs. The City at City's sole expense shall, upon project owner completion of all conditions prerequisite to the approval of a site plan and issuance of a certificate of occupancy, terminate all or the relevant parts of the agreement, and file the necessary legal documents at the Register of Deeds.

(k) Compliance with Performance Agreement. Prior to the issuance of a final certificate of occupancy by the Director of Building Inspection for occupancy of a building identified on a site plan pursuant to a performance agreement, the ~~City Planner or Deputy City Planner~~ Community Development Department shall be required to first determine whether the provisions of the performance agreement have been met, and then, if all conditions of the performance agreement have been met, shall sign the certificate of occupancy. The certificate of occupancy shall not be deemed issued until signed by both the Director of Building Inspection and ~~either the City Planner or Deputy City Planner~~. Occupancy of a project without a certificate of occupancy is in direct violation of this chapter, and the owner shall be subject to penalties under MMC 15.630. If it is determined that the terms of the performance agreement have not been met at any time after the execution of a performance agreement, any party aggrieved by an alleged failure of the project owner or their successors, grantees, heirs and assigns with the performance agreement may request a hearing before the City Plan Commission. The City Planner ~~or Deputy City Planner~~ will provide the project owner with a date for said hearing before the City Plan Commission. The Commission will determine whether the development complies with the performance agreement and may:

1. Amend the approved site plan;
2. Amend the agreement to carry out the purposes of the approved site plan; or
3. Seek enforcement remedies under MMC 15.630.

The Commission's determination shall be final and without appeal.

(l) Irrevocable Letter of Credit. When site and off-site improvements required by City ordinance, State regulations or conditions of site plan approval have not been completed due to adverse weather or other unforeseen circumstances, the City, at their discretion may require that the project owner issue to the City of Manitowoc an irrevocable and unconditional letter of credit or comparable security instrument in an amount approved by the Community Development Department, but not greater than 125% of the estimated cost of such required remaining site and off-site improvements before an occupancy permit is issued.

Said letter of credit shall be from a recognized, financially stable lending institution satisfactory to the City, and shall be written in form and content satisfactory to the City. The letter of credit, among other things, shall name the City as beneficiary; be irrevocable and unconditional; be conditioned for payment to the City solely upon presentation of the letter of credit and a sight draft, which shall direct the issuing lending institution to pay the City without any explanation, affidavit or documentation; shall provide that the original letter of credit be automatically renewed for successive periods through and including the date upon which a final certificate of occupancy is issued; and authorize the City to draw on the letter of credit, in whole or in part, from time to time, at the City's election. ~~Simultaneous with the approval of a site plan under this subsection (2) or execution of a performance agreement under subsection (2)(i) of this section, the project owner shall cause to have delivered to the City Planner or Deputy City Planner an original irrevocable and unconditional letter of credit. Hereinafter, the term letter of credit shall be defined to include a letter of credit instrument or comparable security instrument or agreement acceptable to the City, including but not limited to a check from the project owner deemed by the City Planner or Deputy City Planner to, at minimum, cover the cost of the obligations specified in the performance agreement, and shall be provided in form and content to the satisfaction of the City Planner or Deputy City Planner. The letter of credit shall be in an amount approved by the City Planner or Deputy City Planner, and shall not be in an amount less than two percent of the estimated total cost of constructing the project, including buildings, landscaping and on- and off-site improvements, and excluding land acquisition and the purchase of machinery and equipment. The letter of credit shall be issued by a financial institution so authorized to do so, and the original letter of credit shall be delivered to the City Planner or Deputy City Planner. As an alternative to the above and expressly for site plan projects classified under subsections (2)(a)(3), (a)(4), (a)(5), and (a)(6) of this section, the letter of credit requirement shall be established at a minimum of \$5,000, and which shall be terminated upon the issuance of a final certificate of occupancy by the Director of Building Inspection. The letter of credit issued at this time shall hereinafter be referred to as the "original letter of credit." Said original letter of credit shall be from a recognized, financially stable lending institution satisfactory to the City, and shall be written in form and content satisfactory to the City. The original letter of credit, among other things, shall:~~

- ~~1. Name the City as beneficiary;~~
- ~~2. Be irrevocable and unconditional;~~
- ~~3. Be conditioned for payment to the City solely upon presentation of the letter of credit and a sight draft, which shall direct the issuing lending institution to pay the City without any explanation, affidavit or documentation;~~
- ~~4. Expire not earlier than six months after the date the performance agreement is fully executed, and shall provide that the original letter of credit be automatically renewed for successive periods through and including the date upon which a final certificate of occupancy is issued, and without any gaps between the expiration of the original letter of credit and the start of any renewal or new letter of credit; and~~
- ~~5. Authorize the City to draw on the letter of credit, in whole or in part, from time to time, at the City's election.~~

~~Upon the City's receipt of a request from the owner for occupancy of a project, or for a certificate of occupancy under subsection (2)(m) of this section, the City Planner or Deputy City Planner shall determine if all requirements and conditions identified on the approved site plan have been completed to the satisfaction of the City. The project owner shall be required to submit a written cost estimate of any uncompleted improvements, which shall be based on actual estimates from owner's contractor(s), engineer or architect. In the event the amount of the original letter of credit issued under this section is not adequate to cover the costs of completing all required landscaping and site improvements, at the time occupancy of the project is requested by the owner, the owner shall cause to have delivered to the City a new letter of credit in an amount equal to 125 percent of the estimated cost of the uncompleted landscaping and site improvements, to guarantee completion of said improvements. The letter of credit issued at this time shall hereinafter be referred to as the "new letter of credit."~~

~~In the event the financial institution issuing the original letter of credit opts to not renew the original letter of credit past the expiration date or if any check provided shall not be honored by the bank or financial institution upon which it is drawn, the project owner shall, prior to occupancy of the project site or the issuance of a certificate of occupancy by the City, be required to secure a substitute or new letter of credit or comparable security instrument or agreement acceptable to the City which meets the requirements of this section, to cover the required amount and renewal period. If the original letter of credit is not renewed and a substitute or new letter of credit not secured to the satisfaction of the City, the City shall have the right to draw on the original letter of credit, and implement the required landscaping and site improvements to the fullest extent possible. If the cost of required landscaping and site improvements exceeds the amount of funds available or specified in the original letter of credit, the City shall utilize any legal remedies available to collect the additional funds from the project owner to complete the uncompleted improvements, with any and all costs, including reasonable attorneys' fees which are incurred by the City for collection, payable by the project owner.~~

(m) Certificate of Occupancy. No certificate of occupancy shall be granted by the ~~City Planner or Deputy City Planner~~ **Community Development Department and Director of Building Inspection** until all requirements in this subsection (2) have been completed to the sole satisfaction of the City. The **Director of Building Inspection and** ~~City Planner or Deputy City Planner~~, in their discretion, may authorize the temporary occupancy of a project for a maximum period of 12 months, effective from the date temporary occupancy is authorized. The owner shall be given permission to occupy a project that is the subject of a performance agreement under subsection (2)(i) of this section upon satisfaction of the following conditions:

1. Receipt by the ~~City Planner or Deputy City Planner~~ **Community Development Department** of a letter of credit under subsection (2)(l) of this section; and
2. Receipt of any required payments, deeds, easements or other legal agreements required as a condition of site plan approval.

A **final** certificate of occupancy, indicating the completion of all required landscaping and site improvements, as well as the completion of all building and site plan requirements, shall be issued to the owner upon satisfaction of the following conditions:

1. Completion of all landscaping and site improvements required and specified in an approved site plan; and
2. Receipt of written confirmation from the appropriate site plan review agencies that the required site plan improvements have been satisfactorily completed.

Upon the completion of all required landscaping and site improvements required and specified on the approved site plan, the City shall release its interest under the original and/or new letter of credit."

Section 3. This ordinance shall take effect the day after publication.

INTRODUCED _____ ADOPTED _____

_____ APPROVED _____

Justin M. Nickels, Mayor

Fiscal Impact:	Minimal; required publication costs of ordinance update
Funding Source:	2022 budgeted line item for publication costs
Finance Director Approval:	SMA
Approved as to form:	EMM

This ordinance was drafted by Paul Braun, City Planner.

O:\Planning\PC Plan Commission\PC_Zoning Ordinance Text Amendment\2022\PC 6-2022 Site Plan
LOC & Mini Warehouse\Section 15.310 and 15.370.docx