

ENROLLED ORDINANCE 177-4

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE BY REPEALING AND RECREATING SUBSECTION 36-283(d) RELATING TO CONDITIONAL USES AND AMEND APPENDIX A REGARDING IN-LAW DWELLING UNITS AND APPENDIX B REGARDING FREE STANDING SOLAR ENERGY SYSTEMS (RZ98)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Mukwonago Town Board on March 2, 2022; and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Mukwonago Zoning Code, adopted by the Town of Mukwonago on November 30, 2020, is hereby amended to repeal and recreate Subsection 36-283(d) relating to conditional uses and amend Appendix A regarding in-law dwelling units and Appendix B regarding free standing solar energy systems, more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference RZ98, is hereby approved.

BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Mukwonago.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING CODE BY REPEALING AND RECREATING SUBSECTION 36-283(d) RELATING TO CONDITIONAL USES AND AMEND APPENDIX A REGARDING IN-LAW DWELLING UNITS AND APPENDIX B REGARDING FREE STANDING SOLAR ENERGY SYSTEMS (RZ98)

Presented by:  
Land Use, Parks, and Environment Committee

  
Thomas A. Michalski, Chair

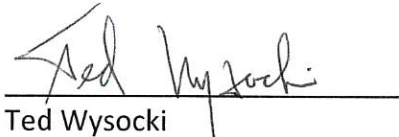
  
Jennifer Grant

  
Christine M. Howard


  
Robert L. Kolb

  
Brian Meier

  
Chris Mommaerts

  
Ted Wysocki

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 5/31/22,   
Margaret Wartman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed: \_\_\_\_\_

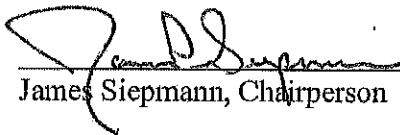
Date: 5/31/2022,   
Paul Farrow, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Text of the Town of Mukwonago Zoning Code hereby recommends **approval** of RZ98 (Town of Mukwonago Board) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

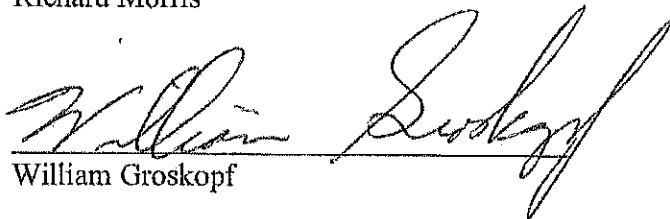
April 21, 2022

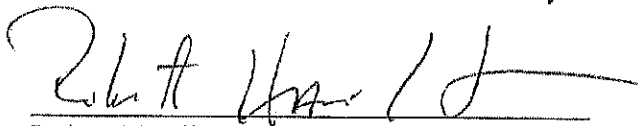
  
James Siepmann, Chairperson

  
Thomas Michalski, Vice Chairperson

Absent  
Robert Peregrine

Absent  
Richard Morris

  
William Groskopf

  
Robert Hamilton

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION**  
**TEXT AMENDMENT**

**FILE NO:** RZ98  
**TAX KEY NUMBER:** N/A  
**DATE:** April 21, 2022  
**NAME OF PETITIONER:** Town Board of Mukwonago  
Town of Mukwonago Hall  
W320 S8315 Beulah Road  
Mukwonago, WI 53149

**NATURE OF REQUEST:**

Repeal and recreate Subsection 36-283(d) of the Town of Mukwonago Zoning Code relating to Conditional Uses and amend Appendix A regarding in-law dwelling units and Appendix B regarding free standing solar energy systems.

**PUBLIC HEARING DATE:**

February 2, 2022.

**PUBLIC REACTION:**

One individual spoke in favor of the amendments.

**TOWN PLAN COMMISSION ACTION:**

At their meeting of February 9, 2022, the Town of Mukwonago Plan Commission recommended approval of the proposed text amendments to the Town Board.

**TOWN BOARD ACTION:**

At their meeting on March 2, 2022, the Town Board approved the proposed text amendments to Town of Mukwonago Zoning Code.

**COMPLIANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY (WCCDP) AND THE TOWN OF MUKWONAGO COMPREHENSIVE PLAN:**

The text amendments make minor text changes to update standards relative to solar energy systems and in-law units on residential properties. The amendments are consistent with plan recommendations.

**STAFF ANALYSIS:**

The Town of Mukwonago is proposing minor changes to the text of the town code relative to solar energy systems and is making minor adjustments to the land use matrix relative to in-law dwelling units. The solar systems change would replace the surface area limitation standard of 120 square feet with a more open standard that would allow for a system area to not exceed the area needed to accommodate 120 percent of the site's anticipated power demand. The town planner explained that this is consistent with WE Energies allowances. The change related to in-

## ORDINANCE 2022-O-57

**AN ORDINANCE TO AMEND CHAPTER 36 OF THE MUNICIPAL CODE**

WHEREAS, the Town Board for the Town of Mukwonago adopted a zoning code for the Town of Mukwonago in 1953 and has amended it from time to time since then; and

WHEREAS, that zoning code is codified as Chapter 36 of the Town of Mukwonago Municipal Code, titled "Town Zoning;" and

WHEREAS, the Plan Commission at their meeting on January 5, 2022, recommended various revisions to the zoning code as set forth herein; and

WHEREAS, allowing for proper notice, the Plan Commission and Town Board conducted a joint public hearing on February 2, 2022, to consider the amendment and to accept public comment; and

WHEREAS, the Plan Commission recommended approval at their meeting on February 2, 2022; and

WHEREAS, the Town Board considered the Plan Commission's recommendation at their meeting on March 2, 2022; and

WHEREAS, the Town Board finds that the recommended revisions to the Town's zoning regulations could potentially be interpreted to be a down zoning ordinance because it may decrease the development density of land or reduce the permitted uses of land, and therefore the super majority requirement in s. 66.10015, Wis. Stats, applies to this ordinance, requiring a vote in favor by two-thirds of the members-elect of the Town Board for passage and adoption; and

WHEREAS, the Town Board for the Town of Mukwonago, after carefully reviewing the recommendation of the Plan Commission for the Town of Mukwonago and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety and welfare of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the ordinance amendment will serve the public health, safety and general welfare of the Town of Mukwonago, will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance, and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

NOW, THEREFORE, the Town Board for the Town of Mukwonago, Waukesha County, does hereby ordain as follows:

**Section 1.** Repeal and recreate subsection 36-283(d) to read as follows:

- (d) Conditional uses on a lot with an existing conditional use. In the event a lot has an approved conditional use, all conditional uses are prohibited, unless the plan commission

determines, on a case-by basis, that the existing and proposed conditional uses are compatible. Any such determination in the affirmative shall have no bearing on the plan commission's recommendation or the town board's decision made under this division.

**Section 2.** In Appendix A remove “BP” and “SP” from the secondary review column for 13.16 (In-law dwelling unit).

**Section 3.** In Appendix B repeal and recreate the supplemental standards for 13.25 (Solar energy system, free-standing) to read as follows:

Supplemental Standards:

- (a) **Surface area.** The surface area of a free-standing solar energy system must not exceed the area needed to accommodate 120 percent of the site's anticipated power demand.
- (b) **Number.** There shall be no more than one free-standing solar energy system on a parcel of land.
- (c) **Maximum height.** A free-standing solar energy system in any position shall not exceed 15 feet in height as measured from the surrounding grade.
- (d) **Setback.** A free-standing solar energy system in any position shall not extend into the setback of a front yard, side yard, shore yard, or rear yard as established for the zoning district in which the parcel is located. The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to allow a free-standing solar energy system to extend into a setback or offset when no other location on the parcel is acceptable and the encroachment is the least necessary to allow the system to operate.
- (e) **Placement in yards.** A free-standing solar energy system located in a residential or business zoning district shall only be located in the rear or side yard. The plan commission may approve a special exception, consistent with the procedures and requirements of article 5 of this chapter, to allow a free-standing solar energy system in the front yard when no other location on the parcel is acceptable and the encroachment is the least necessary to allow the system to operate. A solar panel in an agricultural or industrial zoning district may be located in any yard area.
- (f) **Certification.** A free-standing solar energy system shall be certified by one of the following: Underwriters Laboratories, Inc.; National Renewable Energy Laboratory; Solar Rating and Certification Corporation; or other recognized body as approved by the zoning administrator. The building inspector may approve the use of a homemade panel.
- (g) **Approval by electric utility company.** If the solar energy system is designed to produce electricity, the property owner shall submit documentation acceptable to the building inspector indicating that the system meets all applicable regulations and requirements of the affected electric utility company.

- (h) Termination of use. If the zoning administrator determines that a free-standing solar energy system has not been operational for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 of this chapter relating to the termination of an approval.
  
- (i) Compliance with state law. The provisions in this section are intended to satisfy the requirements of Wis. Stats. § 66.0401(1m). On a case-by-case basis, if the restrictions of this subsection are found not to comply with the authority of Wis. Stats. § 66.0401(1m), they shall not be required. The Plan Commission shall have the ability to add additional restrictions on a case-by-case basis, provided they are within the authority of the Town pursuant to Wis. Stats. § 66.0401(1m), and in particular the restriction must satisfy one of the following conditions:
  - (1) Serves to preserve or protect the public health or safety.
  - (2) Does not significantly increase the cost of the system or significantly decrease its efficiency.
  - (3) Allows for alternative system of comparable cost and efficiency.

**Section 4.** The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

**Section 5.** The Town of Mukwonago Town Clerk is directed to send three signed copies of this ordinance to the Waukesha County Clerk for approval of the Waukesha County Board of Supervisors.

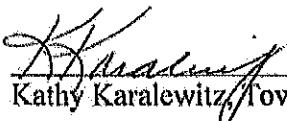
**Section 6.** This ordinance shall take effect immediately upon passage and posting or publication as provided by law following approval by the Waukesha County Board of Supervisors.

Adopted by a vote in favor by two-thirds of the members-elect of the Town Board, or more, this 2nd day of March 2022

TOWN OF MUKWONAGO

  
\_\_\_\_\_  
Peter Topczewski, Town Chair

ATTEST:

  
\_\_\_\_\_  
Kathy Karalewitz, Town Administrator

Published and/or posted this 14 day of March, 2022



ORDINANCE 2022-O-57

**AN ORDINANCE TO AMEND CHAPTER 36 OF THE MUNICIPAL CODE**

- Draft of January 6, 2022 for Public Hearing -

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WHEREAS, that zoning code is codified as Chapter 36 of the Town of Mukwonago Municipal Code, titled "Town Zoning;" and

WHEREAS, the Plan Commission at their meeting on January 5, 2022, recommended various revisions to the zoning code as set forth herein; and

WHEREAS, allowing for proper notice, the Plan Commission and Town Board conducted a joint public hearing on February 2, 2022, to consider the amendment and to accept public comment; and

WHEREAS, the Plan Commission recommended approval at their meeting on \_\_\_\_\_, 2022; and

WHEREAS, the Town Board considered the Plan Commission's recommendation at their meeting on \_\_\_\_\_, 2022; and

WHEREAS, the Town Board finds that the recommended revisions to the Town's zoning regulations could potentially be interpreted to be a down zoning ordinance because it may decrease the development density of land or reduce the permitted uses of land, and therefore the super majority requirement in s. 66.10015, Wis. Stats, applies to this ordinance, requiring a vote in favor by two-thirds of the members-elect of the Town Board for passage and adoption; and

WHEREAS, the Town Board for the Town of Mukwonago, after carefully reviewing the recommendation of the Plan Commission for the Town of Mukwonago and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety and welfare of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the ordinance amendment will serve the public health, safety and general welfare of the Town of Mukwonago, will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance, and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

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- (g) Approval by electric utility company. If the solar energy system is designed to produce electricity, the property owner shall submit documentation acceptable to the building inspector indicating that the system meets all applicable regulations and requirements of the affected electric utility company.
- (h) Termination of use. If the zoning administrator determines that a free-standing solar energy system has not been operational for a continuous period of 12 months, the administrator shall follow the procedure outlined in article 5 of this chapter relating to the termination of an approval.
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**Section 6.** This ordinance shall take effect immediately upon passage and posting or publication as provided by law following approval by the Waukesha County Board of Supervisors.

Adopted by a vote in favor by two-thirds of the members-elect of the Town Board, or more, this \_\_ day of \_\_\_\_\_ 2022

TOWN OF MUKWONAGO

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Peter Topczewski, Town Chair

ATTEST:

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Kathy Karalewitz, Town Administrator

Published and/or posted this \_\_\_\_ day of \_\_\_\_\_, 2022

VOTING RESULTS

AYE 25 | NAY 0 | ABSTAIN | ABSENT 0

# Ordinance 177-O-003

Ordinance 177-O-003: Amend The Text Of The Town...

 **Passed By Majority Vote**

D1 - Foti	AYE	D14 - Mommaerts	AYE
D2 - Weil	AYE	D15 - Kolb	AYE
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Meier	AYE
D5 - Grant	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Enriquez	AYE
D7 - LaFontain	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Gaughan	AYE
D9 - Heinrich	AYE	D22 - Wysocki	AYE
D10 - Thieme	AYE	D23 - Hammitt	AYE
D11 - Howard	AYE	D24 - Bangs	AYE
D12 - Wolff	AYE	D25 - Johnson	AYE
D13 - Decker	AYE		

May 24 2022 - May 24 2022 07:28:22 PM

