

COMMITTEE OF THE WHOLE MEETING

The Common Council of the City of Ashland will meet as the Committee of the Whole on June 30, 2020 immediately following the City Council meeting which begins at 5:30 PM in the Ashland City Hall Council Chambers.

The following items will be considered:

1. Roll Call
2. Council President's Report
3. Administrator's Report
4. Approval of Agenda
5. Committee Updates
6. Discussion Items
 - A. Discussion and Possible Action to Enact a Local Ordinance to Regulate Drones in Residential Neighborhoods (*Mayor*)
 - B. Discussion and Possible Action Regarding Implementing an Ordinance Requiring Water Lateral Replacement of Properties Directly Involved with Road Reconstruction (*Mayor*)
 - C. Discussion and Possible Action to Enact a Local Ordinance to Empower Municipal Power to Issue Emergency Orders by the City of Ashland under Wisconsin State Statute 323 in the Absence of County Health Officer Order (*Mayor*)
7. Adjournment

The City of Ashland does not discriminate on the basis of sex, race, creed, color, national origin, sexual orientation, age or disability in employment or provision of services, programs or activities.

NOTE: Upon reasonable notice, the City of Ashland will accommodate the needs of disabled individuals or individuals with limited English proficiency through auxiliary aids or services. For additional information or to request this service, contact Denise Oliphant at 715-682-7071 (not a TDD telephone number) or FAX: 715-682-7048

SUBJECT: Committee Updates

RECOMMENDATION: Discussion only

DEPARTMENT OF ORIGIN:

CLEARANCES:

EXHIBITS:

FINANCIAL IMPACT:

SUMMARY STATEMENT:

Harbor Commission: Pufall
Plan Commission: MacKenzie
Police & Fire: Lewis
Library Board: Jackson
Housing Authority: Franek
Housing Committee: Tochterman
Parks and Rec Committee: Haas
Public Works Committee: Moore
Sustainability Committee: Ullman
Historic Preservation Committee: Franek
Disabled Parking Committee: Whitebird
Source Water Protection Committee: Ortman

SUBJECT: Discussion and Possible Action to Enact a Local Ordinance to Regulate Drones in Residential Neighborhoods (*Mayor*)

RECOMMENDATION: As Council Desires

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES: City Attorney
City Administrator
Council President

EXHIBITS:

1. Email correspondence with Erica Hannickel
2. Legal Opinion by Attorney Claire Silverman, League of Municipalities
3. Wisconsin State Statutes 114.105 & 175.55
4. New Holstein, WI Drone Ordinance with Red-Lined Proposed Edits

FINANCIAL IMPACT: N/A

SUMMARY STATEMENT:

Recreational drone use is becoming more prevalent for recreational and other commercial uses and with it the concern for privacy issues. More than a few local residents have complained in the past few years to the City about drone use in residential neighborhoods due to the noise they cause and the potential for unwanted photographs to be taken of private individuals, family members and their property. The purpose of this discussion is to determine the interest in the Council in pursuing legal restrictions as well as to educate Council and the public on the status of the law.

Denise Oliphant

From: Deb Lewis
Sent: Thursday, May 28, 2020 7:59 PM
To: erica hannickel
Subject: Re: drones in my neighborhood

Erica: At the next Committee of the Whole meeting on June 9 the Council will consider enacting a new ordinance that will mirror the state statute. It would forbid drones in places where an individual has an expectation of privacy. We have consulted with legal counsel and that is the recommendation. I will send you a copy of the Agenda bill next week when it is prepared. It would be helpful if you could speak to Council at the comment period.

My best,
Deb

Sent from my iPhone

On May 28, 2020, at 3:24 PM, erica hannickel <[REDACTED]> wrote:

Dear Deb,
There was a drone hovering over the neighborhood this morning (it stayed longest near the intersection of 9th Ave West and 7th St). I'm wondering if there's been any planning or progress for a response or legal remedy? We're happy to come to a City Council meeting to raise the issue if it would help.

Thank you,

Erica Hannickel & Jason Terry
711 9th Ave W

On Wednesday, April 29, 2020, 09:30:19 AM CDT, Deb Lewis <dlewis@coawi.org> wrote:

Hi Erica: Thank you for bringing this to our attention. We do not currently have a drone ordinance in the City but I share your concern about invasion of privacy. This issue will only worsen as the prevalence and uses of drones increase.

I will start by bringing this issue to the attention of city staff and keep you in the loop about our progress.

Have you contacted the neighbor directly to express your concerns and the impact on the neighbors? Sometimes these kinds of conflicts can be resolved quickly through civil discourse and a little education but I understand that is not always possible.

Meanwhile We can look into possible legal remedies. I'm sorry this is happening to you.

My best,
Deb

Sent from my iPhone

> On Apr 29, 2020, at 9:12 AM, erica hannickel <[REDACTED]> wrote:

>

> Dear Deb, Megan, Ana, and Kate,

>

> I'm writing you today with a concern about drones flying in our neighborhood. (I live in Ward 5 on 9th Ave W.) There are at least three families that have drones in the area and fly them regularly. Last summer, one family flew it down our alleyway almost daily. Three days ago, someone flew a drone for several minutes 10 feet above my house and my neighbors' houses.

>

> We feel (and our neighbors feel) that this is a serious invasion of privacy, as the drones have cameras and take pictures of our private property and our children in our backyards. It is also HIGHLY annoying to have a very loud buzzing hovering above me almost every time I go outside on a nice day. One neighbor has been made so mad by this situation that he took out his shotgun and threatened to shoot down the drone while screaming profanities (and trust me, I'm on his side about this--it is beyond aggravating).

>

> Is there a City drone ordinance? How may I make sure my privacy is protected and I am not driven insane by constant buzzing over my head? Can I help pass a law outlawing drones in the City? This needs to change now. I cannot go through another summer like this.

>

> Thank you,

>

> Erica Hannickel

MUNICIPAL AUTHORITY TO REGULATE DRONES

By: Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

In the past year, the use of unmanned aerial vehicles (UAVs) or unmanned aerial systems (UAS), also known as drones, has proliferated with affordable models making the popular technology increasingly accessible to both commercial and recreational users. Some public agencies have begun using drones as well, finding them useful in assisting with, among other things, firefighting, law enforcement, aerial inspections of municipal properties and facilities, and environmental monitoring. As the use of drones has dramatically increased, so have the number of publicized incidents involving unsafe operation of drones, as have the number of incidents where drones are operated in a manner that causes people in their vicinity to feel uncomfortable or that their privacy is being invaded. Highly publicized incidents involving unsafe operation include a drone crashing on the White House lawn, a drone crashing into the ferris wheel located at Seattle's Pier 57, and a drone crashing into empty seats during the U.S. Open. State and local governments are recognizing the need to regulate drones in order to protect people and property and to address privacy concerns.

Just a year ago, municipal regulations were few, given that municipalities were navigating in uncharted territory, with boundaries of municipal regulatory authority over drones ill defined. Some members of Congress were calling for preemption and municipalities were unsure how local authority intersected with the authority of the Federal Aviation Administration (FAA) which is responsible for the safety of civil aviation. Not surprisingly, a search one year ago for "drone" ordinances was less than fruitful, turning up only bee-keeping ordinances defining a "colony" as including drones. That same search today produces greater bounty, evidence that municipalities are more confident of local authority to regulate drones following the FAA's June 21, 2016 release of regulations governing its small unmanned aircraft rule, commonly referred to as Part 107. This legal comment provides an overview of the new landscape, briefly summarizing recent federal and state regulations governing drones as well as highlighting some municipal regulations recently enacted and suggesting some areas that municipal regulations should avoid.

I. Federal Regulations

The FAA treats all drones as aircraft and subjects them to FAA regulations. There are four categories of unmanned aircraft operators: 1) Model Aircraft operators; 2) Those holding 333 Exemptions; 3) Public Operators (public agencies and those operating drones for governmental purposes who must obtain a Certificate of Waiver or Authorization from the FAA defining

Just a year ago, municipal regulations were few, given that municipalities were navigating in uncharted territory, with boundaries of municipal regulatory authority over drones ill defined.

how and where the drone can be used); and 4) Part 107 Remote Pilots. Public operators can choose to operate under Part 107. The requirements of the various categories are beyond the scope of this article which will focus on the regulations governing the use of small UAVs, referred to as the Part 107 regulations released by the FAA on June 21, 2016. These regulations took effect August 29, 2016. Briefly stated, Part 107 operators are individuals who are at least 16 years of age, who have passed an FAA knowledge test as well as a Transportation Security Administration (TSA) background check and who have been issued a Part 107 certificate. These operators can fly any size drone weighing up to 55 pounds with maximum groundspeed of 100 miles per hour for any purpose (e.g., commercial or recreational), so long as the drone is flying within the operator's line of sight and at a maximum altitude of 400 feet unless within 500 feet of a building. Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle. Part 107 operators can only operate during daylight or, with appropriate anti-collision lighting, 30 minutes before sunrise and after sunset.¹ Part 107 prohibits careless or reckless operations and carriage of hazardous materials. External load operations are allowed if the object being carried by the UAV is securely attached and does not adversely affect the flight characteristics or uncontrollability of the aircraft. Some additional regulations relate to transportation of property for compensation or hire.

In crafting Part 107, the FAA explicitly rejected blanket preemption, finding it unnecessary and saying "laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation."² The FAA said that specific text regarding preemption was not necessary and that preemption would be addressed on a case-by-case basis rather than in a rule of general applicability. According to the FAA, its primary mission is aviation safety and FAA Administrator Michael Huerta said the FAA's role is to "set a flexible framework of safety without impeding innovation."³ Thus states and local governments are free to enact laws like those explicitly mentioned by the FAA that traditionally relate to state and local police power.

Continued on page 28

¹FAA Summary of Small Unmanned Aircraft (Part 107) at https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=20516.

²The National League of Cities' (NLCs) report, *Cities and Drones: What Cities Need to Know About Unmanned Aerial Vehicles (UAVs)* at p. 39, citing Operation and Certification of Small Unmanned Aircraft Systems (RIN-2120-AJ60) Federal Aviation Administration. Retrieved from http://www.faa.gov/uas/media/RIN_2120-AJ60_Clean_Signed.pdf p.545.

³FAA press release (August 29, 2016), online at https://www.faa.gov/news/press_releases/news_story.cfm?newsId=20734.

MUNICIPAL AUTHORITY TO REGULATE DRONES (CONTINUED)

II. State Law

In the last few years, the State of Wisconsin has enacted several statutes governing the use of drones which are defined as “a powered, aerial vehicle that carries or is equipped with a device that, in analog, digital, or other form, gathers, records, or transmits a sound or image, that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, and can fly autonomously or be piloted remotely.”⁴

Wisconsin law prohibits law enforcement agencies from using a drone to gather evidence or other information in a criminal investigation from or at a place or location where an individual has a reasonable expectation of privacy without first obtaining a search warrant. It does not prohibit law enforcement from using a drone in a public place or to assist in an active search and rescue operation, to locate an escaped prisoner, to surveil a place or location for the purpose of executing an arrest warrant, or if a law enforcement officer has reasonable suspicion to believe that the use of a drone is necessary to prevent imminent danger to an individual or to prevent imminent destruction of evidence.⁵

Wisconsin law also addresses privacy concerns. Under Wisconsin law, a person who uses a drone with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy is guilty of a Class A misdemeanor. This does not apply to a law enforcement officer authorized to use a drone pursuant to s. 175.55 (2).⁶

With an exception for members of the United States armed forces or national guard acting in their official capacity, Wisconsin law prohibits the operation of a weaponized drone and violation of that law is a Class H felony.⁷

Finally, Wisconsin law prohibits persons from operating a drone over a correctional institution⁸ and prohibits persons from interfering with activities associated with lawful hunting, fishing or trapping or the use of a drone to conduct any of the activities described in Wis. Stat. sec. 29.083.

III. Municipal Regulations

Although few Wisconsin municipalities have ordinances regulating drones,⁹ it is expected that ordinances regulating drones will become increasingly common as the use of drones increases and municipalities realize their ability to enact such regulations. In addition to municipal ordinances in Green

Bay, Elkhart Lake, DeForest, Windsor, and Chetek, a search of Municipal Code Corporation’s web site located several ordinances from municipalities in other states, including several from Florida¹⁰ and also ordinances from municipalities in Illinois, South Dakota, and Texas. These municipal ordinances range from very simple to more complex and are available from the League upon request. Ordinances typically regulate or prohibit the use of drones at special events or public gatherings, as defined by law, regulate where drones can take off and land, and also are aimed at protecting privacy. A sample ordinance regulating drones is also available on the National League of Cities’ (NLCs’) web site which can be accessed at http://www.nlc.org/Documents/Find%20City%20Solutions/City-Solutions-and-Applied-Research/FA_drone_ordinance_brief.pdf. Municipal regulations should focus on areas traditionally regulated by state and local governments under police power. Municipal regulations should avoid regulations focusing on operator qualifications and requirements and aircraft equipment which are likely to cause the FAA to assert preemption which the FAA has indicated it will do on a case-by-case basis.

IV. Additional resources

This legal comment is only a brief summary of regulations pertaining to drones. More information regarding the regulations and FAA authority generally can be found on the FAA’s web site¹¹ and in the National League of Cities (NLC) 2016 comprehensive report, *Cities and Drones: What Cities Need to Know About Unmanned Aerial Vehicles (UAVs)* which is intended to “serve as a primer on drones for local officials, providing insight into the recently released federal rules relating to drone operation, as well as offering suggestions for how local governments can craft their own drone ordinances to encourage innovation while also protecting their cities.”¹² An excellent article on drone regulation by Attorney Kevin D. Trost of Axley Brynelson recently appeared in the September 2016 issue of the Wisconsin Lawyer and can be accessed here. <http://www.wisbar.org/NewsPublications/InsideTrack/Pages/article.aspx?Volume=89&Issue=8&ArticleID=25060> on their website www.wisbar.org

* Powers of Municipalities 928

⁴Wis. Stat. § 175.55.

⁵*Id.*

⁶Wis. Stat. §942.10

⁷Wis. Stat. §941.292.

⁸Wis. Stat. §114.045

⁹A search for Wisconsin drone ordinances located ordinances in Green Bay, Chetek, Elkhart Lake, Windsor and DeForest.

¹⁰ Miami, West Palm Beach, Aventura, and Key West have drone ordinances.

¹¹ See FAA fact sheet on State and Local Regulation of Unmanned Aircraft Systems (UAS) dated December 15, 2015 and available at http://www.faa.gov/uas/resources/uas_regulations_policy/media/uas_fact_sheet_final.pdf. Also see FAA fact sheet on Small Unmanned Aircraft Regulations (Part 107) at https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=20516.

¹² NLC Report at p. 1, available at <http://www.nlc.org/find-city-solutions/city-solutions-and-applied-research/governance/cities-and-drones>.

114.105 Local regulation.

(1) In this section:

- (a) "Drone" means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.
 - (b) "Political subdivision" means a city, village, town, or county.
 - (2) A political subdivision may adopt any ordinance in strict conformity with the provisions of this chapter and impose the same penalty for violation of any of its provisions except that an ordinance under this subsection may not provide for the suspension or revocation of pilot or aircraft licenses or certificates.
 - (3) A political subdivision may enact an ordinance limiting the use of drones by the political subdivision.
 - (4)
 - (a) No political subdivision may enact any ordinance governing aircraft or aeronautics or spacecraft or astronautics contrary to or inconsistent with the provisions of this chapter or federal law.
 - (b) Except as provided in sub. (3), no political subdivision may regulate the ownership or operation of a drone.
- History: [1983 a. 151](#); [2005 a. 335](#); [2017 a. 322](#)

175.55 Use of drones restricted.

(1) In this section:

- (a) "Drone" has the meaning given in s. [114.105 \(1\) \(a\)](#).
- (b) "Wisconsin law enforcement agency" has the meaning given in s. [165.77 \(1\) \(c\)](#) and includes the department of justice and a tribal law enforcement agency.
- (2) No Wisconsin law enforcement agency may use a drone to gather evidence or other information in a criminal investigation from or at a place or location where an individual has a reasonable expectation of privacy without first obtaining a search warrant under s. [968.12](#). This subsection does not apply to the use of a drone in a public place or to assist in an active search and rescue operation, to locate an escaped prisoner, to surveil a place or location for the purpose of executing an arrest warrant, or if a law enforcement officer has reasonable suspicion to believe that the use of a drone is necessary to prevent imminent danger to an individual or to prevent imminent destruction of evidence.

History: [2013 a. 213](#); [2017 a. 322](#).

New Holstein WI Drone Ordinance with changes in red as recommended by City Attorney :

USE OF DRONE

(1) It shall be unlawful for anyone to use a drone, as defined in Wis. Stats. ~~175.55(1)(a)~~ 114.105 (1)(a), with the intent to photograph, record, or otherwise observe another individual in a place or location where the individual has a reasonable expectation of privacy. This section does not apply to a law enforcement officer authorized to use a drone pursuant to Wis. Stats. 175.55(2).

(2) PENALTY. Any person who violates this Section shall be penalized pursuant to

~~Section 20.04 Chapter 279~~ of the City of ~~New Holstein~~ Ashland Code of Ordinances in a forfeiture amount of \$\$\$\$ per occurrence.

~~(3) The provisions of Chapter 175 of the Wisconsin Statutes addressing Miscellaneous Police Provisions are incorporated herein by reference together with any subsequent additions, modifications, or other changes.~~

SUBJECT: Discussion and Possible Action Regarding Implementing an Ordinance Requiring Water Lateral Replacement of Properties Directly Involved with Road Reconstruction (*Mayor*)

RECOMMENDATION: Discussion

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES: City Administrator
Council President

EXHIBITS:

FINANCIAL IMPACT: NA

SUMMARY STATEMENT:

The purpose of this item is to begin a discussion about the feasibility of enacting an ordinance to require the replacement of lead water laterals when a street is completely reconstructed and lead water mains are replaced with non-lead. Currently there is no requirement that lead laterals (responsibility of the homeowner) be replaced at the same time and there are instances where a homeowner has elected to re-hook a lead lateral to a non-lead main. The City has received grant dollars from the state of Wisconsin to pay the cost to homeowners at no expense and expects that the grant funding will continue for the foreseeable future.

SUBJECT: Discussion and Possible Action to Enact a Local Ordinance to Empower Municipal Power to Issue Emergency Orders by the City of Ashland under Wisconsin State Statute 323 in the Absence of County Health Officer Order (*Mayor*)

RECOMMENDATION: As Council Desires

DEPARTMENT OF ORIGIN: Mayor

CLEARANCES: City Attorney
City Administrator
Council President

EXHIBITS: 1. Proposed Resolution - DRAFT
2. Beloit COVID 19 RESOLUTION 2020-089

FINANCIAL IMPACT: NA

SUMMARY STATEMENT:

This discussion item is a continuation of the initial discussion held by the Committee of the Whole on 5/26/20. At the last COW meeting, the Council, in an effort to be proactive, directed Administration to bring back a proposal for further discussion in the event that our area experiences a serious COVID-19 spike in confirmed cases.

In light of the Wisconsin Supreme Court's decision on May 13, 2020 invalidating the order by the Wisconsin Department of Health Services to remain at home during the coronavirus pandemic, many local municipalities such as the City of Ashland have questioned whether we have the authority to issue local stay-in-place orders that are enforceable and will withstand judicial scrutiny to protect the health, safety and welfare of residents during the coronavirus emergency.

The following is quoted from guidance issued by the Wisconsin League of Municipalities legal counsel on 5/18/20:

“Under [Wis. Stat., section 323.14 \(14\) \(a\)](#), which governs local governments’ powers and duties during a declared emergency, local governments have the general authority to order, by ordinance or resolution, “whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property within the local unit of government in the emergency,” including the power to bar, restrict, or remove all unnecessary traffic, both vehicular and pedestrian, from the highways...” Although 323.14(14) (a) doesn’t explicitly mention controlling communicable diseases—in contrast to [Wis. Stat. sect. 252.03](#) which provides that local health departments may do whatever is reasonable and necessary to prevent and suppress disease, including forbidding public gatherings when deemed necessary to control outbreaks or epidemics, section

323.14(14) (a) is broadly written to grant local governments authority to enact measures to protect the public health and welfare in an emergency.

RESOLUTION RELATED TO COVID-19 PREVENTION AND CONTROL IN THE CITY OF ASHLAND

WHEREAS, in December, 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout the world. COVID-19 was declared a Public Health Emergency of International Concern on January 30, 2020, and was ultimately declared a pandemic on March 11, 2020; and

WHEREAS, in Wisconsin, Governor Tony Evers declared a public health emergency on March 12, 2020 and directed all agencies to support efforts to respond to and contain COVID-19 in Wisconsin. At a national level, President Donald Trump proclaimed a National Emergency concerning COVID-19 on March 13, 2020. At a local level, the Mayor of Ashland, Debra Lewis, declared a state of emergency in the City of Ashland on March 17, 2020, which declaration was ratified by the City Council at the next following meeting of the Council on March 31, 2020; and

WHEREAS, as of (day), (month), (date), (year), millions of people around the world have tested positive for COVID-19, including (#) people in the United States, (#) people in Wisconsin, (#) people in Ashland and Bayfield County and that the City of Ashland provides regional medical and hospital care to several surrounding counties; and

WHEREAS, as a novel disease with uncertain immunity and no vaccination currently available all of the population is at risk; and

WHEREAS, we are guided by the federal guidelines for “Opening up America Again” plan and the “Wisconsin Bounce Back Plan” that both provide guidance and metrics for controlling the spread of COVID-19 and bring back our economy; and

WHEREAS, the prior Wisconsin Safer at Home Order worked to flatten the curve of infections of COVID-19 in Wisconsin, and Wisconsin saw meaningful gains from this proactive step. With increasing testing capacity, we anticipate increased detection of new COVID-19 cases in the coming weeks that will correspond with identifying significant community transmission. This is a crucial time for the City of Ashland to contain COVID-19 in our community and halt further dissemination of the disease; and

WHEREAS, we know that the fight to contain COVID-19 is dynamic and ultimately is dependent long-term on the widespread availability of a vaccine and/or treatment. When deciding what action is necessary given current law, the City of Ashland meticulously considered various criteria including: the rate of spread of COVID-19 in Wisconsin, Ashland County and the City of Ashland; the health care capacity to meet the needs of the state; the testing, contact tracing, and isolation capacity in Ashland County; the availability of personal protective equipment (“PPE”) for healthcare workers, first responders, and other public servants that are required to perform face-to-face services; and the economic needs of the community; and

WHEREAS, we know that physical contact and close proximity to other individuals may cause the spread of COVID-19, thereby endangering the public and placing undue strain on the healthcare system; and

WHEREAS, “physical distancing”, meaning a distance of six (6) feet is maintained between all individuals, is a public health tool that may be used to limit the spread of disease and it is essential to use all available tools as is reasonable and necessary to stop the transmission of COVID-19; and

WHEREAS, Wisconsin state law provides broad authority and power for local governments to provide for health, safety and welfare; and

WHEREAS, the Wisconsin Department of Health Services provides communicable disease prevention and control and social distancing guidelines informed by Wisconsin public health experts and consistent with recommendations by the President and the U.S. Centers for Disease Control.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Ashland, under its authority in Chapter 323 of the Wisconsin State Statutes and Chapter (#) of the Code of Ordinances for the City of Ashland, hereby issues this Order to continue controlling COVID-19 disease transmission throughout the City of Ashland. This Order outlines the measures needed now in the City of Ashland based on the above-listed factors. This Order shall become effective immediately. This Order shall remain in effect until 12:01 a.m. on (day), (month), (date), and (year). Any superseding or subsequent order shall be based upon public health best practices, review of all available data, and may include the following indicia: availability of personal protective equipment; intensive care unit bed capacity; downward trajectory of positive tests as a percent of total tests with a 14-day period; treatment of all patients without crisis care; community testing of all symptomatic individuals involved in an outbreak, and individuals living and working in congregate settings.

PASSED:

Councilperson

ATTEST: _____
Denise Oliphant, City Clerk

Debra S. Lewis, Mayor

APPROVED AS TO FORM:

Tyler W. Wickman, City Attorney

~~RESOLUTION 2020-089~~

~~RESOLUTION RELATED TO COVID-19 PREVENTION AND CONTROL IN THE CITY OF БЕЛОИТ~~

~~WHEREAS, on December, 2019, a novel strain of the coronavirus was detected, now named COVID-19, and it has spread throughout the world. COVID-19 was declared a Public Health Emergency of International Concern on January 30, 2020 and was ultimately declared a pandemic on March 11, 2020; and~~

~~WHEREAS, in Wisconsin, Governor Tony Evers declared a public health emergency on March 12, 2020 and directed all agencies to support efforts to respond to and contain COVID-19 in Wisconsin. At a national level, President Donald Trump proclaimed a National Emergency concerning COVID-19 on March 13, 2020. At a local level, the Beloit City Council declared a state of emergency in the City of Beloit on March 16, 2020; and~~

~~WHEREAS, as of Saturday, May 16, 2020 millions of people around the world have tested positive for COVID-19, including 1,467,884 people in the United States, 12,187 people in Wisconsin; 422 people in Rock County; and that the City of Beloit has the highest concentration of confirmed positive cases in Rock County; and~~

~~WHEREAS, as a novel disease with uncertain immunity and no vaccination currently available all of the population is at risk; and~~

~~WHEREAS, we are guided by the federal Guidelines for "Opening Up America Again" plan and the "Wisconsin Badger Bounce Back" plan that both provide guidance and metrics that are designed to slowly and cautiously reopen businesses and activities in our communities. This Order is based on the foundations of federal and state guidance to slow the spread of COVID-19 and bring back our economy. The foundation for most public health and executive guidance has been based on "flattening the curve" to ensure healthcare capacity is not severely strained; and~~

~~WHEREAS, the prior Wisconsin Safer at Home Order worked to flatten the curve of infections of COVID-19 in Wisconsin, and Wisconsin saw meaningful gains from this proactive step. With increasing testing capacity, we anticipate increased detection of new COVID-19 cases in the coming weeks that will correspond with identifying significant community transmission. This is a crucial time for the City of Beloit to maintain the momentum in containing COVID-19 in our community and halt further dissemination of the disease; and~~

~~WHEREAS, we know that the fight to contain COVID-19 is dynamic and ultimately is dependent long term on the widespread availability of a vaccine and/or treatment. When deciding what action is necessary given current law, the City of Beloit meticulously considered various criteria including: the rate of spread of COVID-19 in Wisconsin, Rock County and the City of Beloit; the health care capacity to meet the needs of the state; the testing, contact tracing, and isolation capacity in Rock County; the availability of personal protective equipment ("PPE") for healthcare workers, first responders, and other public servants that are required to perform face to face services; and the economic needs of the community; and~~

~~WHEREAS, we know that physical contact and close proximity to other individuals may cause the spread of COVID-19, thereby endangering the public and placing undue strain on the healthcare system; and~~

~~WHEREAS, “physical distancing”, meaning a distance of six (6) feet is maintained between all individuals, is a public health tool that may be used to limit the spread of disease and it is essential to use all available tools as is reasonable and necessary to stop the transmission of COVID 19; and~~

~~WHEREAS, community testing is currently underway in Beloit with the assistance of the Army National Guard and results will be forthcoming; and~~

~~WHEREAS, Wisconsin state law provides broad authority and power for local governments to provide for health, safety and welfare; and~~

~~WHEREAS, the Wisconsin Department of Health Services provides communicable disease prevention and control and social distancing guidelines informed by Wisconsin public health experts and consistent with recommendations by the President and the U.S. Centers for Disease Control.~~

~~NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of Beloit, under its authority in Chapter 323 of the Wisconsin State Statutes and Section 1.10 of the Code of General Ordinances for the City of Beloit, hereby issues this Order to continue controlling COVID 19 disease transmission throughout the City of Beloit. This Order outlines the measures needed now in the City of Beloit based on the above listed factors. Recognizing that the City of Beloit has made progress in flattening the curve, we focus on the importance of continuation and resumption of businesses and activities for sectors of our economy that are able to operate with Physical Distancing and Protective Measure Requirements and safe business practices in place. Future decisions will be based on the COVID 19 data for the City of Beloit and upcoming orders, if any, will necessarily remain fluid and will be based on the above factors as well as emerging data and research.~~

1. **DEFINITION.** For purposes of this Order and to the extent possible under applicable laws, including but not limited to, the Americans with Disabilities Act, ***“Physical Distancing and Protective Measure Requirements”*** means:

- a. Maintaining physical distancing of six (6) feet between people not residing in a single living unit or household.
- b. Washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer;
- c. Covering coughs or sneezes (into the sleeve or elbow, not hands);
- d. Regularly cleaning high-touched surfaces;
- e. Not shaking hands;
- f. Use of a mask or cloth face covering; and

Note: the use of masks or cloth face coverings is strongly recommended but shall not be required due to equity concerns regarding the challenges that either may cause for individuals because of disabilities and/or shortages of Personal Protective Equipment (“PPE”)

- g. Following all other public health recommendations issued by State of Wisconsin Department of Health Services (“DHS”), Rock County Health Department and the U.S. Centers for Disease Control and Prevention (“CDC”).

2. **PUBLIC SPACES BOTH INDOORS AND OUTDOORS AND PUBLIC BUILDINGS.**

- a. All public spaces, public buildings, and private buildings that are open to the public, shall meet the following public health and safety practices to prevent the spread of COVID-19:

1. To the greatest extent feasible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work.
 2. Review the Wisconsin Economic Development Corporation ("WEDC") guidelines on safe business practices, available here: <https://wedc.org/reopen-guidelines/>.
 3. Comply with Physical Distancing Requirements and Protective Measure Requirements of 6 feet between all individuals on the premises including but not limited to employees, customers, and members of the public and limit the number on the premises, both indoors and outdoors to meet this physical distance requirement, except for those contacts that are incidental and brief in nature. This shall not be construed to require physical distancing between individuals from the same living unit or household. If compliance with the Physical Distancing Requirements of 6 feet between all individuals cannot be maintained, use of PPE or alternative physical distancing precautions recommended by the WEDC, DHS or CDC is required.
 4. Allot 144 square feet¹ of space per living unit or household in a business, both inside and outside and including decks and patios, which shall not in any event exceed an occupancy limit established by building code.
 5. Restrict the number of workers present on premises to no more than is strictly necessary to perform operations.
 6. Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
 7. Adopt policies to actively screen and prevent workers from entering the premises if they display COVID-19-like symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.
 8. Adopt policies to actively screen and prevent customers, visitors, guests from entering the premises if they display symptoms identified by the CDC as symptoms related to COVID-19 or have had contact with a person with a confirmed diagnosis of COVID-19.
 9. Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.
 10. Cease any self-service operations of any type of food or beverage.
 11. Except for grocery stores, prohibit customers from self-dispensing all unpackaged food.
 12. Establish lines to regulate entry in with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also use alternatives to lines, including allowing customers to wait in their cars for a text message or phone call and scheduling pick-ups or entries to the store.
 13. Cooperate with public health investigations related to COVID-19 confirmed or suspected cases related to the business operations, including excluding employees based on public health recommendations and assisting public health with identifying and contacting contacts of cases.
- b. Where applicable, an individual shall comply with requirements and restrictions outlined in this section while present in public spaces, public buildings, and private buildings that are open to the public.

¹ This amount is based upon a calculation of the physical distancing requirements of 6 feet between individual (or living unit or household) in each direction.

- c. The above requirements shall not apply to those interactions that must occur for health and safety reasons.
3. **SHARED SPACES.** Unless otherwise provided herein, all individuals present in the City of Beloit using shared spaces, outdoor spaces or any place other than their home or residence shall, to the extent possible, comply with Physical Distancing and Protective Measure Requirements.
4. **MASS GATHERINGS.** Mass gatherings are those planned or spontaneous events with a large number of people in attendance that could strain the planning and response resources of the community hosting the event, such as a concert, festival, conference, or sporting event. Mass Gatherings of more than 25 people are strongly discouraged. Gathering size for organizations that serve individuals who are at increased risk of severe illness, as that term is defined in section 7 of this Order, is strongly encouraged to not exceed 10 people. Mass gatherings are required to comply with the provisions outlined in Section 2 and 3 of this Order as well as the following COVID-19 mitigation strategies:
 - a. Minimize sharing of frequently touched objects consistent with the community or individual's traditions and in consultation with local health officials as needed;
 - b. Food or beverage offerings should be provided in, pre-packaged boxes or bags for each attendee to avoid possible COVID-19 transmittal from sharing common dishes at a buffet or family-style meal; and
 - c. Nothing in this Order prohibits the gathering of members of a single living unit or household.
5. **FOLLOW DHS AND CDC GUIDELINES.** All individuals, organizations, government bodies, and any other group of individuals shall, to the extent possible, follow all applicable DHS or CDC guidelines that are more restrictive than this Order when taking any action permitted under this Order. DHS guidelines are located here: <https://www.dhs.wisconsin.gov/covid-19/index.htm> and here <https://www.dhs.wisconsin.gov/covid-19/employers.htm>. CDC guidelines are located here <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
6. **STAY AT HOME OR PLACE OF RESIDENCE.** All individuals present within the City of Beloit are strongly encouraged to stay at home or at their place of residence, minimize travel out of Rock County, and keep the number of connections minimal to decrease the spread of disease. To the extent individuals are using shared or outdoor spaces other than their home or residence, they must at all times as reasonably possible maintain physical distancing of at least six (6) feet from any other person except that they do not need to maintain social distancing between individuals residing in a single living unit or household. If a resident travels outside their community and engages in activities that compromise physical distancing the resident should limit contact with non-household members for 14 days and monitor symptoms closely.

Individuals whose homes or residences are unsafe or become unsafe, such as victims of domestic violence, are urged to leave their home and stay at a safe alternative location. For purposes of this Order, homes or residences include hotels, motels, shared rental units, dormitories, shelters, and similar facilities.
7. **VULNERABLE MEMBERS OF THE POPULATION SHOULD TAKE ADDITIONAL PRECAUTIONS.** People at increased risk of severe illness from COVID-19 and people who are sick are strongly

encouraged to stay in their home or residence to the extent possible except as necessary to seek medical care. For the purposes of this Order, the City adopts the definition of the CDC of those individuals who are at increased risk for severe illness which includes the following:

- a. People 65 years and older
- b. People who live in a nursing home or long-term care facility
- c. People of all ages with underlying medical conditions, particularly if not well-controlled, including:
 - 1) People with chronic lung disease or moderate to severe asthma
 - 2) People who have serious heart conditions
 - 3) People who are immunocompromised
Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications
 - 4) People with severe obesity (body mass index [BMI] of 40 or higher)
 - 5) People with diabetes
 - 6) People with chronic kidney disease undergoing dialysis
 - 7) People with liver disease

8. **PREVENTION OF DISEASE RECOMMENDATIONS.** For purposes of this Order, all residents are strongly encouraged to follow these guidelines when in private spaces including:
 - a. Maintaining distancing of six (6) feet between people;
 - b. Washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer;
 - c. Covering coughs or sneezes (into the sleeve or elbow, not hands);
 - d. Regularly cleaning of frequently-touched surfaces;
 - e. Not shaking hands; and
 - f. Following all other public health recommendations issued by DHS and the U.S. Centers for Disease Control
9. **CITY FACILITIES AND SERVICES.** The City may impose restrictions for city facilities, city property or services based upon on the needs of a particular facility, property or service for protection of the public health, visitors, and city employees. Such restrictions shall be posted prominently at the facility, property or location of the service to advise the public of the restrictions.
10. **ENFORCEMENT.** This Order is enforceable by any local law enforcement official. A violation may result in the issuance of a citation.
11. **LOCAL ORDERS.** This Order does not preclude local health officer from addressing localized outbreaks with a localized order. Such order may include instituting tailored restrictions based on the needs of a particular location. If there is a conflict between this Order and an order from a local health officer, the more restrictive order shall control. Further, nothing in this Order prevents DHS and local health officials from issuing and enforcing isolation and quarantine orders pursuant to Wis. Stat. ch. 252 and local ordinances.
12. **PRIVATE BUSINESS OR ORGANIZATION POLICIES.** In addition to the responsibilities to adopt and implement policies related to addressing patron and employee safety outlined in Section 2 of this Order, private businesses or other organizations are strongly encouraged to develop plans or policies to address how to best combat the spread of COVID-19. A private business or

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organization may implement policies or plans that are more restrictive than this Order for the protection of the public health in its discretion. Any such policies implemented shall be clearly communicated to patrons and the public.

13. **SEVERABILITY.** If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
14. **DURATION.** ~~This Order shall become effective immediately. This Order shall remain in effect until 12:01 a.m. on Tuesday June 2, 2020. Any superseding or subsequent order shall be based upon public health best practices, review of all available data, and may include the following indicia: availability of personal protective equipment; intensive care unit bed capacity; downward trajectory of positive tests as a percent of total tests within a 14 day period; treatment of all patients without crisis care; community testing of all symptomatic individuals; individuals involved in an outbreak, and individuals living and working in congregate settings.~~

~~Adopted this 18th day of May, 2020.~~

~~CITY COUNCIL OF THE CITY OF BELOIT~~

~~Regina Dunkin, President~~

~~ATTEST:~~

~~Lorena Rae Stottler, City Clerk Treasurer~~