

CHAPTER 19: TOWN OF DARIEN PLAN COMMISSION

19.01. Title/Purpose.

This chapter is entitled “Town of Darien Plan Commission.” The purpose of Chapter 19 is to set forth the Plan Commission’s organization, powers, and duties to further the health, safety, welfare, and wise use of resources for the benefit of current and future residents of the Town and affected neighboring jurisdictions.

19.02. Definitions.

As used in this chapter, the following words and phrases shall be defined as follows:

A. “Applicant” shall mean that individual(s) submitting the application materials to the Town and signing the Cost Recovery Agreement. “Applicant” shall include at least one of the owners of the Subject Property. If more than one Applicant is listed on the application materials, all Applicants shall be jointly and severally liable for all requirements imposed pursuant to this Chapter 19.

B. “Conceptual Plan” shall mean a map and summary of the proposed Project, indicating the lands to be included, a brief description, a timeline, and any other information Applicant deems necessary to provide the Town with a general overview of the proposed Project.

C. “Cost Recovery Agreement” shall mean that agreement required under Chapter 23 of the Municipal Code.

D. “County” shall mean Walworth County, Wisconsin. When used in a geographical sense, “County” shall mean all lands within the boundaries of Walworth County, Wisconsin.

E. “County Zoning Division” shall mean Walworth County Land Use & Resource Management Department, Zoning Division.

F. Unless specified otherwise this chapter, “days” shall mean calendar days, not business days.

G. “Ordinance” shall mean this Chapter 19.

H. “Project” shall mean, generally, all modifications, construction, work, or other activities to be performed upon the Subject Property or changes to the allowed use of the Subject Property, as set forth in the application materials submitted to the Town by Applicant.

I. "State" shall mean the State of Wisconsin, including any State agency or department, agent, or employee.

J. "Subject Property" shall mean the land affected by the application submitted by Applicant.

K. "Town" shall mean the Town of Darien, County of Walworth, State of Wisconsin, in its present form or in any later recognized, consolidated, annexed, or detached form. When used in a geographical sense, "Town" shall refer to all lands located within the corporate limits of the Town.

L. "Town Board" shall mean the present governing body of the Town, or any future body constituting the governing body of the Town.

M. "Town Clerk" shall mean that individual elected or appointed to perform the duties set forth under Wis. Stat. § 60.33.

N. "Wis. Stat." or "Wisconsin Statutes" shall mean the official statutes of the State, as amended from time to time.

19.03. Abrogation and Greater Restrictions.

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

19.04. Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, and 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.

19.05. Severability.

If any section, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

19.06. Repeal.

Any portion of the Municipal Code inconsistent or conflicting with this chapter, to the extent of the inconsistency only, are hereby repealed.

19.07. Plan Commission.

A. **Membership.** The Plan Commission consists of five members, as set forth in subsection 1.16.B., above.

B. **Vacancies and Removal.** A person who is appointed to fill a vacancy on the Plan Commission shall serve for the remainder of the term. A member of the Plan Commission may be removed only by a majority vote of the Town Board.

C. **Rules; Records.** The Plan Commission, under Wis. Stat. § 62.23(2), may adopt rules for the transaction of its business, subject to the Municipal Code, and shall keep a record of its resolutions, transactions, findings, and determinations, which shall be a public record under Wis. Stat. §§ 19.21 through 19.39.

D. **Plan Commission Members as Local Public Officials.** All members of the Plan Commission shall faithfully discharge their official duties to the best of their abilities, as provided in the oath of office, Wis. Stat. § 19.01, in accordance with, but not limited to, the provisions of the Wisconsin Statutes on: Public Records, Wis. Stat. §§ 19.21 through 19.39; Code of Ethics for Local Government Officials, Wis. Stat. §§ 19.42, 19.58, and 19.59; Open Meetings, Wis. Stat. §§ 19.81 through 19.89; Misconduct in Office, Wis. Stat. § 946.12; and Private Interests in Public Contracts, Wis. Stat. § 946.13. Plan Commission members shall further perform their duties in a fair and rational manner and avoid arbitrary actions.

19.08. General and Miscellaneous Powers.

The Plan Commission, under Wis. Stat. § 62.23(4), shall have the power:

A. Necessary to enable it to perform its functions and promote Town planning.

B. To make reports and recommendations relating to the plan and development of the Town to the Town Board, other public bodies, citizens, public utilities, and organizations.

C. To recommend to the Town Board programs for public improvements and the financing of such improvements.

D. To receive from public officials, within a reasonable time, requested available information required for the Commission to do its work.

E. For itself, its members, and employees, in the performance of their duties, to enter upon land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. However, entry shall not be made upon private land, except to the extent that the private land is held open to the general public, without the permission of the landowner or tenant. If such

permission has been refused, entry shall be made under the authority of an inspection warrant issued for cause, under Wis. Stat. § 66.0119, or other court issued warrant.

19.09. Referrals to the Plan Commission.

A. Required Referrals, under Wis. Stat. § 62.23(5). The following shall be referred to the Plan Commission for report:

- (1) The location and architectural design of any public building.
- (2) The location of any statue or other memorial.
- (3) The location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any:
 - (a) Street, alley, or other public way;
 - (b) Park or playground;
 - (c) Airport;
 - (d) Area for parking vehicles; or
 - (e) Other memorial or public grounds.
- (4) The location, extension, abandonment, or authorization for any publicly or privately owned public utility.
- (5) All plats under the Town's jurisdiction, under Wis. Stat. ch. 236, including divisions under a Town subdivision or other land division ordinance adopted under Wis. Stat. § 236.45.
- (6) The location, character, and extent or acquisition, leasing, or sale of lands for:
 - (a) Public or semi-public housing;
 - (b) Slum clearance;
 - (c) Relief of congestion; or
 - (d) Vacation camps for children.
- (7) The amendment or repeal of any ordinance adopted under Wis. Stat. § 62.23, including ordinances relating to the Plan Commission; the Town master

plan or the Town comprehensive plan, under Wis. Stat. § 66.1001; a Town official map; and Town zoning under village powers.

B. **Required Referrals under Sections of the Wisconsin Statutes, Other than Wis. Stat. § 62.23(5)**. The following shall be referred to the Plan Commission for report:

(1) An application for initial licensure of a child welfare agency or group home, under Wis. Stat. § 48.68(3).

(2) An application for initial licensure of a community-based residential facility, under Wis. Stat. § 50.03(4).

(3) Proposed designation of a street, road, or public way, or any part thereof, wholly within the jurisdiction of the Town, as a pedestrian mall, under Wis. Stat. § 66.0905.

(4) Matters relating to the establishment or termination of an architectural conservancy district, under Wis. Stat. § 66.1007.

(5) Matters relating to the establishment of a reinvestment neighborhood required to be referred, under Wis. Stat. § 66.1107.

(6) Matters relating to the establishment or termination of a business improvement district required to be referred, under Wis. Stat. § 66.1109.

(7) A proposed housing project, under Wis. Stat. § 66.1211(3).

(8) Matters relating to urban redevelopment and renewal in the Town required to be referred under subch. XIII of Wis. Stat. ch. 66.

(9) The adoption or amendment of a Town subdivision or other land division ordinance, under Wis. Stat. § 236.45(4).

(10) Any other matter required by the Wisconsin Statutes to be referred to the Plan Commission.

C. **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 application submitted under this Chapter 19 or Chapter 20 of the Municipal Code.

(2) Any proposal, under Wis. Stat. § 59.69, for the Town to approve general County zoning so that it takes effect in the Town, or to remain under general County zoning.

(3) Proposed regulations or amendments relating to historic preservation, under Wis. Stat. § 60.64.

(4) A proposed driveway access ordinance or amendment.

(5) A proposed Town official map ordinance, under Wis. Stat. § 62.23(6), or any other proposed Town ordinance under Wis. Stat. § 62.23, not specifically required by the Wisconsin Statutes to be referred to the Plan Commission.

(6) A proposed Town zoning ordinance or amendment adopted under authority separate from or supplemental to Wis. Stat. § 62.23, including a Town construction site erosion control and stormwater management zoning ordinance, under Wis. Stat. § 60.627(6), and a Town exclusive agricultural zoning ordinance under subch. V of Wis. Stat. ch. 91.

(7) A proposed extraterritorial zoning ordinance or a proposed amendment to an existing ordinance, under Wis. Stat. § 62.23(7a).

(8) A proposed boundary change pursuant to an approved cooperative plan agreement, under Wis. Stat. § 66.0307, or a proposed boundary agreement, under Wis. Stat. § 66.0225 or other authority.

(9) A proposed zoning ordinance or amendment pursuant to an agreement in an approved cooperative plan, under Wis. Stat. § 66.0307(7m).

(10) 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.

(11) 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 Wis. Stat. § 66.0309, another unit of government, a consultant, or any other person or organization.

(12) A proposed ordinance, regulation or plan, or amendment to the foregoing, relating to a mobile home park, under Wis. Stat. § 66.0435.

(13) A proposed agreement, or proposed modification to such agreement, to establish an airport affected area, under Wis. Stat. § 66.1009.

(14) A proposed Town airport zoning ordinance, under Wis. Stat. § 114.136(2).

(15) A proposal to create environmental remediation tax incremental financing in the Town, under Wis. Stat. § 66.1106.

(16) A proposed county agricultural preservation plan or amendment, under subch. IV of Wis. Stat. ch. 91, referred by the County to the Town, or proposed Town agricultural preservation plan or amendment.

(17) Any other matter required by any Town ordinance or Town Board resolution or motion to be referred to the Plan Commission.

D. Discretionary Referrals. The Town Board, or other Town officer or body with final approval authority or referral authorization under the Municipal Code, 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 Wis. Stat. § 236.45, 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 Wis. Stat. § 66.0301 or other statute, affecting land use, or a municipal revenue sharing agreement, under § 66.0305.

(6) A proposed plat or other land division under the County subdivision or other land division ordinance, under Wis. Stat. § 236.45.

(7) A proposed County plan, under Wis. Stat. § 236.46 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 the Town Board deems advisable for referral to the Plan Commission for report.

E. **Referral Period.** No final action may be taken by the Town Board or any other officer or body with final authority on a matter referred to the Plan Commission until

the Commission has made its report, or 60 days have passed since the referral, unless a longer period is provided in this Chapter 19 or in Chapter 20 of the Municipal Code, or is stipulated by the Town Board.

19.10. Procedure.

This section shall govern all applications to the Plan Commission, except applications for land division, governed by Chapter 20 of the Municipal Code.

A. Application Requirements.

(1) All applications must include a completed Cost Recovery Agreement, as set forth in Chapter 23 of the Municipal Code. No application will be considered prior to receipt of such Cost Recovery Agreement.

(2) For any application, Applicant must file eight complete sets of the required application materials no less than 15 days prior to the next scheduled Plan Commission meeting. A complete set of the required application materials shall consist of the following:

(a) All forms prescribed for the Project by the County Zoning Division.

(b) A copy of the map, survey, and/or Project description to be considered and acted upon.

(c) A signed copy of the Cost Recovery Agreement.

(d) All applications must also include all fees required under Section 19.11, below.

B. **Amendments.** Eight copies of any amendment or revision to an application must be provided to the Town Clerk at least 15 days prior to the next scheduled Plan Commission meeting.

C. **Rezone/Conditional Use Sign Requirements.** Any Applicant for a rezone or conditional use permit shall obtain signs from the Town and shall post said signs in a prominent location visible from either direction on all public roadways that adjoin the Subject Property. Said signs shall be posted at least 15 days prior to the Plan Commission meeting where the application will be discussed. Applicant shall install and use the signs in a manner which is not likely to cause damage to the signs. Applicant shall return all such signs to the Town within three days of final approval or denial of the application. Applicant shall pay a deposit as required in Section 19.6, below.

D. **General Review Procedures.**

(1) At the Plan Commission meeting at which an application filed under this Chapter 19 is considered, those in attendance may have the opportunity to speak regarding Applicant's proposal. The Plan Commission shall have no obligation to hear from all persons in attendance. Once the public comment session has ended, the Plan Commission may deliberate and/or ask questions of parties involved.

(2) The Plan Commission shall reach a decision to recommend that the Town Board approve, approve conditionally, or deny the request, or shall table the request.

(3) The Town Board shall address the application after the application is approved, approved conditionally, or denied by the Plan Commission.

(4) The Town Clerk shall notify the County Zoning Division of the Town Board's decision within seven days of such decision.

(5) Any approval granted by the Town Board under this chapter shall be effective for a period of 12 months. In the event that final approval by the County is not obtained within that time period, Applicant must resubmit the application for reconsideration, following the procedures contained in this chapter for a new application, including payment of a new application fee. The Town Board, in its sole discretion, may grant up to a 12-month extension for Applicant to obtain County approval.

E. **Time for Review.** Any deadline or timeline for review and action by the Plan Commission or Town Board established in this chapter may be extended by the agreement of the Town and Applicant, unless prohibited by law. Such agreement need not be in writing.

F. **County Application.** An exact duplicate of the application submitted to the County for consideration must be filed with the Town Clerk within three business days of filing the application with the County. The Town Clerk and/or the Plan Commission shall review said application to ensure its conformity with the application considered by the Town. In the event of any substantive inconsistency, the Town shall notify the County Zoning Division of the same, and schedule the application for reconsideration at the next meeting of the Plan Commission.

G. **Notification.** Within five business days of receiving final approval from the County, Applicant must notify the Town, in writing, of said approval. In cases where a survey, plat, or certified survey map is involved, Applicant must file 10 copies of the approved survey, plat, or certified survey map with the Town Clerk.

19.11. Fees.

A. **General.** Applicant shall pay costs and fees incurred by the Town as a result of any Project as set forth in this chapter and as set forth in Chapter 23 of the Municipal Code, below, plus a five percent overhead factor to assist in defraying costs for Town supervision and administration. The unused balance of any deposit paid by Applicant to the Town shall be refunded one year after final inspection or acceptance of the Project, provided Applicant has fully paid all fees and costs due to the Town.

B. **Land Use and Zoning Fees.**

Variance Application Fee	\$50.00
Rezone and Conditional Use Application Fees	
Residential Developments (Zone Districts A-1, A-2, A-3, A-5, R-2, R-2A, R-3, R-4, R-5, R-6, R-7, R-8, C-2 and C-3)	\$100.00, plus \$50.00 per additional lot/unit
Commercial Developments (Zone Districts B-1, B-2, B-3, B-4, B-5, B-6)	
Less than 5,000 sq. ft. gross floor area	\$175.00
5,000 sq. ft. to 10,000 sq. ft. gross floor area	\$325.00
More than 10,000 sq. ft. gross floor area	\$525.00
*Where development includes residential use, add \$50.00 per lot or housing unit.	
Industrial Development	
Mineral Extraction (M-3)	\$525.00, plus \$50.00/acre
Sanitary Landfill (M-4)	\$1,100.00, plus 100.00/acre
Utility and Related Structures	\$525.00
Other Industrial (M-1, M-2, A-4)	Same as Commercial
Wetland and Park Districts (C-1, C-4, P-1, P-2)	\$325.00
Deposit for Signs	\$50.00 per sign

C. **Effect on Nonpayment of Fees.** Notwithstanding any other provision of this chapter, no final approval of any final plat, condominium, planned development, or certified survey map shall be granted by the Town Board until such time as all fees imposed under this chapter have been paid in full, with the exception of construction-related fees. In the case of construction related fees, the Town reserves the right to withhold building permits until all fees imposed under this chapter have been paid in full.

D. **More than One Category.** In the event that a single Project falls into more than one category listed above, a single fee shall be charged, and said fee shall be the highest fee applicable to the Project in question.