

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Gen. Ord. No. 42-19-20 by Alderpersons Donohue and Bohren repealing and recreating Chapter 82 of the Sheboygan Municipal Code relating to personnel regulations and benefits.

REPORT PREPARED BY: Sandy Rohrick, Director of Human Resources and Labor Relations

REPORT DATE: February 5, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: Chapter 82

BACKGROUND / ANALYSIS:

Chapter 82 of the Municipal Code has been updated to reflect changes in policies and procedures that either have occurred or are recommended. In addition, in an effort to streamline several processes relating to hiring and staffing, additional modifications are recommended. Many of these changes shift oversight of the Table of Organization from Common Council to the Office of the City Administrator while continuing to follow approved budget parameters.

STAFF COMMENTS:

Most of the changes or updates are self-explanatory. However, one notable change has to do with modifications to the Table of Organization. While some changes require Common Council approval (such as changes that would require an adjustment to the approved budget or a transfer of funds between departments), other organizational changes could be streamlined to allow for the City of Sheboygan to respond to organizational needs more timely. This shift would continue to require oversight from the Office of the City Administrator.

ACTION REQUESTED:

Motion to recommend the Common Council adopt Gen. Ord. No. 42-19-20, modifying changes to the Sheboygan Municipal Code relating to personnel regulations and benefits.

ATTACHMENTS:

- I. Gen. Ord. No. 42-19-20
- II. Chapter 82 with Modifications and Strike Through Listed

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Gen. Ord. No. 42 - 19 - 20. By Alderpersons Donohue and Bohren.
February 3, 2020.

AN ORDINANCE repealing and recreating Chapter 82 of the Sheboygan Municipal Code relating to personnel regulations and benefits.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Chapter 82 of the Sheboygan Municipal Code entitled "Personnel regulations and benefits" is hereby repealed and recreated to read as follows:

"Chapter 82 - PERSONNEL REGULATIONS AND BENEFITS

ARTICLE I. IN GENERAL

Sec. 82-1. *Responsibility for maintenance and approval of program.*

- (a) The city administrator shall maintain an employee classification and compensation program.
- (b) As part of maintaining such a program:
 - (1) The director of human resources and labor relations shall review and update the program annually. Said review and update shall include, but not be limited to, the allocation of new or changed positions and the determination of proper compensation rates pursuant to the provisions of this chapter.
 - (2) The city administrator shall prepare and introduce a yearly budget that reflects the needs of the program.
 - (3) Department heads shall make changes to job descriptions, job titles, and classifications, subject to the approval of the director of human resources and labor relations.
 - (4) The city administrator shall annually review the table of organization described in Section 82-31 of this Code and approve mid-year changes to the table of organization not requiring council approval.
 - (5) The city administrator may approve modifying, adding, or deleting positions to facilitate the needs of the business while maintaining the approved city-wide budget.

Sec. 82-2. *Medical insurance.*

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Personnel

- (a) *Election of retirees to participate.* Eligible employees who retire after January 1, 1977, may participate in the city's medical insurance family, employee plus spouse, employee plus child(ren), or single plan for retirees, subject to the limitations and conditions listed under subsection (c). Such election shall be made on or before the date of retirement. Employees who do not elect coverage at the time of retirement are deemed to have waived their right to participate, subject to continuation rights they may have pursuant to federal and state law."
- (b) *Payment of premiums.* Eligible retirees who elect to participate in the city's medical insurance plan pursuant to subsection (a) shall prepay monthly, via direct deposit, the entire rate for their medical plan coverage, as established from time to time by the city or its insurance carrier, to the finance director/treasurer on or before the fifteenth day of the month preceding coverage. A fee of fifty (\$50.00) dollars shall be added to the established premium for any failure to pay by the fifteenth, including rejection of a direct deposit. Any eligible retiree who fails to pay the premium and all fees by the last day of the month shall be terminated from the plan effective the first day of the following month, absent extraordinary circumstances completely beyond the control of such retiree. In the event a retiree wishes to appeal this decision, he or she may do so, in writing, within thirty days of the fee being charged. Said appeal would be directly to licensing, hearings, and public safety committee.
- (c) *Limitations and conditions:*
- (1) The employee must have reached normal retirement age as determined for annuity computation purposes and must receive a monthly retirement annuity from the Wisconsin Retirement Fund.
 - (2) The employee is not eligible for any other group health insurance while employed elsewhere.
 - (3) When the employee or his spouse becomes eligible for any government-sponsored insurance programs, the coverage shall be changed to a non-duplicating plan.
- (d) *Surviving spouse.* A surviving spouse of an active, disabled or a retired employee may elect to participate in the City of Sheboygan medical benefit plan at his/her own expense, subject to the limitations and conditions listed below, excepting as otherwise set forth in any labor agreements passed by the common council. Said surviving spouse shall not be eligible for dental coverage under the City of Sheboygan plan except as required by applicable law.

- (1) The employee, or retired employee, must have fifteen years or more of continuous City Service and be enrolled in the City of Sheboygan medical benefit plan at the time of his/her death.
- (2) Said election shall be irrevocable and shall be made within thirty days after the date of death of the employee or retired employee and said spouse may remain in the aforementioned plan indefinitely, subject to the other provisions herein.
- (3) Said surviving spouse shall pay, monthly, via direct deposit, the entire rate for medical plan coverage, as established from time to time by the city or its insurance carrier to the finance director/treasurer on or before the fifteenth day of the month preceding coverage. Said payments shall not be reduced by any contractual city contribution for medical plan rates for which the deceased employee or retired employee may have been eligible. Upon failure to pay by the fifteenth, or if the direct deposit rejects, a late payment fee of fifty (\$50.00) dollars shall be added to the established premium. Failure to pay the premium and late payment fee by the last day of the month shall result in termination from the plan effective the first day of the following month, absent extraordinary circumstances totally beyond the control of such surviving spouse as determined by the common council upon recommendation of the finance and personnel committee.
- (4) Coverage under the above plan shall be limited to the surviving spouse and the deceased's legally dependent children, inclusive of unborn, as of the date of the employee's or retired employee's death. Said coverage for the surviving spouse and deceased's legally dependent children shall terminate upon a change in the marital status of the surviving spouse.
- (5) The surviving spouse must sign an affidavit of eligibility upon initial enrollment and may not be eligible for any type of medical plan coverage as a result of being employed elsewhere. Said affidavit must be completed and signed on an annual basis. Lack of response or failure to include factual information in the affidavit will result in the surviving spouse being terminated from the City of Sheboygan medical benefit plan.
- (6) When the surviving spouse becomes eligible for any government-sponsored insurance program, the coverage shall be changed to a non-duplicating plan.

- (7) The terms "dependent" and "disabled" as used herein are as defined in the City's medical benefit plan summary.
- (8) The surviving spouse of employees with less than 15 years of service will be offered coverage as required under applicable law and will be ineligible for further City coverage when the coverage required by law expires.

Sec. 82-3. False statements, reports.

No persons shall make any false statement or report with regard to any test, certification or appointment made under any provisions of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and policies.

Sec. 82-4. Bribery.

No person shall directly or indirectly give, render, pay, offer, solicit or accept any money, service or valuable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the city service.

Sec. 82-5. Political activities.

- (a) Nothing hereinafter contained shall affect the right of the city employee to hold membership in and support a political party, to vote as he or she chooses, to express privately his or her opinions on all political subjects and candidates, to maintain political neutrality and to attend political meetings.
- (b) No employee shall engage in political activities during regular work hours, nor shall any employee wear his or her uniform, badge or other indicia of office/employment while engaging in political activities.
- (c) No employee shall erect, construct or post political posters on city property or buildings. Political posters shall not be displayed or posted on the private automobiles of employees when parked on city premises furnished to the employee by the city for the parking of such vehicle during regular work hours, except bumper strips on bumpers.
- (d) No person shall directly or indirectly solicit or receive subscriptions, assessments, contributions, or services or any partisan or nonpartisan political purpose from any employee in city service or use his or her influence to coerce the political action

of any employee while such employee is on city premises during any regular working hours.

- (e) Unless otherwise prohibited, any city employee may be a candidate for political office and may actively campaign therefor without jeopardizing his or her employment with the city. (Note: No city employee elected to a city political office may serve in violation of the restrictions contained in Wisconsin Statutes 946.13 and 66.0501).
- (f) For the purposes of this section, political activity shall mean activity calculated to improve or favor the changes of any political party or any person seeking or attempting to hold political office; such definition of political activities shall include but not be limited to campaigning for candidates or political parties, circulating nomination papers, registering voters, collecting contributions or selling fund-raising tickets, distributing campaign material, organizing political rallies or meetings.

Sec. 82-6. *Effect of violations.*

- (a) Any employee who is guilty of a violation of section 82-3 through 82-5 of this chapter shall be subject to disciplinary action which may include demotion, suspension and/or termination of employment.
- (b) An elected official, a department head, or any person who is not an employee of the city who is guilty of a violation of section 82-3 through 82-5 of this chapter shall be subject to a forfeiture of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00), together with the costs of prosecution, and in default of payment thereof, to imprisonment in the county jail until such forfeiture and costs are paid, but not to exceed thirty days.

Sec. 82-7. *Alleged or Apparent Strikers.*

- (a) Employees who may be deemed to be alleged or apparent strikers will not receive their regular pay, sick leave pay, or be permitted plus time pay. All employees who are on an approved vacation which was prescheduled will receive the approved amount of vacation pay. All lost time by strikers shall be reported as absent without leave. All strikers and their agents will be subject to provisions of any appropriate law, applicable rules and regulations, ordinances and contracts covering the prohibition of strikes and absence without leave from assigned jobs and subject to replacement.

(b) Employees are deemed to have refused to work during a strike in the following cases:

- (1) Refusal to cross picket lines with equipment or to obtain equipment.**
- (2) Refusal to cross picket line to enter their place of work.**
- (3) Refusal to be transported to their place of work by city vehicle even if they are furnished such transportation outside the picket lines.**
- (4) Refusal to work because of being in sympathy with the strikers.**
- (5) Leaving jobs during the work day to attend union meeting.**

The above are examples of reasons for refusal to work. Any unauthorized reason for refusal to work falls into this category even though not stated above. These employees will not receive their regular pay, call-in pay, sick leave pay or be permitted plus time pay. Employees in this category will only be paid for authorized time actually worked.

(c) Employees who are available and willing to work but cannot work for a variety of reasons, such as:

- (1) Lack of equipment.**
- (2) Inability to proceed without workers on strike, upon whom they depend for completing their tasks.**
- (3) Inclement weather.**

These employees whose contract allows for a two-hour call-in pay will be paid that amount, but no additional plus or minus hours will be issued.

(d) The following guidelines are furnished to department heads of union groups with respect to employees in their department who present themselves in the regular way for regular employment during the strike or work stoppage. Any employee in the department who is able and willing to work and presents himself for work in the department at the usual and customary time and place shall be permitted to work conditioned upon the following:

- (1) That the regular or customary work to which such employee is**

normally assigned is available and that such employee can discharge his normal duties.

- (2) That the equipment which such employee normally uses is available and operating, if equipment is necessary for such employee normally in the discharge of his duties.

Sec. 82-8. Application to employees of boards, commissions.

The classification and compensation provisions of this chapter shall apply to employees of all boards and commissions after the governing bodies thereof so approve by resolution duly adopted.

Sec. 82-9. "Employee" defined.

The term "employee" whenever used in this chapter shall include all officers, supervisors, and department and division heads of the city except those excluded under section 82-23.

Secs. 82-10 - 82-20. Reserved.

ARTICLE II. POSITION CLASSIFICATION

Sec. 82-21. Division of offices.

All offices in the public service in the city shall be divided into two (2) classes, namely, the classified and unclassified service.

(a) Unclassified positions.

- (1) All officials elected by the people.
- (2) Election officials appointed pursuant to Sec. 7.30, Wis. Stats.
- (3) All officers, members or employees of city boards, commissions, utilities or authorities.
- (4) All employees appointed by the mayor and/or common council.
- (5) Other positions designated by the common council as unclassified.
- (6) All employees in the unclassified service except those excluded under section 82-23 shall be governed by this chapter and the same provisions relating to the classified service with respect to hours, paid time off ("PTO"), holidays,

political activities, unlawful acts, all as provided in this chapter.

- (b) *Classified positions.* All other offices and positions not designated otherwise shall be included in the classified service, with the exceptions of such employment or positions relating to temporary, seasonal or part-time work or work created for relief purposes.

Sec. 82-22. *Establishing classifications.*

All positions in the municipal service, except those listed in section 82-23, shall be grouped into classes and each class shall include those positions sufficiently similar in respect to their duties and responsibilities so that similar requirements as to training, experience, knowledge, skill, personal qualities, and the same rates of compensation are applicable thereto. The civil service status of positions is not affected by their inclusion or exclusion from the provisions of this section.

Sec. 82-23. *Excluded positions.*

The provisions of this chapter (except sections 82-5 and 82-6) shall not apply to the following offices and positions:

- (a) Officers of the city government who are elected by the voters of the city, except that compensation as provided in section 82-61.
- (b) Members of city boards and commissions and members and employees of city utilities and authorities.
- (c) Officers and employees of the library board.
- (d) Officers and employees subject to the jurisdiction of the municipal water utility department and paid from the funds of such department.

Sec. 82-24. *Hiring of new employees generally.*

- (a) When any department head learns that a vacancy has occurred or is about to occur in any full-time position in the city service in his department, except positions excluded pursuant to Section 82-23, he or she shall forward a written request to the director of human resources and labor relations to fill the vacant position for approval.
- (b) Once approved, the director of human resources and labor relations shall forward the approval to the city administrator, who may make

any modifications to the table of organization (including numbers of employees) and job descriptions he or she deems appropriate which are cost-neutral with regard to the city budget.

- (c) Upon notice from the city administrator that all such changes have been made, the director of human resources and labor relations shall proceed with the hiring process and fill the position. If filling the vacant position necessitates a modification to the budget, the director of human resources and labor relations shall request the finance and personnel committee authorize filling the position as part of the budget transfer process. If the finance and personnel committee fails to approve filling the position, it shall set forth its reasons in writing, and the affected department shall have the right to appeal the decision to deny to the common council.
- (d) The filling of any vacant position pursuant to this section shall be certified in accordance with the following procedure:
 - (1) When filling a vacancy by selection of an eligible candidate from a list established on the basis of an open competitive examination, the appointing authority, subject to the approval of the director of human resources and labor relations, may specify requirements of particular experience, education, skill and/or physical requirements necessary for successful performance. The director of human resources and labor relations shall certify the name or names of those persons categorized as best qualified to fill the vacancy in accordance with these requirements and civil service rules and regulations. The appointing authority shall make his or her appointment from those certified.
 - (2) In promotional examinations, appropriate consideration shall be given to employee qualifications, record of performance and ability.
 - (3) For protective service vacancies, the selection shall be in accordance with police and fire commission regulations and any labor agreement or applicable department policy.
 - (4) The appointing authority, subject to the approval of the director of human resources and labor relations, may make a provisional appointment from an eligible list in accordance with of this subsection even though the incumbent has not yet vacated the position provided approval has been received in accordance with this subsection. The eligible person so appointed will be accorded all the benefits of a regular

appointee and shall retain all rights of certification to the permanent appointment.

Sec. 82-25. Abolition of positions generally.

Whenever in the judgment of the city administrator or the common council it becomes necessary in the interest of economy, lack of work or funds, or other just causes to abolish any position in the classified service, the person filling such position shall cease to be employed. Where the number of employees in a class code is reduced, city administrator may consider seniority, performance appraisals, conduct, skill, and ability in determining the order of layoff, except where otherwise provided for in labor agreements entered into by the city. Qualifications, skill and ability, and work performance are given greater weight than seniority in the event of a reduction in force. If all things are equal, seniority will be the determining consideration. Regarding seniority, years of service as a full-time employee are calculated. Part-time service will be given prorated credit. For example, an employee who worked twenty hours per week average will be given credit for one-half (1/2) year of service.

Sec. 82-26. Agreements authorized.

- (a) The director of human resources and labor relations is authorized and empowered to enter into reciprocal agreement within the approved budgetary limitations for the use of equipment, materials, facilities, and services with any agency or body for the benefit of the public personnel system.
- (b) The director of human resources and labor relations may enter into agreements with other governmental agencies charged with public personnel administration in conducting personnel tests, recruiting personnel, establishing eligibility lists, labor relations services, and the interchange of personnel.

Sec. 82-27. Class specifications - Purpose and effect.

Each class specification shall outline the main characteristics and qualification requirements of positions in the class and give examples of specific duties which employees holding such positions may properly be required to perform. The class specification is descriptive and explanatory but not restrictive. The listing of particular examples of duties does not preclude the assignment of other tasks by the department head or designated supervisory personnel.

Sec. 82-28. Class specifications - Statements of qualifications.

The statement of qualifications in a class specification is intended to

be used as a guide in selecting persons for examinations and employment, for preparing examinations and for use in determining the relative value of positions in a class with positions in other classes. In addition, the director of human resources and labor relations will establish minimum standards for all other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency.

Sec. 82-29. *Class specifications - Applying specifications to positions.*

In determining the class to which a position should be allocated, the specification of each class shall be considered in its entirety and in relation to the specifications of the classes in the classification plan.

Sec. 82-30. *Classification plan.*

The classification plan shall consist of the classes referred to in section 82-31, with such changes as may be approved by the council. All positions in each class shall be compensated in accordance with the class grade for each class as shown in section 82-31 and the rates for such class grades referred to in section 82-54.

Sec. 82-31. *List of classes and class specifications.*

The classification schedule shall include a table of organization and compensation grade schedules showing the position title, pay scale, and compensation of all positions of employment in the city service to which the provisions of this section shall apply. An updated copy of said table of organization shall be annually in the non-represented compensation plan. Additionally, a copy of the table of organization shall be kept on file in the city clerk's office.

Secs. 82-32 - 82-50. Reserved.

ARTICLE III. COMPENSATION PLAN

Sec. 82-51. *Compensation limited.*

No provision of this article shall be construed as authorizing any increase in salary or wage during a fiscal year which would result in exceeding appropriations made for such purpose. No city employee shall retain any fees or compensation received by virtue of his employment with the city other than authorized by the common council; such fees shall be paid into the city treasury.

Sec. 82-52. *General payroll procedure.*

The director of human resources and labor relations shall make necessary

changes in the payroll procedure, establish hourly rates based on the number of hours to be worked and the amount earned, and make such other incidental changes not in conflict with this chapter.

Sec. 82-53. Full-time earnings basis.

The biweekly rates of pay are based on full-time employment at normal working hours for the respective classes of positions as referred to in section 82-31; provided, however, that the salaries of non-represented supervisory, professional and administrative positions exempt under the federal Fair Labor Standards Act are fixed according to the responsibilities to be fulfilled and are not based on a fixed number of hours of work per week and shall not be adjusted with variations in work schedules, unless part-time employment is specifically provided.

Sec. 82-54. Salary and wage schedules.

Salary and wage schedules with hourly rates and straight-time yearly rates for a full-time employee (full-time for the calculation of a yearly rate is forty hours per week, 2,080 per year) for all salary grades in the city service to which this article shall be applicable are established and listed in the non-represented compensation program on file in the human resources department.

Sec. 82-55. Base salary of police and fire personnel.

The base salary of police shall include reporting time. In addition, the base salary of police and fire personnel shall include a prorated amount of holiday pay per pay period.

Sec. 82-56. Biweekly payment of earnings.

Except for elected officials and employees covered under a valid collective bargaining agreement providing otherwise, all salaries and wages shall be paid biweekly for salaries and wages earned during the biweekly period preceding the most current biweekly period (i.e. two-week holdback).

Sec. 82-57. Acting pay for non-represented employees.

- (a) When a temporary vacancy occurs of more than two calendar weeks but less than six months in a non-represented position, the director of human resources and labor relations, in consultation with the affected department head, may recommend to the city administrator an appropriate subordinate non-represented employee to fill the position on an acting basis for the duration of the temporary vacancy. Positions in the transit, police and fire departments require the approval of the respective commissions. If the

subordinate is in a lower salary grade while serving in such an acting capacity, the subordinate shall receive additional compensation for the additional work assigned. An increase of ten percent is assigned when acting in full-capacity; a reduced amount will be issued for limited acting duties or when partial duties are assigned. This amount will be issued after a replacement starts in the form of a lump-sum for all acting time. In no case shall the temporary increase in pay be greater than the salary of the person who left.

- (b) Within six months of the beginning of a temporary vacancy, the City Administrator will determine whether the opening will remain or a change in the table of organization needs to be made, and will inform the employee filling the position on an acting basis as to the status of the replacement. The employee may be reclassified to the position he/she is actually performing. In case of such a reclassification, his or her pay will be adjusted to match the new classification based on the employee's performance.

Sec. 82-58. *Worker's compensation.*

A full-time or permanent part-time city service employee, except an employee of the board of water commissioners, who sustains a compensable injury while performing within the scope of his or her employment as provided by Chapter 102, Wis. Stats. (Worker's Compensation Act), shall receive compensation in accordance with state statutes. The first three days of a lost time injury will be unpaid, after which the employee will receive his/her eligible amount of compensation directly from the city's third party administrator for worker's compensation.

Sec. 82-59. *Temporary, seasonal employees.*

- (a) Temporary or seasonal employees shall be paid in accordance with the "extra help schedule" and amendments thereto and prepared annually by the director of human resources and labor relations.
- (b) Temporary or seasonal employees who return to the same department and perform essentially the same duties may be advanced in pay within the pay grade based upon satisfactory service and the recommendation of the department head. Returning seasonal employees will not be paid greater than the amount listed as top-pay for "extra help."

Sec. 82-60. *Car allowances.*

Officers or employees who are required to use their privately owned automobiles in the conduct of city business are entitled to reimbursement on

a per mile basis equal to per mile basis approved by the Internal Revenue Service for income tax purposes. Official increases or decreases announced by the Internal Revenue Service will not be retroactive but shall be effective on the first of the month following the announced increase or decrease by the Internal Revenue Service. To be eligible for reimbursement, an employee must comply with the expense reimbursement policy.

Sec. 82-61. *Elected officials.*

The finance and personnel committee shall recommend for common council approval the initial salary for all elective positions and any and all in-term increases for same at least thirteen months prior to the election date for each office. The common council shall act on such recommendations and establish the salaries for full-time elective positions not later than the final meeting of the council year preceding the year of election.

Sec. 82-62. *Starting rates on initial employment.*

Original hires who have all the qualifications to any position shall be offered the minimum pay for that position. In the case where a potential employee has the majority of qualifications, that employee may be offered an amount less than minimum until the point that he/she achieves the qualification, at which time the employee will be brought to the minimum. In the case an employee is hired who already has advanced training and/or experience required for a position, the initial rate offered upon hire may be greater than minimum but no greater than the top of the salary range, subject to the approval from the city administrator for a salary that is at or over market rate/mid-point in the range. At no time will an employee receive greater than the top pay in a salary grade (with the exception of those who whose wage is greater than the maximum salary for that employee's classification and where the position has not been revised to another pay grade; in such a situation, the employee's salary shall be frozen until such time that an adjustment in the market rate causes his or her salary to fall under the maximum for the classification range.

Sec. 82-63. *Starting rates on new position.*

Whenever an employee is assigned a position not previously held by him and such change is not in the nature of a promotion, he or she shall receive the entrance rate in the range established for such position or such other rate within the applicable range as he or she may be entitled to by reason of crediting him in his new position with such prior service that is found to meet the following conditions: The character and nature of the duties of the position to which the employee was assigned are similar to those of the new position; and the service in the former position provided experience valuable to the performance of the new position.

Sec. 82-64. *Starting rates on promotion.*

In any case where an employee is promoted to a class with a higher pay range, the entrance rates shall be at no-less than the minimum base pay in the applicable range as he or she may be entitled to by reason of crediting him with prior experience that is directly related to the new position, except as otherwise provided for in any labor agreements approved and passed by the council.

Sec. 82-65. *Starting rates on demotion.*

Whenever an employee is demoted to a position for which he or she is qualified, be it voluntary or involuntary, he or she shall be compensated at a rate not less than the minimum pay for the new position.

Sec. 82-66. *Increases in compensation.*

- (a) The director of human resources and labor relations has the authority to identify necessary adjustments to position descriptions. The city administrator must approve any substantive changes to the job description, including salary grade changes necessary to reflect market value.
- (b) Department heads requesting consideration for modifying a salary grade must complete the appropriate reclassification request form to properly document the specific information requested for consideration and keep a record of the reasons for the justified change, if any.

Sec. 82-67. *Continuity of service.*

- (a) Service requirements for advancement within compensation ranges and for other purposes as specified in this article shall have the implication of continuous service, which means employment in the city service without break or interruption. Leaves of absence without pay of less than thirty workdays and leaves with pay shall not be considered interruptions of continuous service, nor shall the length of time of such leaves be deducted from the length of continuous service. However, leave of absence of greater than thirty days may reduce performance increase amounts unless that leave is protected by law, including but not limited to coverage by a qualified Family Medical Leave Act certification or by military leave pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994.
- (b) Except as otherwise provided under federal or state law and regulations for covered absences for service in the armed forces of

the United States, absences shall not be deducted in compiling total service, but shall not serve in the calculation of current benefits pursuant to continuous service. For example, vacation calculation is earned by actual time worked the previous year. Though the employee will receive his/her original hire date for the vacation scheduled (total number of years served will not be deducted while serving), only the actual time worked on the city job will be used in the prorating of earned vacation upon return from active duty.

- (c) Qualified family medical leave absences (FML) will not disrupt an employee's continuity of service. Any identified pay increase that would have occurred while the employee was out on FML would become effective upon the date of return from the leave, i.e. retroactive pay would not apply.

Sec. 82-68. Overtime for non-represented employees.

- (a) The normal work schedule for full-time, nonexempt employees is five eight-hour periods, totaling forty hours per week. This schedule may be revised as necessary depending on customer and/or city requirements, as determined by management. Each employee needs to work with their supervisor to define the expected hours of work. Employees may need to flex their schedule to maintain a forty hour work week. The time flexed must be approved in advance by management and be contained within a two-week, 80-hour payroll cycle. If an employee flexes their schedule during the forty-hour work week, time worked in excess of eight hours a day can only be taken on an hour-for-hour basis. In other words, if an employee works ten hours on Monday, the additional two hours flexed on Monday may be taken off later in the week at straight-time hours, not time-and-one-half. Employees may not save (bank) additional time off for use in another pay period. If customer and/or city requirements prevent an employee from utilizing their flexed time, the employee will be paid overtime for hours worked in excess of forty-hours in a week. Holiday time issued in a work-week is viewed as work time for the purposes of calculating overtime pay.
- (b) Exempt employees are full-time employees who work a minimum of forty hours per week. Due to the executive, administrative or professional nature of these positions, exempt employees are paid a defined salary for their position rather than an hourly rate. Therefore, if the position requires additional hours (over forty) during the work week, those who hold exempt positions are expected to perform their duties as part of their work week. The additional time worked is considered part of the position expectations and is exempt from overtime pay.

- (c) Overtime compensation for nonexempt salaried and hourly full-time, part-time seasonal and temporary employees will be paid for hours worked in excess of forty hours per week in accordance with applicable laws. Holiday time issued during a week counts as time worked for overtime purposes.
- (d) Exempt employees under the fair labor standards act and elected officials will not receive overtime pay.

Sec. 82-69. Non-represented, exempt employees.

The City of Sheboygan adheres to the requirement of the federal Fair Labor Standards Act ("FLSA") relating to the exempt employment status of an employee. To qualify for the executive employee exemption, all of the following tests must be met:

- (a) The employee must be compensated on a salary basis (as defined in the federal regulations related to the FLSA) at a rate not less than \$455 per week;
- (b) The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise;
- (c) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and,
- (d) The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.

The director of human resources and labor relations shall maintain and regularly update a list of each position that qualifies for the executive employee exception under the FLSA.

Sec. 82-70. Hours of employment.

- (a) Except as otherwise provided, the standard work week for regular, full-time employees of the city will be forty hours, but this is not construed to mean a guarantee of minimum hours of work or a limitation of the number of hours which the city may require an employee to work.
- (b) The work week, except as otherwise provided, will commence at 12:01 a.m. Sunday morning and end at 11:59 p.m. Saturday night.
- (c) The work day, except as otherwise provided, shall be from 12:01 a.m. to 12:00 midnight.

Sec. 82-71. Administration and records.

- (a) In emergencies, a department head may prescribe reasonable periods of overtime work to meet operational needs. Such overtime shall be justified as required by the appointing authority concerned.
- (b) All non-exempt and hourly employees in the city service are required to enter their time worked daily in an electronic timekeeping system under their personal login codes, or complete a timecard and sign the card for authenticity. This may include requests for paid time off.

Sec. 82-72. Computation generally.

Overtime payment is based on the employee's regular rate of pay as defined in the federal Fair Labor Standards Act.

Secs. 82-73 - 82-90. Reserved.

ARTICLE IV. LEAVE PROGRAM

Sec. 82-91. General rules applying to all leaves of absence in this article.

- (a) **Restrictions on granting.** Leaves of absence shall not be granted to any employee to accept another position or engage in a business venture or to practice a profession or occupation. A leave of absence which has been granted for any other reason shall automatically be terminated should it be found that the employee on such leave has accepted another position or has engaged in a full-time business venture, profession or occupation. These restrictions shall not apply, however, in any of the following situations:

- (1) If the employee affected has been appointed or elected to a position in the service of the City of Sheboygan, County of Sheboygan, State of Wisconsin, or the United States.
 - (2) If the employee in question has been inducted into the Armed Forces of the United States.
- (b) *Failure to return or revocation of leave.* Failure to report at the expiration of a leave of absence or if a leave has been disapproved or revoked shall be cause for separation from active employment (termination of employment) unless a justifiable reason is submitted within ten days after said expiration, disapproval or revocation, which is acceptable to the granting authority concerned.

Sec. 82-92. *Leaves of absence without pay.*

The city administrator may authorize special leaves of absence without pay and fringe benefits on the prescribed form for any period or periods not to exceed three calendar months in any one calendar year for purposes other than provided in this article that are deemed beneficial to the city service.

Sec. 82-93. *Training leave.*

- (a) Leaves of absence with pay may be granted in accordance with subsection (b) for attendance at a college, business school, or training institute for the purpose of training in subjects directly related to the work of the employee and which will benefit the city service.
- (b)
 - (1) For periods not to exceed three calendar weeks in any one calendar year, with the approval of the city administrator.
 - (2) For periods exceeding three calendar weeks but not exceeding twelve calendar weeks, upon the recommendation of the city administrator, subject to the approval of the finance and personnel committee.

Sec. 82-94. *Jury duty.*

Employees who are subpoenaed and serve on jury duty on an involuntary basis on any days which are scheduled workdays for them shall be excused for the time spent in jury service and will receive pay continuation (not to exceed a total of 8 hours per day or forty hours per week) for the time they

actually serve on jury duty, including any time they are required by the court to be immediately available. Employees shall only be eligible for pay continuation on days they are actually ordered to report for jury duty.

- (a) The employee must present proof of jury duty service, stating the dates and hours per day served on jury duty.
- (b) Other than mileage or meal money, employees shall immediately endorse his/her check for such jury service over to the finance director/treasurer for deposit into the proper fund.
- (c) When the employee is excused for jury service, either temporarily or permanently, the employee shall report back to work within one hour to complete his/her shift.

Sec. 82-95. Departmental leave.

In addition to other leaves authorized by the provisions of this article, a department head may authorize an employee to be absent without pay for personal reasons for a period or periods not to exceed ten working days in any calendar year.

Sec. 82-96. Special leave.

The council, upon the recommendation of the city administrator, may grant leaves of absence with or without pay in excess of the provisions of this article for the purpose of attending extended courses of training at a recognized university or college and for other purposes that are deemed beneficial to the city service.

Sec. 82-97. Unauthorized absence.

An employee who is absent from duty shall report the reason therefor to his supervisor prior to the date of absence, when possible, and in no case later than noon on the first day of absence (emergency situations aside). All unauthorized and unreported absences shall be considered absence without leave and deduction of pay shall be made for the period of absence unless the supervisor approves the absence. Unapproved absences may be made the grounds for disciplinary action, up to and including termination, even on the first offense."

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

Chapter 82 -- PERSONNEL REGULATIONS AND BENEFITS--

ARTICLE I. - IN GENERAL--

Sec. 82-1. - ~~Responsibility for maintenance and approval of plans.~~
~~program.~~

(a) ~~The common council~~ city administrator shall ~~be responsible for the maintenance of them~~ maintain an employee classification and compensation ~~plans, including~~ program.

(b) As part of maintaining such a program:

~~(a)~~ (1) The director of human resources and labor relations shall review and update the program annually. Said review and update shall include, but not be limited to, the allocation of new or changed positions and the determination of proper compensation rates ~~withi~~ pursuant to the provisions of this chapter.

(2) ~~The common council delegates administrative~~ city administrator shall prepare and ~~clerical work involved in~~ introduce a yearly budget that reflects the ~~foregoing~~ needs of the program.

~~(b)~~ (3) Department heads shall make changes to job descriptions, job titles, and classifications, subject to the approval of the director of human resources and labor relations.

~~(c) Whenever a significant change is made in the duties and responsibilities of a position involving either the addition of new assignments or the taking away or modification of existing assignments, such changes shall be reported to the director of human resources and labor relations by the department head concerned. The director of human resources and labor relations shall investigate such changes; if they are to be permanent and warrant reclassification, he/she shall submit the recommendations to the common council.~~

(4) The city administrator shall annually review the table of organization described in Section 82-31 of this Code and approve mid-year changes to the table of organization not requiring council approval.

(5) The city administrator may approve modifying, adding, or deleting positions to facilitate the needs of the business while maintaining the approved city-wide budget.

Sec. 82-2. - ~~Medical insurance.~~

(a) ~~(a) Election of retirees to participate.~~ Eligible employees who retire after January 1, 1977, may participate in the ~~city's~~ city's medical insurance family, employee plus spouse, employee plus child(ren), or single plan for retirees, subject to the limitations

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and conditions listed under subsection (c). Such election shall be made on or before the date of retirement. Employees who do not elect coverage at the time of retirement are deemed to have waived their right to participate, subject to continuation rights they may have pursuant to federal and state law."

- (b) ~~Payment of premiums. Such employees~~ Eligible retirees who elect to participate in the city's medical insurance plan pursuant to subsection (a) shall ~~pay~~prepay monthly, via direct deposit, the entire rate for their medical plan coverage, as established from time to time by the city or its insurance carrier, to the finance director/treasurer on or before the ~~15th~~fifteenth day of the month preceding coverage, and will not benefit by any city contributions except where otherwise provided for in ordinances, resolutions or labor agreements. Upon failure to pay by the fifteenth, or if the direct deposit rejects, a late payment. A fee of \$fifty (\$50.00) dollars shall be added to the established premium. Failure for any failure to pay by the fifteenth, including rejection of a direct deposit. Any eligible retiree who fails to pay the premium and late payment fee all fees by the last day of the month shall result in terminationbe terminated from the plan effective the first day of the following month, absent extraordinary circumstances ~~totally~~completely beyond the control of such employee as determined by the common council upon recommendation of the finance and personnel committee.retiree. In the event a retiree wishes to appeal this decision, he or she may do so, in writing, within thirty days of the fee being charged. Said appeal would be directly to licensing, hearings, and public safety committee.

- (c) ~~Limitations and conditions. Non-represented employees fall into three tiers for consideration of post-employment:~~

- (e) (1) The employee must have reached normal retirement ~~elections~~age as determined for annuity computation purposes and must receive a monthly retirement annuity from the Wisconsin Retirement Fund.

- ~~(1) Tier 1. Employees hired prior to December 31, 2011, who would have otherwise been eligible for the retiree benefits then in effect (vested in WRS eligibility) were grandfathered in this benefit category. To qualify as a Tier 1 employee, the employee must have been a non-represented employee on December 31, 2011, have been eligible for retirement under WRS (retirement age) as of December 31, 2011, with a minimum of 15 years of service of which at least the last five years of service had been served as a non-represented employee on or before December 31, 2011. Upon retirement (the term "retirement" as used herein shall mean the employee must be retired under the Wisconsin Retirement System and receiving monthly annuity payments), Tier 1 employees will be eligible to continue on the health insurance plan with the city paying 100 percent of the premium cost for single coverage and 60~~

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~~percent of the premium cost for the family plan with the following stipulations: Exempt employees are eligible for ten years maximum benefit; non-exempt employees are eligible for five years maximum benefit. Health insurance benefits discontinue upon Medicare eligibility, the retiree becoming eligible for other group health insurance as a result of other employment, the retiree turning age 65, or the retiree's death.~~

~~(2) Tier 2. Employees that were non-represented employees as of December 31, 2011, but did not meet the eligibility requirements to qualify as a Tier 1 employee for retirement (that is, was not eligible for retirement under WRS (retirement age) with a minimum of 15 years of service of which at least the last five years of service served as a non-represented employee on or before December 31, 2011). On or after January 1, 2012, upon reaching 15 years of service, with at least five years as a non-represented employee at the time of retirement, the retiree will be eligible to continue on the health insurance plan and will pay 50 percent of the premium contribution for single or family coverage with the following stipulations: Exempt employees are eligible for five years maximum benefit; non-exempt employees are eligible for two and one-half years maximum benefit. Health insurance benefits discontinue upon Medicare eligibility, the retiree becoming eligible for other group health insurance as a result of other employment, the retiree turning age 65, or the retiree's death.~~

~~(3) Tier 3. Newly hired non-represented employees or employees that were new to the "non-represented" employee status as of January 1, 2012, (employees who were previously part of a bargaining group). Upon a qualifying retirement event, these employees will be eligible for COBRA continuation of benefits.~~

(2) The employee is not eligible for any other group health insurance while employed elsewhere.

(3) When the employee or his spouse becomes eligible for any government-sponsored insurance programs, the coverage shall be changed to a non-duplicating plan.

(d) *Surviving spouse.* A surviving spouse of an active, disabled or a retired employee may elect to participate in the City of Sheboygan medical benefit plan at his/her own expense, subject to the limitations and conditions listed below, excepting as otherwise set forth in any labor agreements passed by the common council. Said surviving spouse shall not be eligible for dental coverage under the City of Sheboygan plan except as required by applicable law.

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(1) The employee, or retired employee, must have ~~15~~fifteen

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years or more of continuous ~~city service~~City Service and be enrolled in the City of Sheboygan medical benefit plan at the time of his/her death.

(2)

(2) Said election shall be irrevocable and shall be made within ~~30~~thirty days after the date of death of the employee or retired employee and said spouse may remain in the aforementioned plan indefinitely, subject to the other provisions herein.

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(3)

(3) Said surviving spouse shall pay, monthly, via direct deposit, the entire rate for medical plan coverage, as established from time to time by the city or its insurance carrier to the finance director/treasurer on or before the fifteenth day of the month preceding coverage. Said payments shall not be reduced by any contractual city contribution for medical plan rates for which the deceased employee or retired employee may have been eligible. Upon failure to pay by the fifteenth, or if the direct deposit rejects, a late payment fee of ~~\$~~fifty (\$50.00) dollars shall be added to the established premium. Failure to pay the premium and late payment fee by the last day of the month shall result in termination from the plan effective the first day of the following month, absent extraordinary circumstances totally beyond the control of such surviving spouse as determined by the common council upon recommendation of the ~~salaries~~finance and ~~grievances~~personnel committee.

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(4)

(4) Coverage under the above plan shall be limited to the surviving spouse and the ~~deceased's~~deceased's legally dependent children, inclusive of unborn, as of the date of the ~~employee's~~employee's or retired ~~employee's~~employee's death. Said coverage for the surviving spouse and ~~deceased's~~deceased's legally dependent children shall terminate upon a change in the marital status of the surviving spouse.

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(5)

(5) The surviving spouse must sign an affidavit of eligibility upon initial enrollment and may not be eligible for any type of medical plan coverage as a result of being employed elsewhere. Said affidavit must be completed and signed on an annual basis. Lack of response or failure to include factual information in the affidavit will result in the surviving spouse being terminated from the City of Sheboygan medical benefit plan.

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(6) When the surviving spouse becomes eligible for any government-sponsored insurance program, the coverage shall be changed to a non-duplicating plan.

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(7) The terms "dependent" and "disabled" as used herein are as defined in the ~~city's~~City's medical benefit plan summary.

(6) (8) The surviving spouse of employees with less than 15 years of service will be offered coverage as required under applicable law and will be ineligible for further ~~city~~City coverage when the coverage required by law expires.

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Sec. 82-3. ~~Reserved.~~

~~Sec. 82-4.~~ *False statements, reports.-*

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No persons shall make any false statement or report with regard to any test, certification or appointment made under any provisions of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and policies.

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~~Sec. 82-5.~~ *4. Bribery.-*

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No person shall directly or indirectly give, render, pay, offer, solicit or accept any money, service or valuable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the city service.

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~~Sec. 82-6.~~ *5. Political activities.—*

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(a) (a) Nothing hereinafter contained shall affect the right of the city employee to hold membership in and support a political party, to vote as he or she chooses, to express privately his or her opinions on all political subjects and candidates, to maintain political neutrality and to attend political meetings.

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(b) (b) No employee ~~small~~shall engage in political activities during regular work hours, nor shall any employee wear his or her uniform, badge or other indicia of office/employment while engaging in political activities.

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(c) (c) No employee shall erect, construct or post political posters on city property or buildings. Political posters shall not be displayed or posted on the private automobiles of employees when parked on city premises furnished to the employee by the city for the parking of such vehicle during regular work hours, except bumper strips on bumpers.

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(d) (d) No person shall directly or indirectly solicit or receive subscriptions, assessments, contributions, or services or any partisan or nonpartisan political purpose from any employee in city service or use his or her influence to coerce the political action of any employee while such employee is on city premises during any regular working hours.

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(e) (e) Unless otherwise prohibited, any city employee may be a candidate for political office and may actively campaign therefor without jeopardizing his or her employment with the city. (Note:

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No city employee elected to a city political office may serve in violation of the restrictions contained in ~~Wis.~~ Wisconsin Statutes ~~§§~~ 946.13 and 66.0501).

- (f) For the purposes of this section, political activity shall mean activity calculated to improve or favor the changes of any political party or any person seeking or attempting to hold political office; such definition of political activities shall include but not be limited to campaigning for candidates or political parties, circulating nomination papers, registering voters, collecting contributions or selling fund-raising tickets, distributing campaign material, organizing political rallies or meetings.

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Sec. 82-7.—6. *Effect of violations.*—

- (a) Any employee who is guilty of a violation of ~~sections~~ section 82-43 through 82-65 of this chapter shall be subject to disciplinary action which may include demotion, suspension and/or ~~dismissal~~ termination of employment.

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- (b) ~~Elected officials,~~ (b) An elected official, a department ~~heads~~ head, or any person who is not an employee of the city who is guilty of a violation of ~~sections~~ section 82-43 through 82-65 of this chapter shall be subject to a forfeiture of not less than \$fifty dollars (\$50.00) nor more than \$two hundred fifty dollars (\$250.00~~r~~), together with the costs of prosecution, and in default of payment thereof, to imprisonment in the county jail until such forfeiture and costs are paid, but not to exceed ~~30~~ thirty days.

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Sec. 82-8.—7. *Alleged or apparent strikers.*— *Apparent Strikers.*

- (a) Employees who may be deemed to be alleged or apparent strikers will not receive their regular pay, sick leave pay, or be permitted plus time pay. All employees who are on an approved vacation which was prescheduled will receive the approved amount of vacation pay. All lost time by strikers shall be reported as absent without leave. All strikers and their agents will be subject to provisions of any appropriate law, applicable rules and regulations, ordinances and contracts covering the prohibition of strikes and absence without leave from assigned jobs and subject to replacement.

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- (b) Employees are deemed to have refused to work during a strike in the following cases:

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- (1) Refusal to cross picket lines with equipment or to obtain equipment.

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- (2) Refusal to cross picket line to enter their place of work.

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- (3) (3) Refusal to be transported to their place of work by city vehicle even if they are furnished such transportation outside the picket lines.
- (4) (4) Refusal to work because of being in sympathy with the strikers.
- (5) (5) Leaving jobs during the work day to attend union meeting.

The above are examples of reasons for refusal to work. Any unauthorized reason for refusal to work falls into this category even though not stated above. These employees will not receive their regular pay, call-in pay, sick leave pay or be permitted plus time pay. Employees in this category will only be paid for authorized time actually worked.

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(e) (c) Employees who are available and willing to work but cannot work for a variety of reasons, such as:

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- (1) (1) Lack of equipment.
- (2) (2) Inability to proceed without workers on strike, upon whom they depend for completing their tasks.
- (3) (3) Inclement weather.

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These employees whose contract allows for a two-hour call-in pay will be paid that amount, but no additional plus or minus hours will be issued.

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(d) The following guidelines are furnished to department heads of union groups with respect to employees in their department who present themselves in the regular way for regular employment during the strike or work stoppage. Any employee in the department who is able and willing to work and presents himself for work in the department at the usual and customary time and place shall be permitted to work conditioned upon the following:

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(1) That the regular or customary work to which such employee is normally assigned is available and that such employee can discharge his normal duties.

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(2) That the equipment which such employee normally uses is available and operating, if equipment is necessary for such employee normally in the discharge of his duties.

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Sec. 82-9.—8. Application to employees of boards, commissions.—

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The classification and compensation provisions of this chapter shall apply to employees of all boards and commissions after the governing bodies thereof so approve by resolution duly adopted.

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Sec. 82-10. ~~9.~~ *"Employee" defined.*

The term "employee" whenever used in this chapter shall include all officers, supervisors, and department and division heads of the city except those excluded under section 82-23.

~~Secs. 82-11-82-20.~~ Reserved.

ARTICLE II. - POSITION CLASSIFICATION

Sec. 82-21. - *Division of offices.*

All offices in the public service in the city shall be divided into two (2) classes, namely, the classified and unclassified service.

(a) *Unclassified positions.*

- (1) All officials elected by the people.
- (2) Election officials appointed pursuant to Sec. 7.30, Wis. Stats. ~~§ 7.30.~~
- (3) All officers, members or employees of city boards, commissions, utilities or authorities.
- (4) All employees appointed by the mayor and/or common council, ~~with the exception of the position of secretary to the mayor.~~
- (5) Other positions designated by the common council as unclassified.
- (6) All employees in the unclassified service except those excluded under section 82-23 shall be governed by this chapter and the same provisions relating to the classified service with respect to hours, paid time off ~~("PTO"),~~ holidays, political activities, unlawful acts, all as provided in this chapter.

(b) *Classified positions.* All other offices and positions not designated otherwise shall be included in the classified service, with the exceptions of such employment or positions relating to temporary, seasonal or part-time work or work created for relief purposes.

Sec. 82-22. - *Establishing classifications.*

All positions in the municipal service, except those listed in section 82-23, shall be grouped into classes and each class shall include those positions sufficiently similar in respect to their duties and responsibilities so that similar requirements as to training, experience, knowledge, skill, personal qualities, and the same rates of compensation are

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applicable thereto. The civil service status of positions is not affected by their inclusion or exclusion from the provisions of this section.

Sec. 82-23. - ~~Excluded positions.~~

The provisions of this chapter (except sections 82-65 and 82-76) shall not apply to the following offices and positions:

- (a) Officers of the city government who are elected by the voters of the city, except that compensation as provided in section 82-61.
- (b) Members of city boards and commissions and members and employees of city utilities and authorities.
- (c) Officers and employees of the library board.
- ~~(d) Harbor master.~~
- (e) (d) Officers and employees subject to the jurisdiction of the municipal water utility department and paid from the funds of such department.

Sec. 82-24. - ~~Allocating existing positions.~~

~~The allocation of individual positions to standard classes and any reallocations which may be required subsequently shall be made by the common council.~~

Sec. 82-25. - ~~Hiring of new employees generally.~~

- (a) When any department head learns that a vacancy has occurred or is about to occur in any full-time position in the city service in his ~~or her~~ department, except ~~those employees of city boards, utilities or authorities,~~ positions excluded pursuant to Section 82-23, he or she shall forward a written request, ~~along with the city administrator's recommendation, justifying the filling of the vacancy to the~~ to the director of human resources department. ~~If and labor relations to fill the vacant position is already part of the department's~~ for approval.
- (b) Once approved, the director of human resources and labor relations shall forward the approval to the city administrator, who may make any modifications to the table of organization ~~and included in the~~ (including numbers of employees) and job descriptions he or she deems appropriate which are cost-neutral with regard to the city budget.
- (c) Upon notice from the city administrator that all such changes have been made, the director of human resources ~~department may~~ and labor relations shall proceed with the hiring process and fill the position. If filling the vacant position ~~is not budgeted, approval needs to be granted by~~ necessitates a modification to the budget,

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the director of human resources and labor relations shall request the finance and personnel committee. ~~Within 30 days after receipt of such request, the finance and personnel committee shall approve or reject the request in writing. If refused, authorize filling the reason should be stated for such refusal. Any department head may appeal any decision made under this section to the common council. If approved by either the position as part of the budget transfer process.~~ If the finance and personnel committee ~~or~~ fails to approve filling the position, it shall set forth its reasons in writing, and the affected department shall have the right to appeal the decision to deny to the common council, ~~certification.~~

(a)(d) The filling of any vacant position pursuant to this section shall be ~~made~~certified in accordance with the following procedure:

(1) When filling a vacancy by selection of an eligible candidate from a list established on the basis of an open competitive examination, the appointing authority, subject to the approval of the director of human resources and labor relations, may specify requirements of particular experience, education, skill and/or physical requirements necessary for successful performance. The director of human resources and labor relations shall certify the name or names of those persons categorized as best qualified to fill the vacancy in accordance with these requirements, and civil service rules and regulations. The appointing authority shall make ~~the~~his or her appointment from those certified.

(2) In promotional examinations, appropriate consideration shall be given to employee qualifications, record of performance and ability.

(3) For protective service vacancies, the selection shall be in accordance with police and fire commission regulations and any labor agreement or applicable department policy.

(4) The appointing authority, subject to the approval of the director of human resources and labor relations, may make a provisional appointment from an eligible list in accordance with ~~items (1) or (2) of this subsection (a)~~ even though the incumbent has not yet vacated the position provided approval has been received in accordance with this subsection ~~(a)~~. The eligible person so appointed will be accorded all the benefits of a regular appointee and shall retain all rights of certification to the permanent appointment.

Sec. 82-26. ~~25.~~ *Abolition of positions generally.*

Whenever in the judgment of the city administrator or the common council it becomes necessary in the interest of economy, lack of work or funds, or other just causes to abolish any position in the classified service, the person filling such position shall cease to be employed. Where the number of

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employees in a class code is reduced, ~~the appointing authority shall~~city administrator may consider seniority, performance appraisals, conduct, skill, and ability in determining the order of layoff, except where otherwise provided for in labor agreements entered into by the city. Qualifications, skill and ability, and work performance are given greater weight than seniority in the event of a reduction in force. If all things are equal, seniority will be the determining consideration. Regarding seniority, years of service as a full-time employee are calculated. Part-time service will be given prorated credit. For example, an employee who worked ~~20~~twenty hours per week average will be given credit for one-half- (1/2) year of service.

Sec. 82-27. ~~26.~~ Agreements authorized.

(a) The director of human resources and labor relations is authorized and empowered to enter into reciprocal agreement within the approved budgetary limitations for the use of equipment, materials, facilities, and services with any agency or body for the benefit of the public personnel system.

(b) The director of human resources and labor relations may enter into agreements with other governmental agencies charged with public personnel administration in conducting personnel tests, recruiting personnel, establishing eligibility lists, labor relations services, and the interchange of personnel.

Sec. 82-28. ~~27.~~ Class specifications - Purpose and effect.

Each class specification shall outline the main characteristics and qualification requirements of positions in the class and give examples of specific duties which employees holding such positions may properly be required to perform. The class specification is descriptive and explanatory but not restrictive. The listing of particular examples of duties does not preclude the assignment of other tasks by the department head or designated supervisory personnel.

Sec. 82-29. ~~28.~~ Class specifications - Amendments.

~~Class specifications for newly created positions shall be approved by the common council. Any additions or deletions in the class specifications which change the class grade or any substantive changes in the minimum requirements of existing positions shall also be approved by the common council. Other changes in the class specification shall be made by the finance and personnel committee.~~

Sec. 82-30. ~~Class specifications -~~ Statements of qualifications.

The statement of qualifications in a class specification is intended to be used as a guide in selecting persons for examinations and employment, for preparing examinations and for use in determining the relative value of positions in a class with positions in other classes. In addition, the director of human resources and labor relations will establish minimum standards for all other factors as may be held to relate to the ability of

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the candidate to perform with reasonable efficiency.

Sec. 82-31. ~~29.~~ *Class specifications - Applying specifications to positions.*

In determining the class to which a position should be allocated, the specification of each class shall be considered in its entirety and in relation to the specifications of the classes in the classification plan.

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Sec. 82-32. ~~30.~~ *Classification plan.*

The classification plan shall consist of the classes referred to in section 82-~~33~~31, with such changes as may be approved by the council. All positions in each class shall be compensated in accordance with the class grade for each class as shown in section 82-~~33~~31 and the rates for such class grades referred to in section 82-54.

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Sec. 82-33. ~~31.~~ *List of classes and class specifications.*

The ~~occupational list of classes~~ (classification schedule shall include a table of organization) and compensation grade schedules showing the ~~class~~ position title, ~~class grade~~ pay scale, and compensation ~~grades~~ of the all positions of employment in the city service to which the provisions of this section shall apply ~~are set forth and numbered as section 82-33~~. An updated copy of said table of organization shall be annually in the ~~supplement to this~~ Codenon-represented compensation plan. Additionally, a copy of the table of organization shall be kept on file in the city ~~clerk's~~ clerk's office.

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Secs. 82-32 - ~~82-34~~ 82-50. - Reserved.

ARTICLE III. - COMPENSATION PLAN

Sec. 82-51. - *Compensation limited.*

No provision of this article shall be construed as authorizing any increase in salary or wage during a fiscal year which would result in exceeding appropriations made for such purpose. No city employee shall retain any fees or compensation received by virtue of his employment with the city other than authorized by the common council; such fees shall be paid into the city treasury.

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Sec. 82-52. - *General payroll procedure.*

The director of human resources and labor relations shall make ~~such~~ necessary changes in the payroll procedure, establish hourly rates based on the number of hours to be worked and the amount earned, and make such other incidental changes not in conflict with this chapter.

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Sec. 82-53. - *Full-time earnings basis.*

The biweekly rates of pay are based on full-time employment at normal

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working hours for the respective classes of positions as referred to in section 82-3331; provided, however, that the salaries of non-represented supervisory, professional and administrative positions ~~listed as department and division heads in section 82-70~~ exempt under the federal Fair Labor Standards Act are fixed according to the responsibilities to be fulfilled and are not based on a fixed number of hours of work per week and shall not be adjusted with variations in work schedules, unless part-time employment is specifically provided.

Sec. 82-54. - *Salary and wage schedules.*—

Salary and wage schedules with hourly rates and straight-time yearly rates for a full-time employee (full-time for the calculation of a yearly rate is ~~40~~ forty hours per week, 2,080 per year) for all salary grades in the city service to which this article shall be applicable are established and listed in the non-represented compensation program on file in the human resources department.

Sec. 82-55. - *Base salary of police and fire personnel.*—

The base salary of police shall include reporting time. In addition, the base salary of police and fire personnel shall include a prorated amount of holiday pay ~~and reporting time~~ per pay period.

Sec. 82-56. - *Biweekly payment of earnings.*—

Except for elected officials and employees covered under a valid collective bargaining agreement providing otherwise, all salaries and wages shall be paid biweekly for salaries and wages earned during the biweekly period preceding the most current biweekly period (i.e. two-week holdback).

Sec. 82-57. - *Acting pay for non-represented employees.*—

(a) When a temporary vacancy occurs of more than two calendar weeks but less than six months, in a non-represented position, the director of human resources and labor relations, in consultation with the affected department head, may recommend to ~~chief administrative officer~~ the city administrator an appropriate subordinate non-represented employee to fill the position on an "acting" basis for the duration of the temporary vacancy. Positions in the transit, police and fire departments require the approval of the respective commissions. If the subordinate is in a lower salary grade, while serving in such an "acting" capacity, the subordinate shall receive additional compensation for the additional work assigned. ~~When partial responsibilities are assigned, a five percent increase will be awarded (five percent of the acting employee's current pay). For full duty assigned responsibilities, a ten percent increase will be awarded.~~ is assigned when acting in full-capacity; a reduced amount will be issued for limited acting duties or when partial duties are assigned. This amount will be issued ~~until after a full-time replacement has been named and starts~~ in the form of a lump-sum for all acting time. In no case shall the

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temporary increase in pay be greater than the salary of the person who left.

- (b) ~~After one year,~~ (b) Within six months of the beginning of a temporary vacancy, the City Administrator will determine whether the opening will remain or a change in the table of organization needs to be made, and will inform the employee ~~shall~~ filling the position on an acting basis as to the status of the replacement. The employee may be reclassified to the position he/she is actually performing. In case of such a reclassification, his or her pay will be adjusted to match the new ~~position, and classification~~ based on the ~~employee's~~ employee's performance ~~shall be reevaluated for pay purposes.~~

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Sec. 82-58. ~~Worker's~~ *Worker's compensation.*

A full-time or permanent part-time city service employee, except ~~these employees~~ an employee of the board of water commissioners, who sustains a compensable injury while performing within the scope of his or her employment as provided by ~~W.S.A. Ch. Chapter~~ 102, Wis. Stats. ~~(Worker's~~ Worker's Compensation Act), shall receive compensation in accordance with state statutes. The first three days of a lost time injury will be unpaid, after which the employee will receive his/her eligible amount of compensation directly from the ~~city's~~ city's third party administrator for ~~worker's~~ worker's compensation.

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Sec. 82-59. ~~Temporary, seasonal employees.~~

- (a) (a) Temporary or seasonal employees shall be paid in accordance with the ~~"extra help schedule"~~ "extra help schedule" and amendments thereto ~~as passed and prepared annually by the common council and filed in the~~ director of human resources ~~department and labor relations.~~

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- (b) (b) Temporary or seasonal employees who return to the same department and perform essentially the same duties, may be advanced in pay within the pay grade based upon satisfactory service and the recommendation of the department head. Returning seasonal employees will not be paid greater than the amount listed as top-pay for ~~"extra help."~~

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Sec. 82-60. ~~Car allowances.~~

Officers or employees who are required to use their privately owned automobiles in the conduct of city business are entitled to reimbursement on a per mile basis equal to per mile basis approved by the Internal Revenue Service for income tax purposes. Official increases or decreases announced by the Internal Revenue Service will not be retroactive but shall be effective on the first of the month following the announced increase or decrease by the Internal Revenue Service. To be eligible for reimbursement, an employee must comply with the expense reimbursement policy.

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Sec. 82-61. ~~Elected officials.~~

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The finance and personnel committee shall recommend for common council approval the initial salary for all ~~full-time~~ elective positions and any and all in-term increases for same at least ~~13~~thirteen months prior to the election date for each office. The common council shall act on such recommendations and establish the salaries for full-time elective positions not later than the final meeting of the council year preceding the year of election.

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Sec. 82-62. ~~Adjustment.~~ *Starting rates on initial employment.*

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~~The biweekly and hourly rates for different classes of positions which are prescribed in this article shall be changed only upon amendment by the common council.~~

Sec. 82-63. ~~Starting rates on initial employment.~~

Original hires who have all the qualifications to any position shall be offered the minimum pay for that position. In the case where a potential employee has the majority of qualifications, that employee may be offered an amount less than minimum until the point that he/she achieves the qualification, at which time the employee will be brought to the minimum. In the case an employee is hired who already has advanced training and/or experience required for a position, the initial rate offered upon hire may be greater than minimum but ~~will be within~~ no greater than the ~~range~~ top of a position. ~~At any time a the salary offer is identified that is greater than midpoint of a salary range, the director of human resources and labor relations must attain advance~~ range, subject to the approval from the ~~finance and personnel committee~~ city administrator for a salary that is at or over market rate/mid-point in the range. At no time will an employee receive greater than the top pay in a salary grade (with the exception of those who whose wage is greater than the maximum salary for that employee's classification and where the position has not been revised to another pay grade; in such a situation, the employee's salary shall be frozen until such time that an adjustment in the market rate causes his or her salary to fall under the maximum for the classification range.

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Sec. 82-64. ~~63.~~ *Starting rates on new position.*

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Whenever an employee is assigned a ~~duty in a~~ position not previously held by him and such change is not in the nature of a promotion, he or she shall receive the entrance rate in the range established for such position or such other rate within the applicable range as he or she may be entitled to by reason of crediting him in his new position with such prior service that is found to meet the following conditions: The character and nature of the duties of the position to which the employee was assigned are similar to those of the new position; and the service in the former position provided experience valuable to the performance of the new position.

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Sec. 82-65. ~~64.~~ *Starting rates on promotion.*

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In any case where an employee is promoted to a class with a higher pay

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range, the entrance rates shall be at no-less than the minimum base pay in the applicable range as he or she may be entitled to by reason of crediting him with prior experience that is directly related to the new position, except as otherwise provided for in any labor agreements approved and passed by the council.

Sec. 82-66.—65. *Starting rates on demotion.*

Whenever an employee is demoted to a position for which he or she is qualified, be it voluntary or involuntary, he or she shall receive be compensated at a decrease in pay of \$1.25 per hour, but rate not less than the minimum pay for the new position.

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Sec. 82-67.—66. *Increases in compensation.*

(a) The director of human resources and labor relations has the authority to identify ~~minor~~necessary adjustments to position descriptions ~~without approval from the finance and personnel committee and/or council. However, major~~. The city administrator must approve any substantive changes in position descriptions which ~~subsequently modify the salary grades to city employees~~the job description, including ~~department heads and supervisory personnel, shall be approved by both the finance and personnel committee and by the common council~~, salary grade changes necessary to reflect market value.

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(b) Department heads requesting consideration for modifying a salary grade must complete the appropriate reclassification request form to properly document the specific information requested for consideration and keep a record of the reasons for the justified change, if any.

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Sec. 82-68.—67. *Continuity of service.*

(a) Service requirements for advancement within compensation ranges, and for other purposes as specified in this article, shall have the implication of continuous service, which means employment in the city service without break or interruption. Leaves of absence without pay of less than ~~30 workdays and leaves with pay shall not interrupt continuous service nor be deducted therefrom~~thirty workdays and leaves with pay shall not be considered interruptions of continuous service, nor shall the length of time of such leaves be deducted from the length of continuous service. However, leave of absence of greater than thirty days may reduce performance increase amounts unless that leave is protected by law, including but not limited to coverage by a qualified Family Medical Leave Act certification or by military leave pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994.

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(b) Except as otherwise provided under federal or state law and regulations for covered absences for service in the ~~Armed~~

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Forces armed forces of the United States, absences shall not be deducted in compiling total service, but shall not serve in the calculation of current benefits pursuant to continuous service. For example, vacation calculation is earned by actual time worked the previous year. Though the employee will receive his/her original hire date for the vacation scheduled (total number of years served will not be deducted while serving), only the actual time worked on the city job will be used in the prorating of earned vacation upon return from active duty.

- (e) (c) Qualified family medical leave absences (FML) will not disrupt an ~~employee's~~ employee's continuity of service. Any identified pay increase that would have occurred while the employee was out on FML would become effective upon the date of return from the leave, i.e. retroactive pay would not apply.

Sec. 82-69. — 68. *Overtime for non-represented employees.* —

- (a) (a) The normal work schedule for full-time, nonexempt employees is five eight-hour periods, totaling ~~40~~forty hours per week. This schedule may be revised as necessary depending on customer and/or city requirements, as determined by management. Each employee needs to work with their supervisor to define the expected hours of work. Employees may need to flex their schedule to maintain a ~~40~~forty hour work week. The time flexed must be approved in advance by management and be contained within a two-week, 80-hour payroll cycle. If an employee flexes their schedule during the ~~40~~forty-hour work week, time worked in excess of eight hours a day can only be taken on an hour-for-hour basis. In other words, if an employee works ten hours on Monday, the additional two hours flexed on Monday may be taken off later in the week at straight-time hours, not time-and-one-half. Employees may not save (bank) additional time off for use in another pay period. If customer and/or city requirements prevent an employee from utilizing their flexed time, the employee will be paid overtime for hours worked in excess of ~~40 hours in a week~~forty-hours in a week. Holiday time issued in a work-week is viewed as work time for the purposes of calculating overtime pay.

- (b) (b) Exempt employees are full-time employees who ~~normally~~ work a minimum of ~~40~~forty hours per week. Due to the executive, administrative or professional nature of these positions, exempt employees are paid a defined salary for their position rather than an hourly rate. Therefore, if the position requires additional hours (over ~~40~~forty) during the work week, those who hold exempt positions are expected to perform their duties as part of their work week. The additional time worked is considered part of the position expectations and is exempt from overtime pay.

- (e) (c) Overtime compensation for nonexempt salaried and hourly full-time, part-time seasonal and temporary employees will be paid for hours worked in excess of ~~40~~forty hours per week in accordance with

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applicable laws. Holiday time issued during a week counts as time worked for overtime purposes.

(d) Exempt employees under the fair labor standards act and elected officials will not receive overtime pay.

Sec. 82-70.—69. *Non-represented, exempt employees.*—

The following non-represented employees are exempt under the City of Sheboygan adheres to the requirement of the federal Fair Labor Standards Act+

~~Attorney Department~~

~~City attorney (elected)~~

~~Assistant city attorney~~

~~Assessor Department~~

~~City assessor~~

~~City Administrator Department~~

~~City administrator~~

~~Finance Department~~

~~Finance director~~

~~Comptroller/treasurer~~

~~Auditor/analyst~~

~~Accountant~~

~~Public Works Department~~

~~Director of public works~~

~~City engineer~~

~~Superintendent — WWTP~~

~~Superintendent of streets~~

~~Superintendent~~ ("FLSA") relating to the exempt employment status of parks

~~Superintendent~~ an employee. To qualify for the executive employee exemption, all of ~~buildings and grounds~~ the following tests must be met:

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~~Maintenance supervisor — WWTP~~

~~Vehicle and equipment supervisor~~

~~Supervisor of operations — Streets~~

~~Environmental engineer~~

~~Chemist — WWTP~~

~~Naturalist~~

~~Fire Department~~

~~Fire chief~~

~~Assistant fire chief~~

~~Deputy chief~~

~~Battalion chief~~

~~City Clerk's Department~~

~~City clerk (elected)~~

~~Police Department~~

~~Chief of police~~

~~Administrative assistant/office supervisor~~

~~Human Resources Department~~

- Director** (a) The employee must be compensated on a salary basis (as defined in the federal regulations related to the FLSA) at a rate not less than \$455 per week;
- (b) The employee's primary duty must be managing the enterprise or managing a customarily recognized department or subdivision of the enterprise;
- (c) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and,
- (d) The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.

The director of human resources

~~Benefits analyst~~

~~City Development Department~~

~~Director of city development~~

~~Planning and zoning manager~~

~~Community development specialist~~

~~Neighborhood development planner~~

~~Information Technology Department~~

~~Information technology director~~

~~Systems analyst~~

~~TV programmer director - WSCS~~

~~TV production coordinator - WSCS~~

~~Parking and Transit Utility~~

~~Director of parking labor relations shall maintain and transit~~

~~Transit operations supervisor/dispatch~~

~~Senior Services Department~~

~~Director~~ regularly update a list of ~~senior services~~ each position that qualifies for the executive employee exception under the FLSA.

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~~Municipal Court~~

~~PT municipal court judge (elected)~~

~~Mayor's Office~~

~~Mayor (elected)~~

Sec. 82-71. ~~70. Hours of employment.~~

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(a) Except as otherwise provided, the standard work week for regular, full-time employees of the city will be ~~40~~ forty hours, but this is not construed to mean a guarantee of minimum hours of work or a limitation of the number of hours which the city may require an employee to work.

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(b) The work week, except as otherwise provided, will commence at 12:01 a.m. Sunday morning and end at 11:59 p.m. Saturday night.

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(e) (c) The work day, except as otherwise provided, shall be from 12:01 a.m. to 12:00 midnight.

Sec. 82-72. — 71. *Administration and records.* —

(a) (a) In emergencies, a department head may prescribe reasonable periods of overtime work to meet operational needs. Such overtime shall be justified as required by the appointing authority concerned.

(b) (b) All non-exempt and hourly employees in the city service are required to enter their time worked daily in an electronic timekeeping system under their personal login codes, or complete a timecard and sign the card for authenticity. This may include requests for paid time off.

Sec. 82-73. — 72. *Computation generally.* —

Overtime payment is based on the ~~employee's~~ employee's regular rate of pay as defined in the federal Fair Labor Standards Act.

Secs. 82-74-73 - 82-90. - Reserved. —

ARTICLE IV. - LEAVE PROGRAM —

Sec. 82-91. - *General rules applying to all leaves of absence in this article.* —

(a) (a) *Restrictions on granting.* Leaves of absence shall not be granted to any employee to accept another position or engage in a business venture or to practice a profession or occupation. A leave of absence which has been granted for any other reason shall automatically be terminated should it be found that the employee on such leave has accepted another position or has engaged in a full-time business venture, profession or occupation. These restrictions shall not apply, however, in any of the following situations:

(1) (1) If the employee affected has been appointed or elected to a position in the service of the City of Sheboygan, County of Sheboygan, State of Wisconsin, or the United States.

(2) (2) If the employee in question has been inducted into the Armed Forces of the United States.

(b) (b) *Failure to return or revocation of leave.* Failure to report at the expiration of a leave of absence or if a leave has been disapproved or revoked shall be cause for separation from active employment (termination of employment) unless a justifiable reason is submitted within ten days after said expiration, disapproval or revocation, which is acceptable to the granting authority

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concerned.

Sec. 82-92. - *Leaves of absence without pay.*-

The ~~chief administrative officer~~ city administrator may authorize special leaves of absence without pay and fringe benefits on the prescribed form for any period or periods not to exceed three calendar months in any one calendar year for purposes other than provided in this article that are deemed beneficial to the city service.

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Sec. 82-93. - *Training leave.*-

(a) (a) Leaves of absence with pay may be granted in accordance with subsection (b) for attendance at a college, business school, or training institute for the purpose of training in subjects directly related to the work of the employee and which will benefit the city service.

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~~(b)~~

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(b)

(1) For periods not to exceed three calendar weeks in any one calendar year, with the approval of the city administrator.

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(2) For periods exceeding three calendar weeks but not exceeding ~~12~~ twelve calendar weeks, upon the recommendation of the city administrator, subject to the approval of the finance and personnel committee.

Sec. 82-94. - *Jury duty.*-

Employees who are subpoenaed and serve on jury duty on an involuntary basis on any days which are scheduled workdays for them shall be excused for the time spent in jury service and ~~shall receive their regular rate of pay for said time served on jury duty, not to exceed 60 days per calendar year, subject to the following provisions:~~ will receive pay continuation (not to exceed a total of 8 hours per day or forty hours per week) for the time they actually serve on jury duty, including any time they are required by the court to be immediately available. Employees shall only be eligible for pay continuation on days they are actually ordered to report for jury duty.

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(a) The employee must present proof of jury duty service, stating the dates and hours per day served on jury duty.

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(b) ~~The employee~~ Other than mileage or meal money, employees shall immediately endorse his/her check for such jury service over to the finance director/treasurer for deposit into the proper fund.

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(c) When the employee is excused ~~from~~ for jury service, either temporarily or permanently, the employee shall report back to work

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within one hour to complete his/her shift.

Sec. 82-95. - *Departmental leave.*—

In addition to other leaves authorized by the provisions of this article, a department head may authorize an employee to be absent without pay for personal reasons for a period or periods not to exceed ten working days in any calendar year.

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Sec. 82-96. - *Special leave.*—

The council, upon the recommendation of the ~~chief administrative officer~~ city administrator, may grant leaves of absence with or without pay in excess of the provisions of this article for the purpose of attending extended courses of training at a recognized university or college and for other purposes that are deemed beneficial to the city service.

Sec. 82-97. - *Unauthorized absence.*—

An employee who is absent from duty shall report the reason therefor to his supervisor prior to the date of absence, when possible, and in no case later than noon on the first day of absence (emergency situations aside). All unauthorized and unreported absences shall be considered absence without leave and deduction of pay shall be made for the period of absence unless the supervisor approves the absence. Unapproved absences may be made the grounds for disciplinary action, up to and including termination, even on the first offense.

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CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 158-19-20 by Alderpersons Donohue and Bohren authorizing the Director of Information Technology to enter into a Managed Print Services Agreement with MBM.

REPORT PREPARED BY: Eric Bushman, Information Technology Director

REPORT DATE: February 12, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The City of Sheboygan entered into a similar agreement in 2017, the agreement has expired. The new agreement has a \$21 (3 percent) increase per month and locks pricing for 36 months.

STAFF COMMENTS:

The City is looking to enter into this three-year agreement to supply printer supplies, excluding paper, and printer maintenance to our existing 59 desktop printers. This service frees up City IT resources to focus on other service needs.

ACTION REQUESTED:

Motion to recommend the Common Council adopt Res. No. 158-19-20 authorizing the Director of Information Technology to enter into a Managed Print Services Agreement with MBM.

ATTACHMENTS:

- I. Res. No. 158-19-20
- II. Managed Print Services Agreement

III

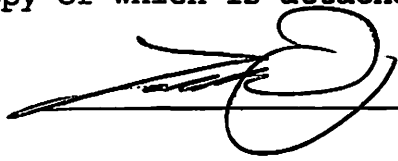
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Res. No. 158 - 19 - 20. By Alderpersons Donohue and Bohren.
February 3, 2020.

A RESOLUTION authorizing the Director of IT to enter into a Managed Print Services Agreement with MBM.

RESOLVED: That the Director of IT is hereby authorized to enter into the Managed Print Services Agreement, a copy of which is attached hereto.

Finances
Personnel



I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

1/16/20
Cost/Term



A Xerox Company

MBM Managed Print Service Proposal

City of Sheboygan

Presented by: Scott Janssen



A Xerox Company

www.mbm360.com ■ 1.800.236.5600

MBM Managed Print Service Proposal

Prepared for: Scott Janssen

36 Month MPS Agreement

Base Payment per Month \$691.50

Summary of Prints Included and Additional Image's Costs

Networked Device Black Prints Included per Month In Base Payment:	42,000
Black Print's Cost per Print:	\$0.0120
Networked Device Color prints included per Month In Base Payment:	1,500
Color Print's Cost per Print:	\$0.1250

Devices Included in Proposal

Networked printers:	59 Units
Black flat rate printers:	None
Color flat rate printers:	None
Thermal Label flat rate printers:	None

MBM Service Level Agreement

Service: MBM shall provide all service necessary to keep client's fleet of Covered Equipment in good working order in accordance with our Managed Print Services Agreement.

Supplies: As part of the service provided, MBM will provide all toner and other consumables (drums, waste toner cartridges, maintenance kits) required to keep the covered equipment operational. This agreement does not include paper or staples. Toner supplied through this agreement is for the exclusive use of the covered equipment included under the MBM agreement.

4 Hour Response Time: MBM commits to an average service response of 4 hours or less on a quarterly basis across the entire covered fleet. Response time shall be calculated from the time the customer call is placed with our Customer Care Center until the time the technician arrives on-site. Response times are calculated between 8 a.m. and 5 p.m. local time, Monday through Friday, excluding holidays.

Parts Availability: MBM technicians will have parts on hand to complete no less than 9 out of 10 service calls while on site. Each MBM technician averages over \$8000.00 in car stock parts.

Device Replacement Policy: For devices covered under an agreement, MBM will guarantee performance of the equipment for seven years from the manufacturer's introduction date. In the event that a device is not serviceable, MBM will provide a loaner device, with similar features and capabilities, for the remainder of our MPS Agreement. Our policy is summed up best by "if we can't fix it, we will replace it with a free loaner."

Uptime Performance: MBM commits to a minimum average of 99% device uptime based on a 40 hour week; 52 weeks a year on MBM covered equipment.

Automated Meter Collection: MBM will provide its 360App software to electronically collect meter and supply information for all networked devices.

Confidential Proposal Valid Until: January 31, 2020



A Xerox Company

MANAGED PRINT SERVICES AGREEMENT
MBM - A Xerox Company
620 N Lynndale Drive, Appleton, WI 54914
Phone: 1-800-236-5600

Customer Name: City of Sheboygan
Address: 828 Center Ave
City/State/Zip Sheboygan, WI

Base Payment:

Customer shall pay a base payment per Month of: \$691.50

Devices included:

The Agreement includes coverage of the devices on this Agreement's Equipment List and any Equipment added as allowed herein.

Networked Device Black A4 images included:

The first 42000 black prints per Month

Charge for Black A4 Images:

Networked Device Black images in excess of 42000 per Month shall be charged at the rate of: \$0.012 per print

Networked Device Color A4 images included:

The first 1500 color prints per Month

Charge for Color A4 Images:

Networked Device Color images in excess of 1500 per Month shall be charged at the rate of: \$0.125 per print

Flat Rate Printers Included:

Black Devices: None Color Devices: None Thermal Label Devices: None

Term of Agreement:

The term of this Agreement shall be 36 months from Our acceptance of this Agreement.

*The per image rates, including the images covered by the base payment, of this Agreement are fixed for the initial Term of

CUSTOMER ACKNOWLEDGES RECEIPT OF THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH CONSISTS OF 2 PAGES, INCLUDING THIS FACE PAGE. THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY US. YOU CERTIFY ALL ACTIONS REQUIRED TO AUTHORIZE EXECUTION OF THIS AGREEMENT, INCLUDING YOUR AUTHORITY, HAVE BEEN FULFILLED.

CUSTOMER: (As Stated Above)

Signature:
Print Name:
Title:
Date:

COMPANY: Merizon Group, Inc. (d/b/a MBM)

Signature:
Print Name:
Title:
Date:
Effective Date:(Office Use Only)

MANAGED PRINT SERVICES AGREEMENT TERMS AND CONDITIONS

1. **SERVICES.** Throughout this Agreement the words "We," "Our," "Us" and "Company" refer to MBM. The words "You" and "Your" refer to the Customer indicated on the face page of this agreement. This Agreement covers both the labor and materials for adjustments, repairs, and replacement of parts necessitated by normal use of the Equipment listed on the Equipment List of this Agreement. ("Services"). Services do not include the following: (a) repairs due to (i) misuse, neglect, or abuse (including, without limitation, improper voltage or use of supplies that do not conform to the manufacturer's specifications); (ii) use of options, accessories or products not provided by Company; (iii) non-Company alterations, relocation, service or supplies; (iv) loss or damage resulting from accidents, fire, water, or theft; (v) non-Company installation of operating systems, print drivers, and software or hardware; (b) maintenance requested outside Company's normal business hours, (c) relocation, (d) hard drive replacement, (e) MICR toner, (f) parts, supplies, and labor for all ink-jet A4 and A3 devices, (g) print heads for wide format and thermal label printers. Replacement parts may be new, reprocessed, or recovered. Supplies provided by Company are in accordance with the manufacturer's stated yields and do not include staples, paper or labels. Supplies are to be used exclusively for the Equipment and remain Company property until consumed. You will return, or allow Company to retrieve, replacement devices provided by Company, unused or surplus supplies at any time including the termination/expiration of this Agreement. You are responsible for the cost of excess supplies. You authorize Equipment to be connected to automatic meter reading software and/or device or, if We otherwise request, You will provide Us with accurate meter readings for each item of Equipment when and by such means as We request. If You do not permit the Company to use automatic meter reading software and/or devices, Company may charge a monthly fee for manually processing meter reads. If You do not provide meter reads as required, Company may estimate the reading and bill accordingly. You shall provide adequate space and electrical service for the operation of the Equipment in accordance with UL and/or manufacturer's specifications. Supplies will be shipped via UPS Ground or ground carrier selected by MBM. Special processing fees may be billed to the customer for any shipping method other than those described above. Additional fees may be charged for Services provided outside Company's normal business hours or for computer/network issues and will be at Company hourly rates in effect at the time of Service. If, at any time during the Term of this Agreement, Customer upgrades, modifies, or adds equipment, Customer shall promptly notify Company. Company maintains the right to inspect any upgrades and modifications to Equipment and/or additional equipment and, in its sole discretion, determine whether equipment is eligible for Service. If approved by Us, the Agreement will be amended by Us to include such changes, including pricing modifications. Unless otherwise agreed to in writing, Customer remains solely responsible for any and all Customer data stored within the Equipment and the removal of such data upon termination of this Agreement.

2. **TERM AND PAYMENT.** Except as otherwise provided for herein, this Agreement is non-cancelable and will commence on the start date indicated on the face of this Agreement and remain in effect throughout the Term. Unless notified in writing sixty (60) days prior to its expiration, this Agreement shall automatically renew for additional one (1) year periods. You agree to pay Company the Base Payment, if applicable, and all other sums when due and payable. Any Base Payment will be billed in advance. In addition, You agree to pay any applicable excess image rate for each Print/Copy which amount shall be billed in arrears and is payable as indicated on the face of this Agreement. Each Flat Rate device covered by this Agreement, excluding thermal label printers, includes no more than \$15.00 in images for black devices and \$65.00 in images for color devices per month. For Flat Rate image calculations we will use the applicable networked device image rates on the face of this Agreement. Any Flat Rate and Networked device image allowances are independent of each other. A Print/Copy is defined as standard 8.5"x11" copy. Scans, in excess of prints/copies, may be subject to Overage Rates. Your obligation to pay all sums when due shall be absolute and unconditional and is not subject to any abatement, offset, defense or counterclaim. If any payment is not paid within 30 days of its due date, a 1% per month (12% per year) late payment fee will be assessed on any unpaid balance. Company has the right to withhold service and supplies, without recourse, for any non-payment. Unless otherwise stated on the face of this Agreement, the Company may increase rates on an annual basis, in an amount not to exceed 15%. Company retains the right to have all or some of the amounts due hereunder billed and/or collected by third parties.

3. **TAXES.** Payments are exclusive of all state and local sales, use, excise, privilege and similar taxes. You will pay when due, either directly or to Us upon demand, all taxes, fines and penalties relating to this Agreement that are now or in the future assessed or levied.

4. **WARRANTY:** You acknowledge that the Equipment covered by this Agreement was selected by You based upon Your own judgment. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF NON-INFRINGEMENT; IMPLIED WARRANTIES OF MERCHANTABILITY; OR, FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE SPECIFICALLY AND UNRESERVEDLY EXCLUDED. IN PARTICULAR, BUT WITHOUT LIMITATION, NO WARRANTY IS GIVEN THAT EQUIPMENT IS SUITABLE FOR PURPOSES INTENDED BY CUSTOMER.

5. **LIMITATION OF LIABILITY.** In no event, shall Company be liable for any indirect, special, incidental or consequential damages (including loss of profits) whether based in contract, tort, or any other legal theory and irrespective of whether Company has notice of the possibility of such damages.

6. **DEFAULT; REMEDIES.** Any of the following events or conditions shall constitute an Event of Default under this Agreement: (a) failure to make payment when due of any indebtedness to Company or for the Equipment, whether or not arising under this Agreement, without notice or demand by Company; (b) breach by You of any obligation herein; or (c) if You cease doing business as a going concern. If You default, Company may: (1) require future Services, including supplies to be paid in advance, (2) require You to immediately pay the amount of the remaining unpaid balance of the Agreement, (3) terminate any and all agreements with You, and/or (4) pursue any other remedy permitted at law or in equity. In the Event of Default, remaining payment amounts due will be calculated using the average of the last six months' billing periods or the face value of this Agreement, whichever is greater, multiplied by the remaining months of the Agreement. You agree that any delay or failure of Company to enforce its rights under this Agreement does not prevent Company from enforcing any such right at a later time. All of Company's rights and remedies survive the termination of this Agreement. In the event of a dispute arising out of this Agreement or the Equipment listed herein, should it prevail, Company shall be entitled to collection of its reasonable costs and attorneys' fees incurred in defending or enforcing this Agreement, whether or not litigation is commenced.

7. **ASSIGNMENT:** You may not sell, transfer, or assign this Agreement without the prior written consent of Company. Company may sell, assign or transfer this Agreement.

8. **NOTICES:** All notices required or permitted under this Agreement shall be by mail to such party at the address set forth in this Agreement, or at such other address as such party may designate in writing from time to time. Any notice from Company to You shall be effective three days after it has been deposited in the mail, duly addressed. All such notices to Company from You shall be effective after it has been received via registered U.S. Mail.

9. **INDEMNIFICATION.** You are responsible for and agree to indemnify and hold Us harmless from, any and all (a) losses, damages, penalties, claims, suits and actions (collectively, "Claims"), whether based on a theory of contract, tort, strict liability or otherwise caused by or related to Your use or possession of the Equipment, and (b) all costs and attorneys' fees incurred by Us relating to such claim.

10. **ELECTRONIC EXECUTION.** A faxed or electronically transmitted version of this Agreement may be considered the original and You will not have the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. This Agreement may be signed in counterparts and all counterparts will be considered and constitute the same Agreement.

11. **MISCELLANEOUS.** (a) Choice of Law. This Agreement shall be governed by the laws of the state of Wisconsin (without regard to the conflict of laws or principles of such states); (b) Jury Trial. YOU EXPRESSLY WAIVE TRIAL BY JURY AS TO ALL ISSUES ARISING OUT OF OR RELATED TO THIS AGREEMENT; (c) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, proposals or negotiations, whether oral or written; (d) Enforceability. If any provision of this Agreement is unenforceable, illegal or invalid, the remaining provisions will remain in full force and effect; (e) Amendments. This Agreement may not be amended or modified except by a writing signed by the parties; provided You agree that We are authorized, without notice to You, to supply missing information or correct obvious errors provided that such change does not materially alter Your obligations; (f) Force Majeure. Company shall not be responsible for delays or inability to service caused directly or indirectly by strikes, accidents, climate conditions, parts availability, unsafe travel conditions, or other reasons beyond Our control; (g) Company has the right to modify/correct any clerical errors.

Customer Initials _____

Private and Confidential

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A Xerox Company

MANAGED PRINT SERVICES AGREEMENT
 MBM - A Xerox Company
 620 N Lynndale Drive, Appleton, WI 54914
 Phone: 1-800-236-5600

City of Sheboygan
 Managed Print Services Agreement Equipment List

Street Address	Location	IP Address	Manufacturer	Model	Serial #	Tag Number	Networked, Flat Rate or Not Covered	Owner
Mead Public Library	2nd Floor Patron Use	172.28.89.5	Xerox	CA05	4HX817915	66679		Leased
Mead Public Library	2nd Floor Patron Use	172.28.89.5	Xerox	CA05	4HX817915	66679	Networked	Leased
Mead Public Library	1st Flr	172.28.7.59	Xerox	WC 6605DN	XL3622592	51447	Networked	Leased
Mead Public Library	1st Flr	172.28.7.39	Xerox	WC 6605DN	XL3622592	51447	Networked	Leased
Mead Public Library	2nd Flr	172.28.7.40	Xerox	WC 6605DN	XL3622578	51441	Networked	Leased
Mead Public Library	2nd Flr	172.28.7.40	Xerox	WC 6605DN	XL3622578	51441	Networked	Leased
Mead Public Library	1st Flr	172.28.89.6	Xerox	WC 6605DN	XL3622593	51448	Networked	Leased
Mead Public Library	1st Flr	172.28.89.6	Xerox	WC 6605DN	XL3622593	51448	Networked	Leased
Mead Public Library	2nd Flr	172.28.7.34	Xerox	WC 6605DN	XL3622595	51445	Networked	Leased
Mead Public Library	2nd Flr	172.28.7.34	Xerox	WC 6605DN	XL3622595	51445	Networked	Leased
Mead Public Library	1st Floor Staff Area	172.28.7.38	Xerox	WC 6605DN	XL3622632	51365	Networked	Leased
Mead Public Library	1st Floor Staff Area	172.28.7.38	Xerox	WC 6605DN	XL3622632	51365	Networked	Leased
Mead Public Library	1st Flr	172.28.89.8	Xerox	WC 6605DN	XL3622633	51360	Networked	Leased
Mead Public Library	1st Flr	172.28.89.8	Xerox	WC 6605DN	XL3622633	51360	Networked	Leased
Mead Public Library	Tech Services	172.28.7.72	Xerox	WC 6605DN	XL3622634	51439	Networked	Leased
Mead Public Library	Tech Services	172.28.7.72	Xerox	WC 6605DN	XL3622634	51439	Networked	Leased
City of Sheboygan Finance Department	Main Office	10.123.2.19	Xerox	8615XL	21CD11864	56503	Networked	Leased
City of Sheboygan Finance Department	Front Desk	10.123.2.18	Xerox	8605X	518492508	51149	Networked	Leased
City of Sheboygan Finance Department	City Hall-Clerk's Office	10.100.16.2	Lanmark	T640 Printer	790879H	50086		CoS
City of Sheboygan Finance Department	Police Dept Transcription Area	10.103.2.5	Lanmark	T50H Printer	79186ARW	51197	Networked	CoS
City of Sheboygan Finance Department	Main Office	10.106.21.33	Xerox	C605XL	998767397	85825	Networked	Leased
City of Sheboygan Finance Department		10.106.1.32	Xerox	WC3415DN	A2734515	52198	Networked	CoS
City of Sheboygan Finance Department	Assessor Office/7th St	10.115.1.26	Xerox	WC3655X	CTK264710	56616	Networked	Leased
City of Sheboygan Finance Department	City Hall-HR	10.115.1.32	HP	LJ M6020n Printer	CNCC21DRWW	56073		CoS
City of Sheboygan Finance Department	Municipal Service Office	10.107.1.32	HP	LJ M601N Printer	CNCC48113	50089	Networked	CoS
City of Sheboygan Finance Department	Transit	10.104.1.32	HP	LJ 200 color M251n	DVD1M21787	50088	Networked	CoS
City of Sheboygan Finance Department	2nd Floor	10.115.1.24	HP	LJ 3200	CND1CDB755	38905		CoS
City of Sheboygan Finance Department	Police Dept Municipal Court	10.103.2.8	HP	LJ Pro M123 Color MFP	CHP3DBWCDD	50295	Networked	CoS
City of Sheboygan Finance Department	City Hall-Planning & Development	10.115.1.35	HP	LJ 4240n	CNGXL34569	50078		CoS
City of Sheboygan Finance Department	Main Office	10.105.1.31	Xerox	WC 6655X (9) Clr	E18082062	57962	Networked	Leased
City of Sheboygan Finance Department	City Hall-Building Inspection	10.115.1.38	HP	LJ P2050n	JF8F956547	50279	Networked	CoS
City of Sheboygan Finance Department	Fire Station 5-Office	10.106.41.31	Xerox	WC3325DN	LAB415371	49853	Networked	CoS
City of Sheboygan Finance Department	Fire Station 2-Office	10.106.11.31	Xerox	WC3325DN	LAB415400	49854	Networked	CoS
City of Sheboygan Finance Department	Medic Room-2nd Floor	10.106.21.34	Xerox	WC3325DN	LAB415421	50094	Networked	CoS
City of Sheboygan Finance Department	Fire Station 4-Office	10.106.31.31	Xerox	WC3325DN	LAB415444	49852	Networked	CoS
City of Sheboygan Finance Department	Fire Station 4-Office	10.106.31.31	Xerox	WC3325DN	LAB415444	49852	Networked	CoS
City of Sheboygan Finance Department	City Hall-Clerk's Office	10.100.16.32	HP	LJ Pro M4020n	PH55849022	68685	Networked	CoS
City of Sheboygan Finance Department	Finance	10.115.1.43	HP	LJ Enterprise Color M5070n	PH50M7852F	71725	Networked	CoS
City of Sheboygan Finance Department	Human Resources	10.115.1.42	HP	LJ M506DN	PH50T49705	71726	Networked	CoS
City of Sheboygan Finance Department	Mechanics Shop Office	10.104.1.34	HP	LJ Pro M4020n	PH5V1975	71534	Networked	CoS
City of Sheboygan Finance Department	City Hall-HR	10.115.1.33	HP	LJ Pro M401n	PH50B15234	50074	Networked	CoS
City of Sheboygan Finance Department	Battalion Chief Office	10.106.21.35	HP	LJ Pro M401n	PH50B53195	50084	Networked	CoS



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Street Address	Location	IP Address	Manufacturer	Model	Serial #	Tag Number	Networked, Flat Rate or Not Covered	Class
City of Sheboygan Finance Department	Fire Station 1-Office	10.106.1.31	HP	U Pro M402n	PHG0876198	50087	Networked	CoS
City of Sheboygan Finance Department	Police Dept Reception	10.103.2.1	HP	U Pro M402n	PHG0811941	50097	Networked	CoS
City of Sheboygan Finance Department	Police Dept Front Desk	10.103.2.12	HP	U Pro M402n	PHG0C00006	50098	Networked	CoS
City of Sheboygan Finance Department	Police Dept Squad Report Room	10.103.2.7	HP	U Pro M402n	PHG0C00015	53196	Networked	CoS
City of Sheboygan Finance Department	Police Dept Sgt's Commander	10.103.2.11	HP	U Pro M402n	PHG0C84810	50099	Networked	CoS
City of Sheboygan Finance Department	City Hall-Building Inspection	10.115.1.40	HP	U P2055an	VNB3102977	50080	Networked	CoS
City of Sheboygan Finance Department	WCSA Studio Office	10.126.2.2	HP	U Pro M402n	VNB3823664	50092	Networked	CoS
City of Sheboygan Finance Department	Suspect Device. Obtain correct address, internal location, contact (name/email/address) to send tag. Email MBM-MPSChanges.	10.107.1.94	HP	Color U Pro M4520n	VNB3403009	VNB3403009	Networked	CoS
City of Sheboygan Finance Department	Police Dept Court Services	10.103.2.4	HP	U Pro M402n	VNB3524060	53195	Networked	CoS
City of Sheboygan Finance Department	City Hall-Attorney's Ofc. 1st 104, 3rd Flr	10.115.1.29	HP	U Pro M402n	VHG3501008	50075	Networked	CoS
City of Sheboygan Finance Department	Municipal Service Stock Room	10.107.1.35	HP	U Pro M402n	VHG3518487	50090	Networked	CoS
City of Sheboygan Finance Department	Municipal Service Electrical	10.107.1.36	HP	U Pro M402n	VHG3518503	50091	Networked	CoS
City of Sheboygan Finance Department	Police Dept Backing Room	10.103.2.2	HP	U Pro M402n	VHG3728057	50100	Networked	CoS
City of Sheboygan Finance Department	City Hall-Clerks Counter	10.100.16.5	HP	U Pro M402n	VHG4608830	50082	Networked	CoS
City of Sheboygan Finance Department	City Hall-Clerks Counter	10.100.16.6	HP	U Pro M402n	VHG4608841	50083	Networked	CoS
City of Sheboygan Finance Department	City Hall-IT	10.115.1.22	HP	U Pro M402n	VHG4612881	50071	Networked	CoS
City of Sheboygan Finance Department	Fire Dept	10.106.21.32	Xerox	WC 64025DN	RL9677104	52343	Networked	CoS

II

3.5

R. O. No. 156 - 19 - 20. By CITY ATTORNEY. February 17, 2020.

Submitting, for information, a copy of the Opinion issued by the Supreme Court of Wisconsin on February 14, 2020, in the matter of *Town of Wilson vs. City of Sheboygan*, Case No. 2018AP2162.

Finances
Personnel

City Attorney

SUPREME COURT OF WISCONSIN

CASE No. : 2018AP2162

COMPLETE TITLE: Town of Wilson,
Plaintiff-Appellant,
v.
City of Sheboygan,
Defendant-Respondent.

ON BYPASS FROM THE COURT OF APPEALS

OPINION FILED: February 14, 2020
SUBMITTED ON BRIEFS:
ORAL ARGUMENT: September 19, 2019

SOURCE OF APPEAL:
COURT: Circuit
COUNTY: Sheboygan
JUDGE: Daniel J. Borowski

JUSTICES:

DALLET, J., delivered the majority opinion for a unanimous Court with respect to Parts I., III.C., and III.D., and the majority opinion of the Court with respect to Parts II., III.A., III.B., and IV., in which ROGGENSACK, C.J., ANN WALSH BRADLEY, ZIEGLER, and HAGEDORN, JJ., joined. REBECCA GRASSL BRADLEY, J., filed a concurring opinion, in which KELLY, J., joined. HAGEDORN, J., filed a concurring opinion.

NOT PARTICIPATING:

ATTORNEYS:

For the plaintiff-appellant, there were briefs filed (in the court of appeals) by *Michael D. Huitink* and *Sorrentino Burkert Risch LLC*, Brookfield. There was an oral argument by *Michael D. Huitink*.

For the defendant-respondent, there was a brief filed (in the court of appeals) by *H. Stanley Riffle* and *Municipal Law & Litigation Group, S.C.*, Waukesha. There was an oral argument by *H. Stanley Riffle*.

For amicus Wisconsin Towns Association, a brief was filed by *Joseph Ruth*, Shawano.

For joint amici League of Wisconsin Municipalities and NAIOP - Wisconsin there was a brief filed by *Julie M. Gay* and *Law Office of Julie M. Gay*, Waukesha, *Thomas D. Larson*, Madison, and *Claire Silverman*, Madison.

2020 WI 16

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2018AP2162
(L.C. No. 2017CV490)

STATE OF WISCONSIN

:

IN SUPREME COURT

Town of Wilson,

Plaintiff-Appellant,

v.

City of Sheboygan,

Defendant-Respondent.

FILED

FEB 14, 2020

Sheila T. Reiff
Clerk of Supreme Court

DALLET, J., delivered the majority opinion for a unanimous Court with respect to Parts I., III.C., and III.D., and the majority opinion of the Court with respect to Parts II., III.A., III.B., and IV., in which ROGGENSACK, C.J., ANN WALSH BRADLEY, ZIEGLER, and HAGEDORN, JJ., joined. REBECCA GRASSL BRADLEY, J., filed a concurring opinion, in which KELLY, J., joined. HAGEDORN, J., filed a concurring opinion.

APPEAL from an order of the Circuit Court for Sheboygan County, Daniel J. Borowski, Judge. *Affirmed.*

¶1 REBECCA FRANK DALLET, J. Kohler Company sought to convert 247 acres of land located in the Town of Wilson into a world championship golf course. After determining that the golf course development would not come to fruition if the land remained within the Town's boundaries, Kohler successfully petitioned for annexation to the City of Sheboygan. In response, the Town filed

a declaratory judgment action alleging that the annexation was "arbitrary, capricious, non-contiguous, an abuse of discretion, and otherwise procedurally and substantively non-compliant with [the City's] annexation authority under Chapter 66, Wis. Stats, and existing Wisconsin case[.]law." The City moved for partial summary judgment regarding the annexation petition's compliance with the population certification requirement in Wis. Stat. § 66.0217(5)(a) (2017-18), which was granted.¹ The circuit court ultimately conducted a bench trial and concluded that the annexation satisfied the statutory contiguity requirement and the "rule of reason."² The circuit court further concluded that the annexation petition fully satisfied the procedural requirements of § 66.0217. Consequently, the circuit court dismissed the action in full.

¶2 On bypass³ from the court of appeals, the Town asks us to review whether: (1) the annexation satisfies the statutory contiguity requirement; (2) the annexation satisfies the rule of reason; (3) the annexation petition strictly complied with the signature requirements in Wis. Stat. § 66.0217(3); and (4) the annexation petition strictly complied with the population certification requirement in § 66.0217(5)(a). We conclude that

¹ All subsequent references to the Wisconsin Statutes are to the 2017-18 version unless otherwise indicated.

² Judge Daniel J. Borowski of the Sheboygan County Circuit Court presided.

³ The Town's petition to bypass was filed pursuant to Wis. Stat. § (Rule) 809.60.

the annexation is contiguous and satisfies the rule of reason. We also conclude that the annexation petition strictly complied with §§ 66.0217(3) and (5)(a). Therefore, we affirm the circuit court.

I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

¶3 For nearly 80 years Kohler has owned 247 acres of undeveloped land abutting Lake Michigan located within the Town's boundaries. In March 2014, Kohler submitted an application with the Town for a conditional use permit to develop the land into a world championship golf course. After Kohler's plan went public, there was immediate opposition to the proposed development by the Town's citizens. The opposition centered on environmental concerns, deforestation, and perceived impacts to residential wells. By 2015, three of the five members of the Town Board were known to oppose the development, decreasing the likelihood that Kohler's application would be approved.

¶4 Due to unfolding Town Board opposition and concerns about the Town's ability to provide adequate water and fire services to the proposed development,⁴ Kohler approached the City about the possibility of annexing its property and adjacent lands. The City was interested in Kohler's proposal as it "had historically targeted the lands within the annexation, including the Kohler Land, for future City expansion, development and

⁴ Kohler was concerned that the Town's inability to provide a municipal water source would negatively impact the golf course development based on: (1) insufficient water for the golf course operations; (2) exposure to well damage claims from neighboring landowners; and (3) a potentially inadequate water source for the Town's volunteer fire department in the event of a fire.

economic growth as a part of the City's 2011 Comprehensive Plan." The City was also facing a substantial need for housing, which was stunting economic growth. Annexation would allow the City to immediately address its housing needs by developing the land adjacent to Kohler's property. It was a mutually beneficial arrangement for Kohler and the City: annexation was a means for Kohler to achieve its goal of developing its land into a golf course and for the City to achieve its goal of economic growth.

¶5 Kohler independently designed the boundaries of the territory subject to the proposed annexation, without the City's assistance. To increase its size and shape, Kohler included a large amount of state land in its proposal. Kohler also purchased several of the properties located within the territory. Pursuant to Kohler's design, the border between the City and the first parcel of the territory spans approximately 650 feet in width. The territory proceeds in a southeasterly direction and varies in size from 1,450 feet wide at certain points to 190 feet wide before expanding to the proposed golf course development. The map of the annexation is attached as an appendix to this opinion.

¶6 Kohler initiated the annexation process in April 2017 by publishing a notice in the Sheboygan Press and sending a "Request for Annexation Review" to the Department of Administration ("DOA"). Kohler then circulated a "Petition for Annexation by One-Half Approval" (the "Petition") in accordance with Wis. Stat. § 66.0217(3)(a).⁵ The Petition stated that its purpose was to

⁵ Wisconsin Stat. § 66.0217(3)(a)1. provides:

"make City of Sheboygan services available to the territory and to ready the territory for development consistent with the City of Sheboygan's 2011 Comprehensive Plan." According to the Petition, the population of the territory subject to the proposed annexation included six adults and three children. Kohler obtained five signatures for the Petition from owners representing over one-half of the real property in assessed value within the territory, as required by § 66.0217(3)(a)1.b.⁶

¶7 DOA issued a nonbinding recommendation in favor of the annexation and found it in the "public interest," as defined in Wis. Stat. § 66.0217(6)(c).⁷ DOA determined that the annexation

(a) Direct annexation by one-half approval. A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following:

1. A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value within the territory.

⁶ The parties stipulated that five signatures would be a majority of qualified electors.

⁷ DOA has a mandatory role to play in annexations "within a county having a population of 50,000 or more." Wis. Stat. § 66.0217(6)(a). Section 66.0217(6)(c) states that the "public interest" is determined after considering:

1. Whether the governmental services, including zoning, to be supplied to the territory could clearly be better

was contiguous to the City "via a quarter-quarter sized parcel of city-owned territory approximately 650-feet wide."

¶18 Shortly thereafter, the City's Common Council adopted two ordinances: one annexing the territory included in the Petition and another zoning the land as suburban residential. Additionally, the Common Council approved a pre-annexation agreement between Kohler and the City.⁸

¶19 The Town filed suit against the City in the circuit court and moved for a temporary injunction, which was denied. The parties filed cross-motions for summary judgment regarding the validity of the annexation pursuant to Wis. Stat. ch. 66 and the rule of reason. The circuit court denied summary judgment based on disputed issues of material fact regarding statutory

supplied by the town or by some other village or city whose boundaries are contiguous to the territory proposed for annexation which files with the circuit court a certified copy of a resolution adopted by a two-thirds vote of the elected members of the governing body indicating a willingness to annex the territory upon receiving an otherwise valid petition for the annexation of the territory.

2. The shape of the proposed annexation and the homogeneity of the territory with the annexing village or city and any other contiguous village or city.

⁸ As the circuit court noted, the pre-annexation agreement reflected the "mutual interest between Kohler and the City in the proposed annexation" and was negotiated between City officials and Kohler before Kohler filed the Petition. The agreement established mutual obligations of the City and Kohler as it related to the proposed annexation. For example, the City agreed to extend water utility to the golf course property, as well as provide police, fire, and emergency services to the property. Kohler agreed to, among other things, utilize the City's municipal water service for all improvements on the property within three years of development.

contiguity, the rule of reason, and the Petition's compliance with the procedural requirements set forth in Wis. Stat. § 66.0217. The circuit court subsequently granted the City's partial motion for summary judgment as to the Petition's compliance with the population certification requirement in § 66.0217(5)(a).⁹ The case proceeded to a bench trial. The trial centered on the Town's claim that the annexation was not contiguous and violated the rule of reason.

¶10 In November 2018, the circuit court issued a written decision concluding that: (1) the annexation satisfied the statutory contiguity requirement in Wis. Stat. § 66.0217(3); (2) the annexation did not violate the rule of reason; and (3) the Petition fully complied with the procedural requirements set forth in § 66.0217.¹⁰ Accordingly, the circuit court dismissed the Town's declaratory judgment action in full. The Town petitioned this court to bypass the court of appeals, which we granted.

II. STANDARD OF REVIEW

¶11 The legislature has conferred broad authority on cities and villages to annex unincorporated lands under Chapter 66 of the

⁹ The City, with the circuit court's permission, filed a subsequent motion for partial summary judgment on this issue.

¹⁰ The circuit court "incorporate[d] by reference" its May 2018 written decision on the City's motion for partial summary judgment and noted that the Town did not raise any new issues at trial regarding whether the Petition complied with the procedural requirements of Wis. Stat. § 66.0217. It concluded that the Petition "complied with the procedural requirements of § 66.0217 . . . [and it] was properly noticed and included the signatures of five of the six qualified electors and the owners of 91% of the territory measured by assessed value."

Wisconsin Statutes. See Town of Pleasant Prairie v. City of Kenosha, 75 Wis. 2d 322, 326-27, 249 N.W.2d 581 (1977). Annexation ordinances have long enjoyed a presumption of validity. Id.; see also Town of Lafayette v. City of Chippewa Falls, 70 Wis. 2d 610, 618, 235 N.W.2d 435 (1975). A party challenging an annexation ordinance bears the burden of overcoming this presumption by demonstrating that the circuit court's findings are contrary to the great weight and clear preponderance of the evidence. Town of Waukechon v. City of Shawano, 53 Wis. 2d 593, 596, 193 N.W.2d 661 (1972).

¶12 In order to resolve the Town's contention that the annexation is not contiguous and that the Petition failed to comply with the procedural requirements set forth in Wis. Stat. § 66.0217, we engage in statutory interpretation. Statutory interpretation is a question of law that we review de novo. Horizon Bank, Nat'l Ass'n v. Marshalls Point Retreat LLC, 2018 WI 19, ¶28, 380 Wis. 2d 60, 908 N.W.2d 797.

¶13 We also review the circuit court's application of the rule of reason, a doctrine designed to determine whether the power delegated to cities and villages under Chapter 66 has been abused under the facts and circumstances of a given case. See Town of Pleasant Prairie, 75 Wis. 2d at 326-27. To pass muster under the rule of reason, an annexation must satisfy three requirements:

(1) exclusions and irregularities in boundary lines must not be the result of arbitrariness; (2) some reasonable present or demonstrable future need for the annexed property must be shown; and (3) no other factors must exist which would constitute an abuse of discretion on the part of the municipality.

Town of Menasha v. City of Menasha, 170 Wis. 2d 181, 189, 488 N.W.2d 104 (Ct. App. 1992). A failure to satisfy any one of the prongs renders an annexation arbitrary, capricious, and invalid. Town of Lafayette, 70 Wis. 2d at 625.

¶14 We accept the circuit court's factual determinations regarding the rule of reason unless they are clearly erroneous. Town of Baraboo v. Village of West Baraboo, 2005 WI App 96, ¶19, 283 Wis. 2d 479, 699 N.W.2d 610. "Whether the undisputed facts meet the legal standards of the rule of reason presents a question of law, which we review de novo" Id.

¶15 Lastly, we review the circuit court's grant of summary judgment as to the Petition's compliance with the population certification requirement in Wis. Stat. § 66.0217(5)(a) using the same methodology as the circuit court. Green Spring Farms v. Kersten, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment shall be granted where the record demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2).

III. ANALYSIS

¶16 We first address the Town's claim that the annexation does not meet the statutory contiguity requirement, as set forth in Wis. Stat. § 66.0217(3) and interpreted by this court in Mt. Pleasant I and its progeny. Town of Mt. Pleasant, Racine Cty. v. City of Racine, Racine Cty., 24 Wis. 2d 41, 127 N.W.2d 757 (1964) ("Mt. Pleasant I"). We next discuss the rule of reason and determine whether it voids the annexation at issue in this case.

Finally, we consider the Town's procedural challenges to the Petition as they relate to the signature requirement in § 66.0217(3) and the population certification requirement in § 66.0217(5)(a).

A. Contiguity

¶17 The Town asserts that the annexed territory is not contiguous to the City and therefore the annexation ordinance should be invalidated. Wisconsin Stat. § 66.0217(3) allows property owners to annex territory that is "contiguous to a city or village."¹¹ (Emphasis added.) "Contiguous" should be construed according to its "common and approved usage unless a different definition has been designated by the statutes." State v. Curiel, 227 Wis. 2d 389, 404, 597 N.W.2d 697 (1999); see also Wis. Stat. § 990.01(1). The term "contiguous" is not defined in Chapter 66 of the Wisconsin Statutes.

¶18 To determine the definition of "contiguous" as it relates to Wis. Stat. § 66.0217(3), we look to the substantial amount of case law that addresses the term's meaning and application. "Although finding a single, precise definition of 'contiguous' is difficult, one may discern a trend in Wisconsin's courts to require at minimum some significant degree of physical contact between the properties in question." Town of Delavan v.

¹¹ Along with the statutory contiguity requirement, Wis. Stat. § 66.0217 outlines the procedures related to preparation, notice, circulation, and filing of such petitions. Direct annexation by one-half approval, the procedure followed by Kohler, requires strict compliance. § 66.0217(3); see Town of Burke v. City of Madison, 225 Wis. 2d 615, 625, 593 N.W.2d 822 (Ct. App. 1999).

City of Delavan, 176 Wis. 2d 516, 528, 500 N.W.2d 268 (1993) (emphasis added) (citing City of Waukesha v. Salbashian, 128 Wis. 2d 334, 352 n.5, 382 N.W.2d 52 (1986)) (referencing one dictionary definition of contiguous: "touching along boundaries often for considerable distances" but stating that "[f]or the purposes of this decision, we define contiguous as touching or adjoining."); Town of Waukechon, 53 Wis. 2d at 597 (describing the proposed annexation as "contiguous to the city for its entire 575-foot width"). We recognize that each case is fact-specific, and therefore we decline to define contiguity using a numerical threshold.

¶19 We have rejected the adoption of a broader definition of contiguous that includes territory near to, but not actually touching, a municipality. See Town of Delavan, 176 Wis. 2d at 528-29 (declining the City's request to adopt "a broader definition of 'contiguous' that includes territory near to, but not actually touching, the annexing municipality," as it would "place distant lakeshore property owners at risk of being annexed by neighboring municipalities"). However, we acknowledge that there can be situations where contiguous "does not always mean the land must be touching." Town of Lyons v. City of Lake Geneva, 56 Wis. 2d 331, 336, 202 N.W.2d 228 (1972). For example, in Town of Lyons, we determined that a 23-foot public road separating the City limits from the boundary of the annexed land was "close enough to the city limits to be contiguous" because "a public road should not destroy the concept of 'contiguous' regardless of ownership." Id.; see also Town of Delavan, 176 Wis. 2d at 530 (recognizing that a

1.5-acre parcel of land separated from the land sought to be annexed by 400 feet of water was not contiguous, but that the "trivial lack of contiguity [was] insufficient to void the annexation" given the "unique facts of th[e] particular case").

¶20 The Town presents side-by-side maps to support its assertion that the annexation in this case is "virtually identical" to the annexation invalidated in Mt. Pleasant I, 24 Wis. 2d 41. In Mt. Pleasant I, a private party sought to connect its land to the Racine city limits by a corridor approximately 1,705 feet long, varying in width from approximately 152 to 306 feet. Id. at 43. The land physically touched the Racine city limits only at the southwest corner by a 153-foot-wide corridor. Id. at 43-44. The Mt. Pleasant I court focused its discussion of contiguity on the validity of "corridor" or "strip" annexations, intended by developers to attach land to a city to obtain services, but which "in reality are no more than isolated areas connected by means of a technical strip a few feet wide." Id. at 45-46.

¶21 Because of the lack of Wisconsin authority regarding the validity of these annexations, the Mt. Pleasant I court looked to out-of-state authority for guidance. Id. at 45. Four of the five out-of-state cases cited in Mt. Pleasant I involved voided annexations with a border of less than 100 feet between the annexing municipality and the annexed territory. See Potvin v. Village of Chubbuck, 284 P.2d 414, 415 (Idaho 1955) (corridor strip was five feet wide); Clark v. Holt, 237 S.W.2d 483, 484 (Ark. 1951) (border was 50 feet wide); State ex rel. Danielson v. Village of Mound, 48 N.W.2d 855, 858-59 (Minn. 1951) ("100-foot wide railroad

right of way which extends about five-eighths of a mile"); State ex rel. Fatzer v. Kansas City, 222 P.2d 714, 720 (Kan. 1950) (of the land annexed, "only 82 feet touches the city limits of Kansas City").¹²

¶22 Here, unlike in Mt. Pleasant I, the annexed territory shares a common boundary with the City of 650 feet, which is more than only a "technical strip a few feet wide."¹³ The degree of physical contact between the City and the territory is over four times that of the border connecting the City with the annexed territory in Mt. Pleasant I and involves a significant degree of physical contact between the properties. See Town of Waukechon, 53 Wis. 2d at 597 ("The Town of Waukechon attempts to analogize [Mt. Pleasant I] with the instant action. We see no similarity between the cases. The area of proposed annexation herein is rectangular and is contiguous to the city for its entire 575-foot width."); see also Town of Lyons, 56 Wis. 2d at 336 ("In the Mt. Pleasant Case, we held land was not contiguous because only a small part of it touched the city.") Based on the facts of this case,

¹² The fifth case, People ex rel. Village of Worth v. Ihde, 177 N.E.2d 313 (Ill. 1961), involved annexation to a highway which also likely involved a border of less than 100 feet.

¹³ The City, DOA, and the circuit court all cited Mt. Pleasant II in their discussion of contiguity, despite the fact that the contiguity of the annexation was not at issue in that case. Town of Mt. Pleasant v. City of Racine, 28 Wis. 2d 519, 524, 137 N.W.2d 656 (1965) ("Mt. Pleasant II") ("Respondent does not attack the ordinance on the ground that the territory lacks sufficient contiguity as was done in the first Mt. Pleasant v. Racine Case.").

we conclude that the annexation satisfies the statutory contiguity requirement in Wis. Stat. § 66.0217(3).

¶23 We observe that when the Mt. Pleasant I court stated that it relied upon "application thereto of the rule of reason" to reach its conclusion regarding statutory contiguity, 24 Wis. 2d at 47, it blurred the statutory contiguity and rule of reason analyses. This has caused confusion and conflation of the statutory contiguity requirement with the first prong of the rule of reason. See, e.g., Town of Waukechon, 53 Wis. 2d at 597. We clarify that contiguity is a legislative mandate discrete from the first prong of the judicially created rule of reason, which is described in detail below.

B. The Rule of Reason

¶24 The rule of reason is a "judicially-created doctrine courts have applied to assess the validity of annexations," in addition to statutory requirements. Town of Lincoln v. City of Whitehall, 2019 WI 37, ¶15 n.10, 386 Wis. 2d 354, 925 N.W.2d 520. The rule, also referred to as "the test of reason," has been traced back to the 1880s. See Smith v. Sherry, 50 Wis. 210, 6 N.W. 561, 564 (1880); see also Town of Fond du Lac v. City of Fond du Lac, 22 Wis. 2d 533, 541, 126 N.W.2d 201 (1964) (applying the rule of reason that was "first announced in Smith v. Sherry"). Wisconsin courts have applied the rule of reason in annexation cases for over 50 years¹⁴ to serve as a check on whether a municipality has

¹⁴ See, e.g., Town of Lincoln v. City of Whitehall, 2019 WI 37, ¶15 n.10, 386 Wis. 2d 354, 925 N.W.2d 520; Town of Delavan v. City of Delavan, 176 Wis. 2d 516, 528, 500 N.W.2d 268 (1993); Town of Pleasant Prairie v. City of Kenosha, 75 Wis. 2d 322, 327, 249

abused its powers of annexation. Town of Delavan, 176 Wis. 2d at 538. The analysis continues to play a role in Wisconsin annexation jurisprudence.¹⁵

¶25 An annexation satisfies the rule of reason when three requirements are met. First, exclusions and irregularities in boundaries must not be the result of arbitrariness. Town of Pleasant Prairie, 75 Wis. 2d at 327. Second, some reasonable present or demonstrable future need for the annexed property must be shown. Id. Finally, no other factors must exist which would

N.W.2d 581 (1977); Town of Lafayette v. City of Chippewa Falls, 70 Wis. 2d 610, 625, 235 N.W.2d 435 (1975); Town of Center v. City of Appleton, 70 Wis. 2d 666, 668 n.4, 235 N.W.2d 504 (1975); Town of Waukesha v. City of Waukesha, 58 Wis. 2d 525, 532, 206 N.W.2d 585 (1973).

¹⁵ Justice Rebecca Grassl Bradley's concurrence would sua sponte abolish the rule of reason, despite the parties' request that the rule remain intact. Justice Rebecca Grassl Bradley's concurrence, ¶51. It is not up to us to make or develop arguments on behalf of the parties. See Industrial Risk Insurers v. American Eng'g Testing, Inc., 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 ("[W]e will not abandon our neutrality to develop arguments."); State v. Pettit, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) ("We cannot serve as both advocate and judge."); see also Yorgan v. Durkin, 2006 WI 60, ¶13 n.4, 290 Wis. 2d 671, 715 N.W.2d 160 ("The proper procedure is to have an issue raised, briefed, and argued by the parties before deciding it.").

When asked at oral argument about the value of the rule of reason, the City's attorney responded, "the rule of reason protects against very, very far out circumstances," and "if we do away with the rule of reason there is no check" on such circumstances. The City's attorney further commented: "I've thought through this a lot . . . I've done municipal law for forty years and I think it would be a bad thing to do away with the rule of reason."

constitute an abuse of discretion. Id. We analyze each requirement in turn.

1. Arbitrariness

¶26 The first prong of the rule of reason prohibits exclusions and irregularities in boundary lines as a result of arbitrariness. Id. We have long recognized that "[w]here property owners initiate direct annexation, we do not think the municipality may be charged with arbitrary action in the drawing of the boundary lines." Town of Lyons, 56 Wis. 2d at 338. The choice of boundaries is generally within the discretion of the private party petitioners. See Town of Pleasant Prairie, 75 Wis. 2d at 342.

¶27 However, there are two exceptions when boundary lines drawn by private party petitioners may be considered impermissibly arbitrary. The first is when the municipality is the "'real controlling influence'" in selecting the boundaries. Town of Baraboo, 283 Wis. 2d 479, ¶24 (quoted source omitted). In that situation, "the municipality may be charged with any arbitrariness in the boundaries even though the property owners are the petitioners." Town of Lincoln, 386 Wis. 2d 354, ¶15 n.11. "'Influencing' the proceedings, in this context, means more than providing mere technical assistance or recommendations to the petition signers . . . rather, it means conduct by which the annexing authority dominates the petitioners so as to have effectively selected the boundaries." Town of Menasha, 170 Wis. 2d at 192. In other words, a court may determine there is arbitrariness when the annexing municipality acts as a "'puppeteer and the petitioners [are it's] puppets dancing on a municipal

string.'" Town of Lincoln, 386 Wis. 2d 354, ¶15 n.11 (quoting Town of Waukesha v. City of Waukesha, 58 Wis. 2d 525, 530, 206 N.W.2d 585 (1973)).

¶28 Boundaries drawn by a private party may also be considered impermissibly arbitrary when the territory subject to the proposed annexation is an "exceptional" shape. See, e.g., Town of Pleasant Prairie, 75 Wis. 2d at 342 ("Where the boundaries of an otherwise unexceptionable direct annexation are fixed by petitioners . . . without the exercise of undue influence by the annexing city or village, we see no reason why the petitioners may not determine those boundaries so as to insure the annexation's success.") (emphasis added); see also Town of Medary v. City of La Crosse, 88 Wis. 2d 101, 115-16, 277 N.W.2d 310 (Ct. App. 1979) ("The rule of reason may, however, be applied to invalidate an annexation where the annexation may result in 'gerrymandered' or 'crazy quilt' municipal boundaries, even when the annexation is initiated by a private landowner who sets the boundaries."); Town of Menasha, 170 Wis. 2d at 191 & n.3 ("There are some circumstances in which the shape of an annexed parcel's boundaries are so 'irregular' in shape, that shape alone—apart from any consideration of whether the city was acting as a petitioner—can serve to invalidate the annexation ordinance."). Wisconsin courts have recognized that "there is authority for the proposition that a court may examine the boundaries of an annexation if it has an irregular shape even though the boundaries are determined by the

property owners." Town of Campbell v. City of La Crosse, 2003 WI App 247, ¶26, 268 Wis. 2d 253, 673 N.W.2d 696.¹⁶

¶29 However, this second exception is limited to the most egregious situations, not mere irregularities in shape, or arm-like extensions. See Town of Baraboo, 283 Wis. 2d 479, ¶¶22-23

¹⁶ In 1977, this court in Town of Pleasant Prairie, 75 Wis. 2d at 342, restated the principle from Mt. Pleasant I that boundaries drawn by private party petitioners can be scrutinized for arbitrariness, but only where the annexed area is an "exceptional shape." Two years later, in Town of Medary v. City of La Crosse, 88 Wis. 2d 101, 277 N.W.2d 310 (Ct. App. 1979) and subsequently in Town of Menasha v. City of Menasha, 170 Wis. 2d 181, 488 N.W.2d 104 (Ct. App. 1992), the court of appeals repeated this standard. In Town of Campbell, the court of appeals relied upon "the analysis in Town of Pleasant Prairie" to conclude that the general shape of an annexation was not open to challenge in an owner-initiated annexation. Town of Campbell v. City of La Crosse, 2003 WI App 247, ¶¶26-27, 268 Wis. 2d 253, 673 N.W.2d 696. However, as noted above, Town of Pleasant Prairie allows for such scrutiny where the annexed area is an "exceptional shape."

In subsequent cases, the court of appeals analyzed the shape of the boundaries drawn by a private party, while also continuing to call on this court to clarify the exception, see, e.g., Town of Baraboo v. Village of West Baraboo, 2005 WI App 96, ¶23 & n.5, 283 Wis. 2d 479, 699 N.W.2d 610 (calling on the court to clarify this issue, yet concluding the shape of the annexation was not "of a kind that removes it from the 'general rule' that owner-petitioned annexations should not be invalidated under the first component of the rule of reason" because "[i]t is not a shoestring or balloon on a stick annexation whereby the Village has relied solely on highway right-of-way to 'capture' a distant prized parcel . . ."); see also Town of Lincoln v. City of Whitehall, 2018 WI App 33, ¶39 n.7, 382 Wis. 2d 112, 912 N.W.2d 403 (reversed and remanded on other grounds) ("[W]e renew our call for the supreme court to clarify the law in this area.").

We now answer the court of appeals' numerous calls for clarification and reiterate that private party initiated annexations that are an "exceptional" shape may be reviewed by a court under the first prong of the rule of reason.

(reasoning that "although it produces an arm-like extension of the northern municipal boundary . . . [it] does not violate the first component of the rule of reason"); see also Town of Medary, 88 Wis. 2d at 117 ("While the shape of the annexation is somewhat irregular, the irregularity is partly necessitated because of the irregularity of the La Crosse city limits along the joint boundary of the city . . . [this] is not the extreme crazy-quilt or shoestring annexation disapproved in Mt. Pleasant."))

¶30 In this case, as to the first exception, the circuit court found that "[t]here is absolutely no evidence in the record supporting any claim that the City selected the boundaries for the Kohler annexation." Instead, the record shows that Kohler alone selected the territory to be included in the Petition, prepared the annexation map, and drew the boundary lines. The circuit court found that "the City had no input or involvement whatsoever in determining the boundaries for the annexation."¹⁷ The circuit court's factual findings regarding the lack of proof are sufficient and legally support the conclusion that the City did not act as a "controlling influence" that orchestrated the annexation.

¶31 As to the second exception, this annexation is not an exceptional shape. The boundaries in this case are not the type

¹⁷ The Town asserts that the City's involvement in presenting Kohler's annexation proposal to the Common Council and in preparing a pre-annexation agreement equates to influence or control. We agree with the circuit court that the City merely provided technical assistance which does not rise to the level of "dominat[ing] the petitioners so as to have effectively selected the boundaries." Town of Menasha, 170 Wis. 2d at 192.

of exceptional "gerrymandered" or "crazy quilt" boundaries disapproved of in Mt. Pleasant I. See Town of Baraboo, 283 Wis. 2d 479, ¶¶22-23 (distinguishing the annexation at issue from a "shoestring" or "balloon on a stick" annexation whereby the Village sought to "'capture' a distant prized parcel"). The territory is 1,450 feet wide at certain points, which is almost five times the widest dimension in the Mt. Pleasant I annexation. Additionally, the configuration is also far more substantial in its dimensions than the isolated rural area that was connected by a technical strip in Mt. Pleasant I. We agree with the circuit court that "[t]he overall shape and appearance of the Kohler annexation is [] not so arbitrary or unreasonable that it can or should be invalidated."

¶32 Based on the circuit court's findings of fact, which are supported by ample evidence, we conclude that the boundary lines are not impermissibly arbitrary under the first prong of the rule of reason.

2. Reasonable Present or Future Demonstrable Need

¶33 Under the second prong of the rule of reason, we assess whether there is "some reasonable present or demonstrable future need for the annexed territory." Town of Pleasant Prairie, 75 Wis. 2d at 334. "To sustain the validity of an annexation the annexing municipality need not have a pressing, imperative need for the territory. A showing of a reasonable need for the

annexation will be sufficient to sustain annexation." Id. at 335.¹⁸

¶34 This court has considered a number of factors when determining the needs of the annexing municipality including: "(1) A substantial increase in population; (2) a need for additional area for construction of homes . . . ; (3) a need for additional land area to accommodate the present or reasonably anticipated future growth of the municipality; . . . (4) the extension of police, fire, sanitary protection or other municipal services" Town of Sugar Creek v. City of Elkhorn, 231 Wis. 2d 473, 482, 605 N.W.2d 274 (Ct. App. 1999) (quoting Town of Lafayette, 70 Wis. 2d at 626); see also Town of Pleasant Prairie, 75 Wis. 2d at 335-36. This list is not exhaustive as there are other factors which courts may deem relevant depending upon the particular facts of each case.

¶35 When the petition is initiated by a private party, as in the instant case, the court must also consider the petitioner's desire to be located in a particular municipality. Town of Sugar Creek, 231 Wis. 2d at 483. We have consistently given great weight to the desire of property owners to seek annexation in pursuit of

¹⁸ A court's assessment of whether there is a reasonable need for the annexation is not an independent evaluation of the best interest of the parties. Town of Lyons v. City of Lake Geneva, 56 Wis. 2d 331, 338, 202 N.W.2d 228 (1972); see also Town of Medary, 88 Wis. 2d at 122-23 (reasoning that a municipality "is in no position to negotiate or pick and choose" when a petition is presented because the statute "does not make any provision for a city to annex only that portion of territory . . . for which it has a need. It must annex all of the territory or none of it.").

their own perceived best interests. See Town of Pleasant Prairie, 75 Wis. 2d at 329; see also Town of Waukesha, 58 Wis. 2d at 533 (reasoning that the wishes of a private party petitioning for annexation "are relevant as well as the need of the municipality to annex"); Town of Campbell, 268 Wis. 2d 253, ¶31 (observing that in past decisions we have "consider[ed] the needs of the annexed territory along with the needs of the annexing municipality in concluding that the need component is met"). When considering a property owner's desire to annex property, we incorporate other factors like "the applicable zoning ordinances, development goals, and available services into its determination of need." Town of Delavan, 176 Wis. 2d at 539.

¶36 The circuit court made detailed findings in its written decision regarding the City's need and Kohler's desire for annexation. In determining whether the City showed a present or demonstrable future need for the annexed territory, the circuit court observed that "[t]he most obvious example is in the expansion of residential housing Annexation further provides the City with the ability to achieve its long term economic planning and goals." See Town of Lyons, 56 Wis. 2d at 338 (recognizing a city's reasonable need for land which could be zoned residential). The City had planned for years to develop and expand and Kohler's proposal provided the opportunity to do so. See Town of Waukechon, 53 Wis. 2d at 599 (recognizing that "the city has a comprehensive city plan which calls for residential development to the south of the city"). Therefore, the circuit court concluded that the "City's desire to effect a reasonable and orderly plan for

municipal expansion, development and economic growth satisfy the need requirement under the rule of reason."

¶37 The circuit court also detailed the reasons Kohler wanted its property to be annexed to the City: to overcome the Town Board's opposition to the intended golf course development and to assure that the golf course would receive a sufficient source of water. The circuit court described Kohler's predicament with the Town as follows: "the Town Board members historically opposed the golf course development . . . [and] . . . Kohler reasonably believed that [the Town Board] would not take a different approach when it came time to . . . vote on Kohler's application for a conditional use permit."

¶38 The circuit court further weighed Kohler's concern that the Town is incapable of providing water for the golf course development. Kohler had determined that it would benefit from the availability of the City's municipal water source because it "ensured that there would be sufficient water available" for all of the buildings constructed in conjunction with the golf course. The availability of municipal water for the City's full-time fire department additionally "provided Kohler with better fire protection . . . than the Town's volunteer fire department." The circuit court's factual findings on the City's needs and Kohler's desires for the annexation are amply supported by the evidence and therefore we conclude that the second prong of the rule of reason is satisfied.

3. Other Factors That Constitute an Abuse of Discretion

¶39 Finally, we consider whether there are other factors that would constitute an abuse of discretion under the third prong of the rule of reason. Town of Pleasant Prairie, 75 Wis. 2d at 327. Under this prong, we "consider evidence that the municipality abused its discretion for reasons other than those considered under the first two components." Town of Campbell, 268 Wis. 2d 253, ¶37.

¶40 The Town asserts that the City abused its discretion by simply rubber-stamping the annexation and agreeing to support the golf course development "simply to get more money." The circuit court found, however, that "none of the facts or reasons given by the Town show the City abused its discretion in enacting the ordinance. Initially, many of the alleged 'bad acts' which the Town identifies are taken out of context and unsupported by the factual record."¹⁹ The record includes evidence of lengthy

¹⁹ Some of these "facts" considered by the circuit court include:

- Sheboygan's employees began lobbying for this golf course development even before it knew what other properties would be included in the annexation (i.e., support the golf course regardless of any other issues or needs);
- Sheboygan allowed Kohler to write and even dictate the advocacy position for the golf course, both to its officials and the DOA;
- Sheboygan knew this plan was "controversial" and could not be supported by references to its Comprehensive Plan, and asked Kohler to provide justifications for it;
- Sheboygan had no concern about ripping this land use conditional use permit decision away from the

deliberations by City officials regarding the annexation, which supports the circuit court's finding that "City officials . . . conducted a thorough analysis of the petition before recommending it to the Common Council for adoption." The City's actions were aimed at effectuating the annexation requested by Kohler and were consistent with Kohler's expressed desire to develop its land into a world championship golf course. See Sanitary Dist. No. 4-Town of Brookfield v. City of Brookfield, 2009 WI App 47, ¶21, 317 Wis. 2d 532, 767 N.W.2d 316 ("The City's actions . . . were always consistent with, and in furtherance of, the property owner's expressed desire. The property owners initiated the annexation proceeding and were assisted by the City to accomplish that intent."). The circuit court's findings of fact are amply supported by the evidence and therefore we conclude that the Town failed to demonstrate any abuse of discretion under the third prong of the rule of reason. We conclude that the annexation satisfies all three prongs of the rule of reason.

C. Signature Requirement

¶41 The Town asserts that because the territory included a large amount of state and city-owned land with no assessed value, the Petition failed to afford property owners with the representative power to veto a proposed annexation as intended by Wis. Stat. § 66.0217(3)(a)1.

Town and residents that surround the subject parcel.

¶42 Wisconsin Stat. § 66.0217(3)(a)1. provides, in relevant part:

(a) Direct annexation by one-half approval. A petition for direct annexation may be filed with the city or village clerk if it has been signed by either of the following:

1. A number of qualified electors residing in the territory subject to the proposed annexation equal to at least the majority of votes cast for governor in the territory at the last gubernatorial election, and either of the following:

a. The owners of one-half of the land in area within the territory.

b. The owners of one-half of the real property in assessed value²⁰ within the territory.

(Emphasis added.)

¶43 The Town acknowledges that, pursuant to Wis. Stat. § 66.0217(3)(a)1.b., non-assessed state and city-owned parcels of land are excluded in calculating the amount of signatures required to approve annexation. The Town concedes that the Petition included signatures for over one-half of the owners of real property in assessed value within the territory, and thus comports with the plain language of § 66.0217(3)(a)1.b. See State ex rel. Kalal v. Circuit Court for Dane Cty., 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 ("[W]e have repeatedly held that statutory interpretation 'begins with the language of the statute.

²⁰ "Assessed value," as defined by Wis. Stat. § 66.0217(1)(a), is "the value for general tax purposes as shown on the tax roll for the year next preceding the filing of any petition for annexation."

If the meaning of the statute is plain, we ordinarily stop the inquiry.'" (quoted source omitted)).

¶44 The Town asserts, however, that the City circumvented the intent of Wis. Stat. § 66.0217(3)(a)1. when it failed to include hundreds of acres of non-assessed state and city-owned property to determine the signature requirement. The Town argues that where the proposed annexation includes a large amount of non-assessed land, as in the instant case, the petitioner should be forced to calculate the number of signatures needed by units of acreage pursuant to § 66.0217(3)(a)1.a. According to the Town, the omission of State-owned parcels from the calculation "artificially weighs against the rights of those representing the petitioned territory to voice their choice for or against initiation of annexation proceeding." The Town admits that this is a "new, novel, issue of law" but argues that the omission of the state and city-owned land otherwise defeats the purpose of § 66.0217(3).

¶45 The Town's argument that a petitioner should be required to use one method of calculation over another is a policy argument and has no support in the statutory language. See Flynn v. DOA, 216 Wis. 2d 521, 529, 576 N.W.2d 245 (1998) ("It is for the legislature to make policy choices, ours to judge them based not on our preference but on legal principles"). It is undisputed that the Petition included the signatures of the owners of 91 percent of the territory measured by assessed value, thus complying with the requirements set forth in Wis. Stat.

§ 66.0217(3)(a)1.a. We therefore conclude that the Petition complied with § 66.0217(3)(a)1.

D. Population Certification Requirement

¶46 Finally, the Town asserts that the Petition failed to certify the population count in accordance with Wis. Stat. § 66.0217(5)(a), which provides:

The petition shall also specify the population of the territory. In this paragraph, "population" means the population of the territory as shown by the last federal census, by any subsequent population estimate certified as acceptable by the department or by an actual count certified as acceptable by the department.

(Emphasis added.)

¶47 At the circuit court, the Town asserted that DOA failed to issue a certification of Kohler's population count, "either by written affirmation or otherwise." The circuit court granted the City's partial summary judgment motion on the issue, concluding that the "undisputed facts in the present case demonstrate that Kohler's petition complied with the population requirement in Wis. Stat. § 66.0217(5)(a)." The circuit court relied in part on two affidavits submitted by DOA employee Erich Schmidtke. Schmidtke conducted the review of the Petition and averred that by accepting the petition for a public interest review, DOA "certified" or confirmed that the Petition satisfied this requirement.

¶48 Schmidtke explained that when there is no federal census information, DOA employs a multi-step process to "certify as acceptable" the population estimate or actual population incorporated within a petition. This process includes obtaining population information from (1) the annexation petition; (2) the

"Request for Annexation Review" form; and (3) an "Annexation Review Questionnaire" that the annexing city or village and the annexee town file with DOA. Schmidtke stated that he relied on population information in the Request for Annexation Review form and the petition document,²¹ and noted that the City and Town also included population information in their Annexation Review Questionnaires. After "finding that the population requirement . . . was complied with, the Department accepted the petition for its review." Based on Schmidtke's averments, the circuit court found that Schmidtke "completed the 'process' in which the DOA engages in order to certify as 'acceptable' the population specified in Kohler's petition."

¶49 As determined by the circuit court, the Town failed to raise a genuine issue of material fact regarding whether DOA "certified as acceptable" the population in the Petition based on its review. As the circuit court correctly noted, Wis. Stat. § 66.0217(5)(a) does not explicitly require DOA to engage in any formal, specific process or to audit the population information in order to certify a population estimate or actual population count. Since it remains undisputed that Schmidtke, on behalf of DOA, reviewed the population in the Petition and averred that he

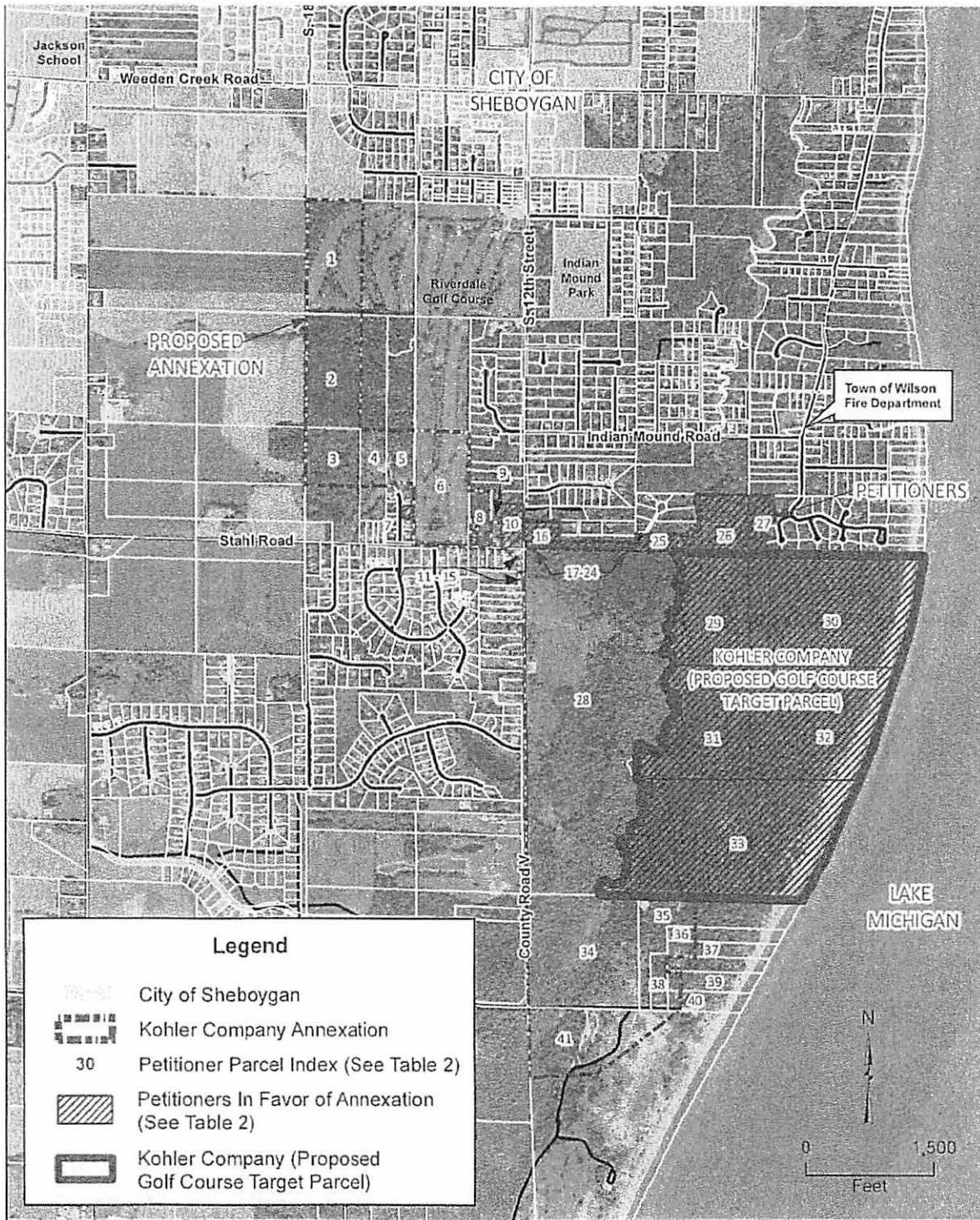
²¹ In his affidavits, Schmidtke stated that he reviewed the Petition for population information; however, it appears that DOA never received a copy of the Petition. The Town is correct that DOA received only the Notice of Intention to Circulate an Annexation Petition, the Request for Annexation Review, and the Annexation Review Questionnaire.

certified it as acceptable, we uphold the circuit court's grant of partial summary judgment on this issue.

IV. CONCLUSION

¶50 We conclude that the annexation meets the statutory contiguity requirement in Wis. Stat. § 66.0217(3) and satisfies the rule of reason. We further conclude that the Petition complied with the signature and certification requirements set forth in §§ 66.0217(3) and (5)(a). Therefore, we affirm the circuit court.

By the Court.—The decision of the circuit court is affirmed.



¶51 REBECCA GRASSL BRADLEY, J. (concurring). I agree with the majority that the annexation of Kohler's land to the City of Sheboygan satisfies the contiguity requirement of Wis. Stat. § 66.0217(3) (2017-18).¹ I also agree the annexation petition complied with the signature requirement of Wis. Stat. § 66.0217(3)(a)1 and the Department "certified as acceptable" the population specified in the petition as required under Wis. Stat. § 66.0217(5)(a) (2017-18).² I write separately, however, because the majority perpetuates the "rule of reason," a judicially created doctrine not found in the statutory text.³ I would overturn Town of Mt. Pleasant v. City of Racine⁴ ("Mt. Pleasant I")—the case

¹ All subsequent references to Wis. Stat. § 66.0217(3) are to the 2017-18 version unless otherwise indicated.

² I join parts I, III.C, and III.D of the majority opinion.

³ See, e.g., Town of Fond du Lac v. City of Fond du Lac, 22 Wis. 2d 533, 541, 126 N.W.2d 201 (1964) (discussing the origin of the principle in cases); Richard W. Cutler, Characteristics of Land Required for Incorporation or Expansion of a Municipality, 1958 Wis. L. Rev. 6, 27-29 (1958) (crediting the rule of reason's origin to a 1957 Wisconsin Supreme Court case); Clayton P. Gillette, Expropriation and Institutional Design in State and Local Government Law, 80 Va. L. Rev. 625, 681 (1994) (discussing Mt. Pleasant I and referring to the "judicially created 'rule of reason'"); Stephen L. Knowles, Comment, The Rule of Reason in Wisconsin Annexations, 1972 Wis. L. Rev. 1125, 1146 (1972) (calling the rule of reason a "judicial doctrine"); Walter K. Johnson, The Wisconsin Experience with State-Level Review of Municipal Incorporations, Consolidations, and Annexations, 1965 Wis. L. Rev. 462, 474 (1965) (referring to it as the "judicially created 'rule of reason'"); Robert D. Zeinemann, Overlooked Linkages Between Municipal Incorporation and Annexation Laws: An In-Depth Look at Wisconsin's Experience, 39 Urb. Law. 257, 285 (2007) (describing the rule of reason as "made by the courts"); majority op., ¶24 ("The rule of reason is a 'judicially created doctrine[.]'").

⁴ Town of Mt. Pleasant v. City of Racine ("Mt. Pleasant I"), 24 Wis. 2d 41, 127 N.W.2d 757 (1964).

responsible for grafting the rule of reason onto the statutory contiguity requirement for annexation—and abolish the rule of reason because the judiciary invaded the exclusive authority of the legislature by rewriting the annexation statute to its liking. It is "the province and duty of the judicial department to say what the law is[,]" and not what we think it should be. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). The legislature conditioned annexations on contiguity, procedural requirements, and nothing more. This court lacks any authority to modify, tweak or supplement the legislature's work.

I

¶52 Continuing to apply a judicial doctrine so consistently criticized for confusing judges and litigants alike in its meaning and application intractably ensconces in our jurisprudence even those cases widely recognized to be wrongly decided. "While adhering to precedent is an important doctrine for lending stability to the law, not every decision deserves stare decisis effect. After all, the purpose of stare decisis 'is to make us say that what is false under proper analysis must nonetheless be held to be true, all in the interest of stability.'" State v. Grandberry, 2018 WI 29, ¶86, 380 Wis. 2d 541, 910 N.W.2d 214 (Rebecca Grassl Bradley, J., dissenting) (quoting Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law 138-40 (1997)). Besides eternalizing bad law, sustaining judicial rewriting of statutes sanctions judicial usurpation of the legislative function. "Reflexively cloaking every judicial opinion with the adornment of stare decisis threatens the rule of law, particularly when applied to interpretations wholly

unsupported by the statute's text." Manitowoc Co., Inc. v. Lanning, 2018 WI 6, ¶81 n.5, 379 Wis. 2d 189, 906 N.W.2d 130 (Rebecca Grassl Bradley, J., concurring).

¶53 This court has long recognized that multiple factors warrant jettisoning wrongly decided precedent:

(1) Changes or developments in the law have undermined the rationale behind a decision; (2) there is a need to make a decision correspond to newly ascertained facts; (3) there is a showing that the precedent has become detrimental to coherence and consistency in the law; (4) the prior decision is "unsound in principle;" or (5) the prior decision is "unworkable in practice."

Bartholomew v. Wis. Patients Comp. Fund & Compcare Health Ins. Corp., 2006 WI 91, ¶33, 293 Wis. 2d 38, 717 N.W.2d 216 (footnote omitted). "The principle of stare decisis does not compel us to adhere to erroneous precedents or refuse to correct our own mistakes." State v. Outagamie Cty. Bd. of Adjustment, 2001 WI 78, ¶31, 244 Wis. 2d 613, 628 N.W.2d 376. In determining whether to uphold a prior case's statutory interpretation, "[i]t is well to keep in mind just how thoroughly [an earlier decision] rewrote the statute it purported to construe." Johnson v. Transp. Agency, 480 U.S. 616, 670 (1987) (Scalia, J., dissenting). In adopting the rule of reason, Mt. Pleasant I transformed a single word into a thorny three-part test requiring judges to inject their subjective whim into the analysis rather than applying their objective judgment.

¶54 The first two prongs of the rule ask whether boundaries are "arbitrar[y]," or there is a "reasonable" need for the property. See Town of Lafayette v. City of Chippewa Falls, 70 Wis. 2d 610, 625, 235 N.W.2d 435 (1975). Drawing the line between

what is rational or arbitrary, and what is reasonable or unreasonable, inherently depends on the subjective beliefs of a reviewing judge. It is no wonder why, almost 70 years after the creation of the doctrine, nobody knows how it applies or what it prohibits. Regrettably but not surprisingly, the doctrine has spawned decades of cases from which no decipherable principle of law may be discerned. See Stephen L. Knowles, Comment, The Rule of Reason in Wisconsin Annexations, 1972 Wis. L. Rev. 1125, 1140 (1972) ("[The rule of reason's] use leads to confusion and invites litigation."); Robert D. Zeinemann, Overlooked Linkages Between Municipal Incorporation and Annexation Laws: An In-Depth Look at Wisconsin's Experience, 39 Urb. Law. 257, 315-16 (2007) (stating that today's rule of reason "is a confusing set of ad hoc and oftentimes conflicting opinions" and its jurisprudence is akin to "muddy waters").

¶55 When revisiting a judicial opinion like Mt. Pleasant I, which overrode the policy choices of the people's representatives in favor of the court's preferences, "courts of last resort are duty-bound to correct the prior court's error." Manitowoc Co., Inc., 379 Wis. 2d 189, ¶81 n.5 (Rebecca Grassl Bradley, J., concurring); see also Gamble v. United States, 139 S. Ct. 1960, 1989 (2019) (Thomas, J., concurring) ("[W]e should not invoke stare decisis to uphold precedents that are demonstrably erroneous."). As the court recently recognized, "[w]e do more damage to the rule of law by obstinately refusing to admit errors, thereby perpetuating injustice, than by overturning an erroneous decision." State v. Roberson, 2019 WI 102, ¶49, 389 Wis. 2d 190, 935 N.W.2d 813 (quoting Johnson Controls, Inc. v. Emp'rs Ins. of

Wausau, 2003 WI 108, ¶100, 264 Wis. 2d 60, 665 N.W.2d 257). "If the precedent is bad, let it be overruled by all means, or let the legislature regulate the matter by statute." Francis Lieber, On Civil Liberty and Self-Government 211 (Theodore D. Woolsey ed., 3d ed. 1883). With respect to annexation, the legislature had regulated the matter by statute but that didn't stop the judiciary from stepping in to tamper with the legislature's policy choices in order to advance its own. This court should disavow its decades-old interference with the legislature's exclusive prerogative to write laws.

II

¶56 In Mt. Pleasant I, the court purported to address whether the annexation by the City of Racine of property located in the Town of Mt. Pleasant "was void because the area proposed to be annexed [was] not contiguous to the city of Racine within the requirements of sec. 66.021(2)(a)[.]" Town of Mt. Pleasant v. City of Racine, 24 Wis. 2d 41, 45, 127 N.W.2d 757 (1964). The land at issue in Mt. Pleasant I was 145 acres total, including a corridor roughly "1,705 feet long, and varying in width from approximately 306 feet to 152 feet." Id. at 43. At the end of this corridor, 153 feet of the annexed area touched the City of Racine. Id. at 44. On appeal, the court considered whether the proposed annexation satisfied the statutory requirement of contiguity. Id. at 45. At the time of Mt. Pleasant I, Wis. Stat. § 66.021(2)(a) (1961-62)⁵ contained one substantive requirement

⁵ All subsequent references to Wis. Stat. § 66.021(2) are to the 1961-62 version unless otherwise noted.

for annexation: contiguity.⁶ The statutory provision at issue between the parties in this case retains this sole substantive requirement.⁷

¶57 The Mt. Pleasant I majority neglected to analyze the statutory meaning of "contiguous," a deficit to which the majority in this case alludes but nevertheless declines to rectify. Majority op., ¶20. Instead of developing the meaning of "contiguous" under the annexation statute, the majority elects to distinguish the annexed territory in Mt. Pleasant I from the annexed property in this case, based upon the "significant degree of physical contact between the properties." Majority op., ¶22 (citation omitted). I agree with the majority's conclusion; giving the word its plain meaning, Kohler's property is "contiguous" to the City of Sheboygan. See Contiguous, Black's Law Dictionary (11th ed. 2019) ("Touching at a point or along a boundary; ADJOINING").

⁶ In 1964 the statute provided:

Methods of annexation. Territory contiguous to any city or village may be annexed thereto in the following ways:

(a) Direct Annexation. . . .

Wis. Stat. § 66.021(2) (emphasis added).

⁷ Wisconsin Stat. § 66.0217(3) provides:

Other methods of annexation. Subject to ss. 66.0301(6)(d) and 66.0307(7), and except as provided in sub. (14), territory contiguous to a city or village may be annexed to the city or village in the following ways:

(a) Direct annexation by one-half approval. . . .

(emphasis added).

¶58 In this case, the majority acknowledges "[t]he Mt. Pleasant I court focused its discussion of contiguity on the validity of 'corridor' or 'strip' annexations," which Mt. Pleasant I described as "isolated areas connected by means of a technical strip a few feet wide." Mt. Pleasant I, 24 Wis. 2d at 46; majority op., ¶20. Somewhat ironically, Mt. Pleasant I's concern over shoestring or gerrymander annexations was completely untethered to the statutory contiguity requirement. In lieu of ascertaining the meaning of "contiguous" under the annexation statute, that court supplanted the statutory language altogether in favor of the judicially-invented "test of reason." Mt. Pleasant I, 24 Wis. 2d at 45-46. While the legislature imposed but one substantive requirement—contiguity—the judiciary fashioned three components on which it would condition its approval of an annexation: "(1) Exclusions and irregularities in boundary lines must not be the result of arbitrariness; (2) some reasonable present or demonstrable future need for the annexed property must be shown; and (3) no other factors must exist which would constitute an abuse of discretion." Town of Lafayette, 70 Wis. 2d at 625 (footnote omitted). By inquiring whether the boundary lines were "reasonable in the sense that they were not fixed arbitrarily, capriciously, or in the abuse of discretion[,]" the Mt. Pleasant I court abandoned the statutory text altogether, instead proclaiming that "[s]hoestring or gerrymander annexation[s]" do not coincide with legislative "intent" as the court somehow divined it. Mt. Pleasant I, 24 Wis. 2d at 46. Without any pretense of ascertaining the meaning of "contiguous" under the annexation statute, the court held, in conclusory

fashion, that under the extra-textual "rule of reason . . . the annexation of the area in question does not meet the statutory requirement of contiguity." Id. at 47.

¶59 Mt. Pleasant I's determination that the boundary lines of the proposed annexation were not "reasonable," i.e., were "fixed arbitrarily, capriciously, or in the abuse of discretion[,] " has no bearing on whether annexed property is contiguous. Boundary lines could be "fixed arbitrarily" and unreasonable, and nevertheless be "contiguous" under the annexation statute. Rather than applying the sole criterion for a lawful annexation—contiguity—the Mt. Pleasant I court instead introduced considerations it found pertinent under its policy predilections, but were in fact extraneous to the statutory language. See Mt. Pleasant I, 24 Wis. 2d at 47 (Wilkie, J., dissenting) (citing § 66.021(2)) ("The majority has engrafted onto the statute the additional requirement that a proposed annexation is subject to review under the 'rule of reason' to determine whether the proposed boundary lines are 'reasonable in the sense that they were not fixed arbitrarily, capriciously, or in abuse of discretion.'" (footnote omitted)). In doing so, the court crossed the judicial boundary of declaring what the law says and intruded on the legislature's prerogative to proclaim what the law should be.

¶60 Grounded in the premise that judges know better than the people's representatives, the rule of reason displays judicial arrogance at its worst. See Clayton P. Gillette, Expropriation and Institutional Design in State and Local Government Law, 80 Va. L. Rev. 625, 681-82 (1994) (noting that implicit in Mt. Pleasant I's rationale is "that judicial intervention could provide a more

accurate decision about the propriety of particular annexations"); Laurie Reynolds, Rethinking Municipal Annexation Powers, 24 Urb. Law. 247, 295 n.185 (1992) ("The . . . rule of reason . . . allows wide-ranging judicial inquiry to evaluate the policy decisions behind the municipality's annexation." (citation omitted)). The rule of reason represents a relic of a by-gone era, reflecting the long-discredited notion that it was the duty of jurists to "do justice."⁸

¶61 Mt. Pleasant I also violated a cardinal canon of statutory interpretation by adding words (and a lot of them) to the statutory text. "Under the omitted-case canon of statutory interpretation, '[n]othing is to be added to what the text states or reasonably implies (casus omissus pro omisso habendus est). That is, a matter not covered is to be treated as not covered.'" Enbridge Energy Co., Inc. v. Dane Cty., 2019 WI 78, ¶23, 387 Wis. 2d 687, 929 N.W.2d 572 (quoting State ex. rel. Lopez-Quintero v. Dittman, 2019 WI 58, ¶18, 387 Wis. 2d 50, 928 N.W.2d 480); see also Wisconsin Ass'n of State Prosecutors v. WERC, 2018 WI 17, ¶45, 380 Wis. 2d 1, 907 N.W.2d 425 ("Nothing is to be added to what the text states or reasonably implies[.]" (quoting Antonin Scalia & Brian Garner, Reading Law: The Interpretation of Legal Texts 93 (2012))); Dawson v. Town of Jackson, 2011 WI 77, ¶42, 336 Wis. 2d 318, 801 N.W.2d 316 ("We decline to read into the statute

⁸ Reportedly, Judge Learned Hand once implored Justice Oliver Wendell Holmes to "Do Justice!" As the story goes, Justice Holmes responded, "That is not my job. My job is to play the game according to the rules." See Michael Herz, "Do Justice!": Variations of a Thrice-Told Tale, 82 Va. L. Rev. 111, 111 (1996) (citing Learned Hand, A Personal Confession, in The Spirit of Liberty 302, 306-07 (Irving Dilliard ed., 3d ed. 1960)).

words the legislature did not see fit to write." (citation omitted)).

¶62 The majority in this case does not attempt to dispute the existence of statutory contiguity (under its "common, ordinary, and accepted meaning")⁹ in Mt. Pleasant I, nor can it identify any language in Wis. Stat. § 66.021(2) even impliedly suggesting that the annexation must satisfy the rule of reason, nor can it connect the plain meaning of "contiguous" to any element of the rule of reason. See § 66.021(2); majority op., ¶¶20-22 (discussing Mt. Pleasant I's 153 foot border, which the Mt. Pleasant court held insufficient to meet the statutory contiguity requirement, while acknowledging the persuasive authority on which it relied set the line at 100 feet). At least the majority in this case acknowledges "that when the Mt. Pleasant I court stated that it relied upon 'application thereto of the rule of reason' to reach its conclusion regarding statutory contiguity . . . , it blurred the statutory contiguity and rule of reason analyses." Majority op., ¶23. The majority also concedes that Mt. Pleasant I did not actually interpret the statute but instead added additional hurdles proposed annexations must satisfy in order to survive judicial scrutiny: "contiguity is a legislative mandate discrete from the first prong of the judicially created rule of reason[.]" Id.

¶63 Just like its predecessor statute in 1964, Wis. Stat. § 66.0217(3) requires only contiguity for annexations. See § 66.0217(3). Preventing "[s]hoestring or gerrymander[ed]

⁹ State ex rel. Kalal v. Circuit Court for Dane Cty., 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110.

annexations" is a policy matter for the Wisconsin Legislature to adopt, not this court. Mt. Pleasant I blatantly disregarded the text of the annexation statute, remade the law to its liking, and should be overruled as both "unsound in principle" and "wrongly decided." In this case, I would rely on the plain meaning of the annexation statute and consider only whether Kohler's property is contiguous to the City of Sheboygan—that is, "[t]ouching at a point or along a boundary; ADJOINING"; "neighbouring, in close proximity[]"; "touching, in contact; adjoining." Contiguous, Black's Law Dictionary (11th ed. 2019); Contiguous, Oxford English Dictionary (6th ed. 1993). It is. The analysis ends there.

III

¶64 The "rule of reason" does not enjoy the longevity suggested by the majority. In a passing reference, the majority cites Smith v. Sherry, 50 Wis. 210, 6 N.W. 561 (1880), as the rule's foundation. See majority op., ¶24. Not so. In Town of Fond du Lac v. City of Fond du Lac, 22 Wis. 2d 533, 541, 126 N.W.2d 201 (1964), the court erroneously declared the rule of reason to have been "first announced in Smith v. Sherry["] Sherry's holding did not create the rule of reason and earlier courts twisted its language in order to give the rule a misleading lineage.

¶65 In Sherry, the court considered the validity of the Village of Shawano's annexation of non-adjoining property over six miles away. See Sherry, 50 Wis. at 561. The court held the annexation invalid pursuant to Article 11, Section 3 of the Wisconsin Constitution, which gives the legislature the power to organize cities and villages. Sherry, 50 Wis. at 564. The

annexation was constitutionally invalid because the property was not "adjacent or contiguous" to the Village, not because of arbitrary boundary lines or an abuse of discretion. See Sherry, 50 Wis. at 564. The court interpreted cities and villages in Article 11, Section 3 to "impl[y] an assemblage of inhabitants living in the vicinity of each other and not separated by any other intervening civil division of the state." Id. Because six miles separated the Village from the property in question, Sherry held "the territory so admitted to be included . . . is an abuse and violation of that provision of section 3, art. 11, of the constitution[.]" Id. The court concluded by saying that it was imposing no constraints on the legislature in fixing boundaries for cities or villages, "so long as the territory of which [they are] composed is adjacent or contiguous[.]" Id. at 564-65.

¶66 Almost fifty years of academic scholarship and cases reveal the shaky foundation for the current three-pronged rule of reason. Based solely on improper judicial policy making, the rule of reason has no foundation in Sherry or the Wisconsin Constitution. Sherry "has been infrequently cited in the past sixty years and misused when it was cited." Zeinemann, supra ¶54, at 277 & n.145 (internal footnote omitted; footnote omitted) (explaining courts miscited Sherry for the basis of the current rule of reason). Wisconsin courts have cited Sherry in annexation cases only twice since 1975. For good reason. "[T]oday's Rule of Reason bears little resemblance to the rule from Sherry" and "departs from Sherry." Id. at 278 (footnote omitted); see also Knowles, supra ¶54, at 1133 (discussing two weaknesses with the rule of reason's purported basis in the constitution). While the

rule of reason is a limitation on arbitrary actions by municipalities, the constitutional provision applied in Sherry is a "positive grant of power" allowing municipalities to govern themselves. See Wis. Const. art. 11, § 3 ("Cities and villages organized pursuant to state law may determine[.]"); Knowles, supra ¶54, at 1133 (discussing the same).

¶67 The expressed purpose for the judicial creation of the rule of reason was to effectuate a perceived legislative "intent" to prohibit certain annexations. Mt. Pleasant I, 24 Wis. 2d at 46 (suggesting that a corridor annexation "does not coincide with legislative intent"); see also Richard W. Cutler, Characteristics of Land Required for Incorporation or Expansion of a Municipality, 1958 Wis. L. Rev. 6, 29 (1958) ("Presumably the court interpreted the rule of reason as representing legislative intent." (footnote omitted)); Knowles, supra ¶54, at 1139 ("The principal advantage of the rule of reason in the contiguity cases is that, at least in theory, it may be used to invalidate annexations allowed by the statutes but clearly contrary to legislative intent."). This court rightly discarded legislative "intent" as a permissible indicator of statutory meaning. See State ex rel. Kalal v. Circuit Court for Dane Cty., 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110 ("It is the enacted law, not the unenacted intent, that is binding on the public."); see also State v. Lopez, 2019 WI 101, ¶39, 389 Wis. 2d 156, 936 N.W.2d 125 (Rebecca Grassl Bradley, J., concurring) ("An interpretation based on what the legislature intended a statute to mean is improper."); Winebow, Inc. v. Capitol-Husting Co., 2018 WI 60, ¶40, 381 Wis. 2d 732, 914 N.W.2d 631 (Rebecca Grassl Bradley, J., dissenting)

("[L]egislative intent behind enactment of a law . . . cannot govern statutory interpretation. Rather, our analysis must focus on the statutory language itself[.]"); State v. Grandberry, 380 Wis. 2d 541, ¶55 (Kelly, J., concurring) ("[W]e give effect only to what the legislature does, not what it tried to do." (footnote omitted)).

¶68 Crafting judicial doctrines based on the collective intent of a large body relies on the false premise that a deliberative body acts with a single purpose. See John W. MacDonald, The Position of Statutory Construction in Present Day Law Practice, 3 Vand. L. Rev. 369, 371 (1950) ("[A]nyone who has ever dealt with the legislative process knows how conspicuously absent is a collective legislative intention."); see also Scalia & Garner, Reading Law, supra ¶61, at 391-96 ("[C]ollective intent is pure fiction because dozens if not hundreds of legislators have their own subjective views on the minutiae of the bills they are voting on[.]"). Legislative intent is nothing more than a pretense to conceal what the court is actually doing—making law reflecting its own biases and policy predilections. See John F. Manning, Without the Pretense of Legislative Intent, 130 Harv. L. Rev. 2397, 2400, 2406-07 (2017) ("[L]egislative intent is a fiction, something judges invoke to elide the fact that they are constructing rather than identifying a legislative decision."). "It is impossible to find the 'will,' 'design,' 'intent,' or 'mind' . . . without making some value judgment about what should count as that legislature's intended decision and why." Id. at 2431 (emphasis in original). The only foundation upon which the

rule of reason stands, legislative intent, collapsed long ago.¹⁰ There is nothing left upon which the rule can, or should, stand.

¶69 Mt. Pleasant I was the first case to use the rule of reason to invalidate an annexation for lack of contiguity. Knowles, supra ¶54, at 1138. Setting aside the impropriety of the court's action, Mt. Pleasant I failed to explain it. See Walter K. Johnson, The Wisconsin Experience with State-Level Review of Municipal Incorporations, Consolidations, and Annexations, 1965 Wis. L. Rev. 462, 479 (1965). Mt. Pleasant I neglects to explain why the annexation was arbitrary, capricious, or an abuse of discretion, nor does it specify the court-proclaimed "lack of reason for the annexation shape." Id.; see also Mt. Pleasant I, 24 Wis. 2d at 45-47. Instead, it substituted its own will for that of local officials. Johnson, supra ¶69, at 479.

¶70 In this case, the majority elects to continue applying the rule of reason, but the rule's incurable flaws prevent the majority from contributing any clarity. With respect to the arbitrariness prong of the test, the majority concludes the land at issue "is not an exceptional shape[,] " before declaring it is not similar to the "boundaries disapproved of in Mt. Pleasant I." Majority op., ¶31. The aerial images provided by the Town of Wilson, however, show that the shape of the annexed property is almost identical to the annexation's shape in Mt. Pleasant I.

¹⁰ Even the great purposivists of their time, Henry Hart and Albert Sacks, dismissed the idea of discerning a collective legislative intent. See John F. Manning, Without the Pretense of Legislative Intent, 130 Harv. L. Rev. 2397, 2410 (2017) (citing Henry M. Hart, Jr. & Albert M. Sacks, The Legal Process 1374 (William N. Eskridge, Jr. & Philip P. Frickey eds., Foundation Press 1994) (1958)).

Parties will remain without any guidance in future annexation disputes.

¶71 The other requirements of the rule of reason suffer from the same infirmities. Under the third prong, "no other factors must exist which would constitute an abuse of discretion." Town of Pleasant Prairie v. City of Kenosha, 75 Wis. 2d 322, 327, 249 N.W.2d 581 (1977) (footnote omitted). What factors rise to the level of an abuse of discretion? Prior decisions shed little light on this part of the inquiry. The majority in this case defines the standard as encompassing "reasons other than those considered under the first two components." Majority op., ¶39 (quoted source omitted). Does this mean an annexation reflects an abuse of discretion whenever a judge identifies any other reason for rejecting the annexation besides arbitrariness or lack of reasonable need? See Manning, supra ¶68, at 2400.

¶72 The rule of reason does not work because it is not a rule of law; it is a mechanism by which the judiciary exercises not its judgment but its will. The majority and Justice Hagedorn's concurrence both suggest the court acquiesce to the parties' requests to retain the rule of reason. See majority op., ¶24 n.15. (noting the "parties' request that the rule remain intact[]"); Justice Hagedorn's concurrence, ¶78 (with respect to "discarding the rule of reason the parties . . . expressly asked us not to do so.") Litigants, of course, advocate for decisions benefitting their interests. Judges, however, have an independent duty to say what the law is, regardless of what the parties may wish it to be. See Marbury, 5 U.S. (1 Cranch) at 177. The majority mischaracterizes abolishing the rule of reason as "abandon[ing]

our neutrality to develop arguments." See majority op., ¶24 n.15 (quoted source omitted). Overturning a law the court had no authority to invent is not abandoning neutrality; it is our judicial role and our responsibility to ensure we exercise only judicial and not legislative power. See Marbury, 5 U.S. (1 Cranch) at 177. If parties ask us to usurp the role of the legislature, we must decline. The City's arguments in favor of retaining the rule of reason may be valid, but they are arguments properly made before the legislature, not the bench. It "is the obligation of the Judiciary . . . to confine itself to its proper role[.]" Koschkee v. Taylor, 2019 WI 76, ¶54, 387 Wis. 2d 552, 929 N.W.2d 600 (quoting City of Arlington v. F.C.C., 569 U.S. 290, 327 (2013) (Roberts, C.J., dissenting)). The proper judicial role does not include "reweigh[ing] the policy choices of the legislature." Mayo v. Wisconsin Injured Patients and Families Comp. Fund, 2018 WI 78, ¶¶26, 40, 383 Wis. 2d 1, 914 N.W.2d 678. Because jurists are not policy makers, this court should apply the annexation law as enacted by the legislature and shed the rule of reason from the contiguity analysis.

¶73 The majority proposes the "proper procedure" would be to wait for the parties to raise the issue before deciding it. See majority op., ¶24 n.15 (quoted source omitted). The parties in this case did raise the rule of reason, asking us to apply it. If in the course of adjudicating a controversy, we discover we lack any authority to apply a law, we are duty-bound to say so. Cf. Trump v. Hawaii, 138 S. Ct. 2392, 2423 (2018) (abrogating Korematsu v. United States, 323 U.S. 214 (1944), even though neither party sought it, but simply because the dissent's invocation "afford[ed]

th[e] Court the opportunity to make express . . . Korematsu was gravely wrong the day it was decided . . . and . . . 'has no place in law[.]'" (quoted source omitted)). The essence of the judicial function is not to fashion law based on our policy preferences, but the "duty to correctly 'expound' it." Gamble v. United States, 139 S. Ct. 1960, 1982 (2019) (Thomas, J., concurring) (quoting Letter from J. Madison to N. Trist (Dec. 1831), in 9 The Writings of James Madison 477 (G. Hunt ed. 1910) (Writings of Madison)); see also Gary Lawson, The Constitutional Case Against Precedent, 17 Harv. J.L. & Pub. Pol'y 23, 26 (1994) ("[A] vital part of the judicial task is to determine whether a claimed source of law . . . may be inapplicable . . . because it conflicts with some hierarchically superior legal source."). Just as the Constitution reigns supreme over statutory law, so too does statutory law trump judicial policy making.¹¹ With respect to the rule of reason, "[w]e should get out of this area, where we have no right to be, and where we do neither ourselves nor the [state] any good by remaining." Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 1002 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part). Because its creation reflects improper overreaching by the judiciary, we should abandon the rule of reason, regardless of the consequences.¹²

¹¹ See Justice Hagedorn's concurrence, ¶¶76-77 (acknowledging the rule of reason is "judicial policy-making" and the "rule of judges" instead of the "rule of law[,]") but nevertheless applying it as "a fair statement and application of" the doctrine.

¹² Justice Hagedorn's concurrence recommends a "full hearing on the merits of this important issue" in order to "ensure that we are not missing anything" and to identify "the consequences of our decision" before deciding whether to discard the rule of reason. Justice Hagedorn's concurrence, ¶78. Continuing to tread on the

IV

¶74 I agree with the majority in concluding that the annexation of Kohler's property by the City of Sheboygan satisfied the contiguity requirement under Wis. Stat. § 66.0217(3). I cannot join the majority's analysis because its continued adherence to the rule of reason perpetuates a non-textual interpretation of our annexation statute, gives life to the antiquated notion of legislative "intent," and validates judicial policy making. Because I would overturn Mt. Pleasant I, abolish the rule of reason, and determine contiguity based solely on the text of the annexation statute, I respectfully concur.

¶75 I am authorized to state that Justice DANIEL KELLY joins this concurrence.

exclusive province of the legislature in the interests of prudence elevates the consequences of our decision making over the statutory text. "But it is precisely because people differ over what is sensible and what is desirable that we elect those who will write our laws—and expect courts to observe what has been written." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 22 (2012). When this court created the rule of reason, it observed what the legislature had written, decided it didn't like it, and replaced the statutory text with what the court deemed to be a preferable test. Regardless of the consequences, such an invasion of the legislative's prerogative should not stand.

¶76 BRIAN HAGEDORN, J. (*concurring*). The majority opinion is a fair statement and application of the analytical framework our cases have announced. That's the good news, and the reason I join the majority. The bad news is that our cases are about as straightforward as a Halloween corn maze, and employ interpretive principles that should strike terror into everyone committed to the rule of law rather than the rule of judges.

¶77 In a tour de force, Justice Rebecca Grassl Bradley's concurrence lays out the manifold problems with the rule of reason. It reminds me of the two rules Justice Neil Gorsuch tells his law clerks. The first rule is, "Don't make stuff up." The second rule is, "When people beg, and say, 'Oh the consequences are so important,' and when they say, 'You're a terrible, terrible person if you don't,' just refer back to Rule No. 1."¹ A casual read-through of our cases creating, modifying, and applying the rule of reason leads to the discomfoting notion that the "legal test" the judiciary has superimposed onto annexation challenges is nothing more than a fancy-sounding façade for the real agenda: judicial policy-making pretending to be law.

¶78 With that said, I have one bit of pause before officially saying so and discarding the rule of reason from our jurisprudence. Namely, the parties did not ask us to go there, and in oral argument, expressly asked us not to do so. Eliminating the rule of reason would be a significant change in our doctrine. Before taking this step, I believe we would be best served by adversarial

¹ <https://www.wsj.com/articles/the-high-courts-rocky-mountain-originalist-11567792378>.

briefing and argument. A full hearing on the merits of this important issue would help ensure that we are not missing anything and that the consequences of our decision are fully fleshed out beforehand. Therefore, I join the majority, but would welcome an opportunity to revisit the rule of reason.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.O. No. 157-19-20 accepting the 2020 Long Term Financial Plan.

REPORT PREPARED BY: Darrell Hofland, City Administrator

REPORT DATE: February 6, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The City of Sheboygan recognizes a long term financial plan will be a valuable tool combining financial forecasting with the Strategic Plan. The process analyzes future scenarios to assist in the navigation of fiscal challenges. The Long Term Financial Plan forecasts projected revenue and expenses using assumptions about economic conditions and future spending to align with long term objectives.

STAFF COMMENTS:

Governments utilize a comprehensive long term financial plan to stimulate discussion and engender a long range perspective for decision makers. It can be used as a tool to prevent financial challenges while it stimulates long term strategic thinking. In addition, it can give consensus on long term financial direction and is a useful tool for communications with internal and external stakeholders.

Attached is an update to the Long Term Financial Plan which was approved by the Common Council in February, 2019.

ACTION REQUESTED:

Motion to recommend the Common Council receive R.O. No. 157-19-20 and adopt the recommendation by the City Administrator accepting the 2020 Long Term Financial Plan.

ATTACHMENTS:

- I. R.O. No. 157-19-20.

II

3.6

R. O. No. 157 - 19 - 20. By CITY ADMINISTRATOR. February 17, 2020.

Submitting the City of Sheboygan 2020 Long Term Financial Plan to the Common Council.

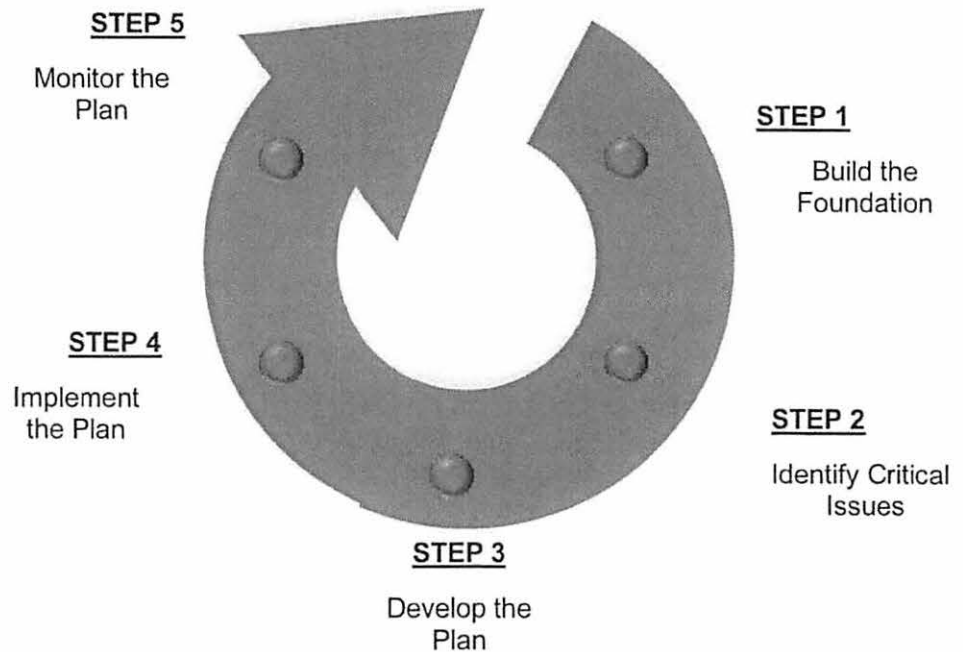
*Finance
Personnel*

City Administrator

LONG TERM FINANCIAL PLAN AND FISCAL POLICIES

The LTFP is a financial strategic plan

The City of Sheboygan, at the Common Council direction, annually prepares a comprehensive Long Term Financial Plan (LTFP), consistent with the city's Strategic Plan focus area of Governing and Fiscal Management. The LTFP is intended to serve as a tool, providing Common Council and the public with the insight required to address issues impacting the city's financial condition.



Long Term Financial Plan Process

Financial strategies have been identified to contribute to the five financial goals.

Ensure adequate funding: obtain adequate funding from multiple sources for requirements related to day-to-day operating commitments, capital equipment life cycle and infrastructure needs, as well as managing growth and development. This would encompass a balanced approach between understanding the timing and nature of operating expenditures to ensure they are matched with reliable and stable funding sources and capital funding related to infrastructure needs and maintaining capital assets. This strategy includes identifying costs and maintaining or increasing funding from existing and new revenue sources.

Achieving diverse sources of funding: identify actions related to alternative and innovative funding sources that will

help the city respond to the pressures of growth and redevelopment and reduce the reliance on property taxes. Property taxes, user fees and intergovernmental revenue are the traditional inelastic revenue sources used to meet expenditure requirements that are continually under upward pressure which can place stress on the city's financial position.

Managing expenditures: containing costs in order to limit pressure on revenue requirements maintain market competitiveness and/or reserve capacity to maintain service levels. This can be accomplished by increasing efficiencies in service delivery, setting spending priorities to ensure the most important areas are funded, and positioning the city as an efficient provider of services and infrastructure.

Providing for contingencies: prepare the city to manage risk and to be resilient when dealing with unforeseen circumstances while limiting the impact on services. This can be accomplished by monitoring economic and operational factors and forecasts in order to be able to respond to changing circumstances and ensuring that the city has access to enough funds to meet unforeseen urgent needs and manage risk appropriately.

Using debt strategically: providing capital funding flexibility by allowing infrastructure to be built and used before sufficient revenue has accumulated to offset needed investment. This can be accomplished by managing the level of debt and strategically making essential assets available as well as examining a wider range of debt financing instruments.

Operating with foresight: taking into account the current and future impacts of decisions on services and infrastructure. This includes maintaining or extending existing practices regarding a long-term approach in decision making.

Maintaining sufficient cash flow: allowing the city to pay the costs of supplying services and infrastructure throughout the year to match expenditure requirements, including debt service.

Promoting and enabling integration of priorities and resources: identifying and encouraging awareness of the financial implications of policy making and decision making on the city's financial position. This can be accomplished by linking needs and actions to resources, responsibilities and timeliness among stakeholders, promoting greater efficiency by reducing duplication of effort or working at cross purposes and managing growth and development.

***The Long Term Financial
Plan process***

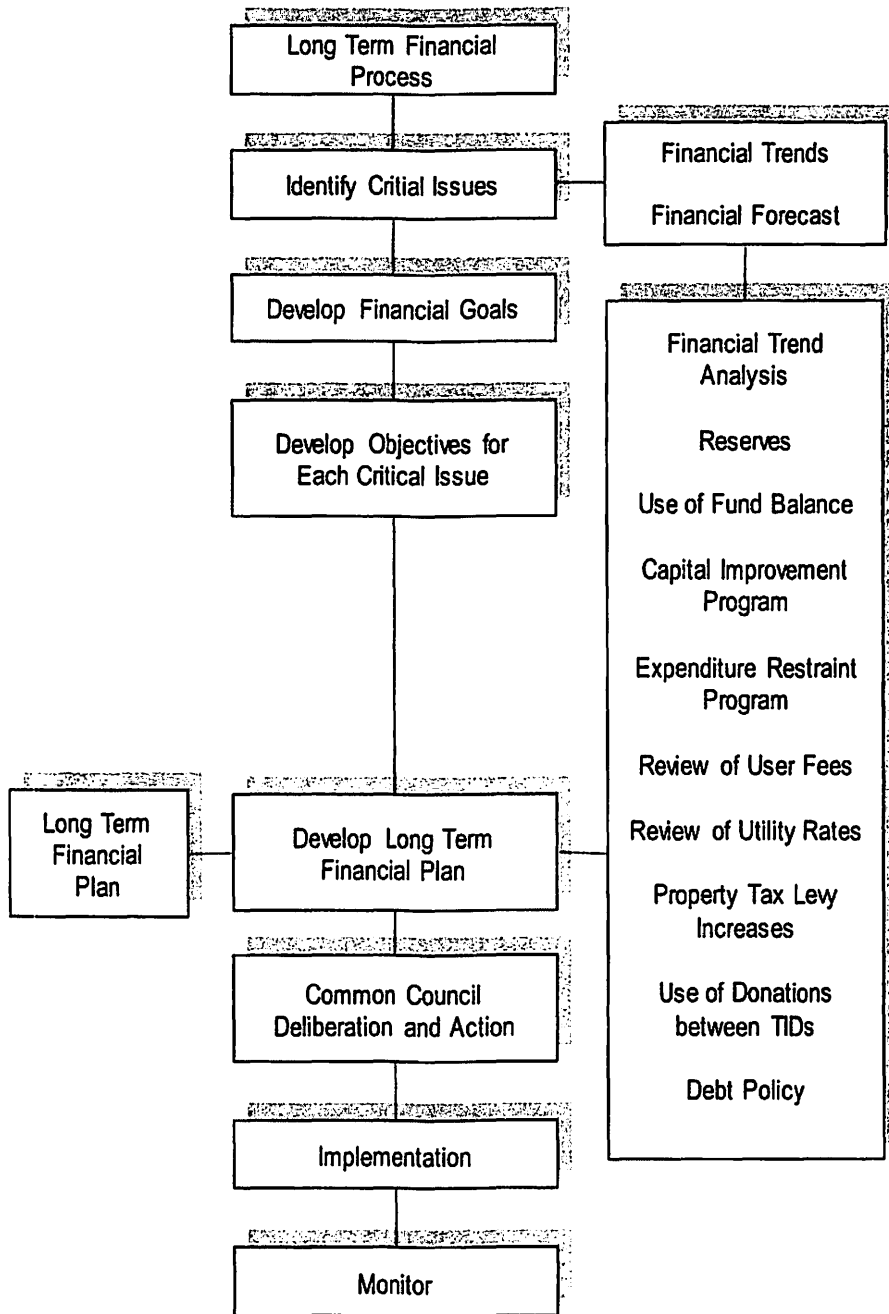
The city's LTFP begins by identifying several critical areas which have, or are expected to have, an impact on the financial condition of the city over the next five years. Once the critical issues are identified, specific goals and objectives are developed for each project designed to meet the overall goal of the project.

To provide a clear and concise Long Term Financial Plan, identifying the city's current and projected financial condition, and proposing specific alternatives to address identified problems.

The Management Team is responsible for keeping the process on track and on schedule. In addition, the Team identifies their goals and objectives are met. The key message expressed to the Management Team is that the LTFP must be clear and concise while providing very specific and practical recommendations.

The LTFP is presented in detail to the Common Council. The Finance and Personnel Committee reviewed the initial proposal in February, 2020. The next section contains the schedule followed by the Common Council as they develop or update an action plan that the city will implement as a part of the annual budget process:

The chart on the following page graphically depicts the process involved in developing the city's LTFP. This project is largely conducted by the city's Management Team.



Schedule

February or March: LTFP provided to the Finance and Personnel Committee.

March or April: Public input and Common Council adoption

The LTFP represents elements of the city's Fiscal Policy.

The LTFP for the City of Sheboygan represents the ongoing commitment to implement its Strategic Plan focus area of Governing and Fiscal Management. On an annual basis, the LTFP has been incorporated into the development, deliberation and approval of the Annual Program Budget. The plan is intended to be a well thought-out analysis of the issues that may affect the finances of the City of Sheboygan.

Trends & Forecast are the foundation of the LTFP

The LTFP uses financial trends and forecasts to identify future financial challenges and opportunities, and then identifies strategies to secure financial sustainability within these same challenges and opportunities. The trends and forecast must identify how, from a financial perspective, the city will provide a consistent level of public services and also addresses special issues of concern to the community.

Financial Sustainability

Funding sufficiency: having sufficient resources to support the delivery of services. This goal not only refers to the amount of funding but also to the consistency in funding level changes relative to changes in expenditures and the diversity of funding sources.

Integration: ensuring that the financial constraints under which the city operates are fully considered when engaged in policy-making and decision-making.

Credibility: achieving financial performance in a way that maintains public confidence in the city's ability to provide services and infrastructure at expected levels. Financial decisions should be consistent with the overall goal of financial sustainability. Services must be valuable to citizens and the benefits provided must be perceived that the services are in proportion to the taxes and fees paid.

Input from Multi-Year City Plans

Common Council-approved multi-year Capital Improvements Program is included in the Long Term Financial Plan as it will impact the finances of the city over the next five years.

From a fiscal perspective, the city's financial picture is positive. The General Fund's fund balance exceeds the city's policy of a minimum 25 percent of expenditures, largely due to significant expenditure savings experienced over the last few years.

Overall, the city is in excellent financial shape and should be able to accommodate the expenditure growth that is anticipated over the next ten years.

State of Wisconsin restrictions on local governments

External factors imposed by the State of Wisconsin have played a key role in shaping the city's financial picture. These factors include restrictions on property tax levy increases and restrictions on new or increase in existing user fees without corresponding reductions in property tax level.

Several city funds are tied directly to development and consequently, are expanding. The active Tax Incremental Districts (TIDs) all have a positive financial outlook, as the increment is sufficient to meet obligations, or serve to donate funds to other districts. The city also has capacity to develop

additional TIDs within the 12 percent capacity limit established by the WI Department of Revenue.

The LTFP provides a framework from which the Common Council and city staff can frame future financial decisions.

As outlined in the 2020 Annual Program Budget, the recommendations from the city's multi-year plans are included in the LTFP as they impact the finances of the city. All of the plans were utilized in LTFP analysis of the General Fund, tax levy and TID's. The fiscal related issues include:

- *Financial Trend Analysis* - All operating position and debt indicators were favorable.
- *Reserves* - The General Fund target is maintaining a minimum of 25 percent uncommitted fund balance. The LTFP indicates that a 25 percent uncommitted fund balance is attainable through the ten year period.
- *Use of Fund Balance as a revenue source* – The city policy restricts the amount of undesignated fund balance for the General Fund that is applied to the budget for the ensuing year shall not reduce the undesignated fund balance below an amount equal to 25 percent of the ensuing year's General Fund expenditures.
- *Capital Improvements Program* – The Five Year Capital Improvements Program includes requests from all city departments for assets and infrastructure improvements, including TIDs. The Five Year Capital Improvements Program is funded from tax levy, debt issuance, contributions and federal, state and local grant funding.
- *Expenditure Restraint Program* – The analysis presumes the city will remain eligible for this State of Wisconsin program which rewards operating (funds affected by the tax levy) budgets who budget annually at or below inflation plus a percentage of net new construction. The LTFP projects expenditures based on projected inflation.
- *Review of User Fees* – The city's Management Team reviews existing fees for consideration of increases annually.
- *Review of Utility User Fee Rates* – Rates are reviewed annually for possible adjustments.
- *Use of Donations between TIDs* – The city has a number of well performing Tax Incremental District (TID) with capacity to donate to other underperforming TIDs.
- *Debt Policy* – This policy establishes parameters for issuing and managing debt. No more than 60 percent of the State of Wisconsin's limit of 5 percent of equalized value.

A financial projection of the General Fund, Debt Service Fund and tax levy requirements is included in the LTFP. An analysis of the TIDs is conducted annually.

An analysis of General Fund revenues and expenditures as well as the General Fund's fund balance is conducted annually. Based on actual and current budgeted revenues and expenditures as well as annual CPI changes, a five year forecast was developed.

**General Fund
Revenue Assumptions**

Revenue Assumptions:

- **Property Tax Levy** – Current State limits continue. Tax levy increases for all funds limited to net new construction (floor of zero percent), adjustments to debt service, and additional adjustments due to annexations, transfer of services to/from another municipality, adjustments due to increases of fees for tax levy supported services and amounts approved by referendum. The 2020 levy increased slightly due to a majority of net new construction development occurring in TIDs.
- **Intergovernmental Revenue** – Current State funding is mostly stable with continuation of transportation aids, expenditure restraint program, and state shared revenue program. The exception is Transportation Aids which will continue to increase based upon the State formula which recognizes the city's increase in transportation-related expenses.
- **All Other Revenue** – Includes Permits and Licenses, Fines and Forfeitures, Charges for Services, and Miscellaneous Revenue. Slight increase anticipated in construction-related permits. All other revenues in this classification anticipated to remain stable.
- **Other Financing Sources** – Conservatively estimated with slight change or no change.

**General Fund
Expenditures Assumptions**

Expenditure Assumptions

- **Personnel Expenditures (Personal Services)** - Wages and benefits, including Wisconsin Retirement System (rates determined by the state) and health insurance (self-insured by the City of Sheboygan). A major portion of expenditures are wage related. A two percent wage increase is included in the 2020 budget.
- **Non-Personnel Expenditures (Non-Personal Services)** – Contracted services, office supplies, utilities, gasoline, liability and property insurance, training and conferences and communication are the main expenses.

Based upon these assumptions, the 2020 General Fund budget will utilize approximately \$1,889,880 in fund balance. Due to conservation budget assumptions, it is anticipated that little to

no actual use of these funds will be necessary. Regardless, the General Fund budget projects a fund balance which will exceed the fund balance policy of maintaining a minimum of 25 percent.

Tax Levy Revenue

Tax Levy Revenue – Tax levy revenue is the largest revenue source for city services and projects.

Tax levy revenue is collected for the following funds:

- **General** – Largest tax levy portion is allocated to this fund which is the operating fund of the city. Increases in the property tax allocation are expected to increase slightly.
- **Library** – Tax levy portion allocated to Mead Public Library Fund will increase in 2020 slightly for the third consecutive year.
- **Park, Forestry and Open Space** – Tax levy funding, which was first allocated in 2017, will continue to be \$110,000 to fund capital items.
- **G.O. Debt Service** – Tax levy portion allocated to G.O. Debt Service Fund will continue to increase to accommodate the increase in annual debt service payments, which are the result of an enhanced street improvement plan.
- **Capital Projects** – Tax levy for capital projects has been allocated to the Capital Project Fund, starting with the 2017 Annual Program Budget. In the 2020 budget, the amount allocated remains unchanged.
- **Transit** – Tax levy portion allocated to the Transit Utility Fund has increased slightly in 2020.

Tax levy limits under current state law may change with future legislation. Changes to the law will require adjustments to future long-range forecasts as necessary. Future limitations could impact the ability of the city to deliver services.

Summary

The LTFP is designed to be a dynamic document that is modified based on current or new conditions. External factors play a key role in determining the financial picture of the city. The external factors include legislation approved by the State of Wisconsin, development and the economy. These factors may impact the financial picture positively or negatively.

The current financial situation reflects a strong financial position, prudent fiscal practices and solid reserves for the funds included on the LTFP.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 167-19-20 by Alderpersons Donohue and Bohren approving the Project Plan and establishing the boundaries for the creation of Tax Incremental District No. 20, City of Sheboygan, Wisconsin.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: February 18, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

Tax Incremental District 20 is being created to facilitate redevelopment of the blighted, underused parcel known as Vandervart Concrete Products along South Business Drive and Georgia Avenue on the north and Broadway Avenue on the south. GreenStreet Development, St. Louis, MO has received Plan Commission approval prior to the development of the 240 apartments and support structures at a minimum assessed value of the \$29 million and a total project cost of \$47 million. The purpose of the TID is to provide developer funded incentive payments known as "Pay As Go" which reimbursed the developer a portion of their taxes. The Common Council has previously approved a developer's agreement for the proposed improvements.

STAFF COMMENTS:

The TID will encompass the former Vandervart property and adjacent railroad right-of-way to the east. The project cost consists of infrastructure improvements, recreation trail improvements, and development incentives. The district is being created as rehabilitation district which allows it to be open for up to 27 years

ACTION REQUESTED:

Motion to recommend the Common Council adopt Res. No. 167-19-20 approving the Project Plan and establishing the boundaries for the creation of Tax Incremental District No. 20, City of Sheboygan, Wisconsin.

ATTACHMENTS:

- I. Res. No. 167-19-20

III

4.2

Res. No. 167-19 - 20. By Alderpersons Donohue and Bohren.
February 17, 2020.

A RESOLUTION approving the Project Plan and establishing the boundaries for and the creation of Tax Incremental District No. 20, City of Sheboygan, Wisconsin.

WHEREAS, the City of Sheboygan (the "City") has determined that use of Tax Incremental Financing is required to promote development and redevelopment within the City; and

WHEREAS, Tax Incremental District No. 20 (the "District") is proposed to be created by the City as a rehabilitation - conservation district in accordance with the provisions of § 66.1105, Wis. Stats., (the "Tax Increment Law"); and

WHEREAS, a Project Plan for the District has been prepared that includes:

- a. A statement listing of the kind, number and location of all proposed public works or improvements within the District, or to the extent provided in § 66.1105(2)(f)1.k. and 66.1105(2)(f)1.n., Wis. Stats., outside of the District;
- b. An economic feasibility study;
- c. A detailed list of estimated project costs;
- d. A description of the methods of financing all estimated project costs and the time when the related costs or monetary obligations are to be incurred;
- e. A map showing existing uses and conditions of real property in the District;
- f. A map showing proposed improvements and uses in the District;
- g. Proposed changes of zoning ordinances, master plan, map, building codes and City ordinances;
- h. A list of estimated non-project costs;
- i. A statement of the proposed plan for relocation of any persons to be displaced;
- j. A statement indicating how the District promotes the orderly development of the City;
- k. An opinion of the City Attorney or of an attorney retained by the City advising that the plan is complete and complies with § 66.1105(4)(f), Wis. Stats.; and

WHEREAS, prior to its publication, a copy of the notice of public hearing was sent to owners of all property in the proposed district, the chief executive officers of Sheboygan County, the Sheboygan Area School District, and the Lakeshore Technical College District, and any other entities having the power to levy taxes on property located within the District, in accordance with the procedures specified in the Tax Increment Law; and

Finance
+
Personnel

WHEREAS, in accordance with the procedures specified in the Tax Increment Law, the Plan Commission, on January 14, 2020 held a public hearing concerning the project plan and boundaries and proposed creation of the District, providing interested parties a reasonable opportunity to express their views thereon; and

WHEREAS, after said public hearing, the Plan Commission designated the boundaries of the District, adopted the Project Plan, and recommended to the Common Council that it create such District and approve the Project Plan; and

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Sheboygan that:

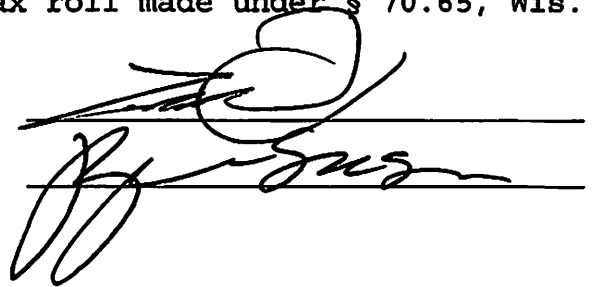
1. The legal description of the District that shall be named "Tax Incremental District No. 20, City of Sheboygan," is attached as Exhibit A to this Resolution.
2. The District is created effective as of January 1, 2020.
3. The Common Council finds and declares that:
 - (a) Not less than 50% by area of the real property within the District is in need of rehabilitation - conservation work within the meaning of § 66.1337(2m)(b), Wis. Stats.
 - (b) Based upon the findings, as stated in 3.a. above, the District is declared to be a rehabilitation - conservation district based on the identification and classification of the property included within the District.
 - (c) The improvement of such area is likely to enhance significantly the value of substantially all of the other real property in the District.
 - (d) The equalized value of the taxable property in the District plus the value increment of all other existing tax incremental districts within the City does not exceed 12% of the total equalized value of taxable property within the City.
 - (e) The City estimates that less than 35% of the territory within the District will be devoted to retail business at the end of the District's maximum expenditure period, pursuant to § 66.1105(5)(b), Wis. Stats.
 - (f) The project costs relate directly to promoting the rehabilitation of the area consistent with the purpose for which the District is created.

(g) That there are no parcels to be included within the District that were annexed by the City within the three-year period preceding adoption of this Resolution.

4. The Project Plan for "Tax Incremental District No. 20, City of Sheboygan" (attached as Exhibit B) is approved, and the City further finds the Plan is feasible and in conformity with the master plan of the City.

BE IT FURTHER RESOLVED: That the City Clerk is hereby authorized and directed to apply to the Wisconsin Department of Revenue, in such form as may be prescribed, for a "Determination of Tax Incremental Base," as of January 1, 2020, pursuant to the provisions of § 66.1105(5)(b), Wis. Stats.

BE IT FURTHER RESOLVED: That pursuant to § 66.1105(5)(f), Wis. Stats., the City Assessor is hereby authorized and directed to identify upon the assessment roll returned and examined under § 70.45, Wis. Stats., those parcels of property which are within the District, specifying thereon the name of the said District, and the City Clerk is hereby authorized and directed to make similar notations on the tax roll made under § 70.65, Wis. Stats.



A handwritten signature in black ink, appearing to be "John J. [unclear]", is written over two horizontal lines.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

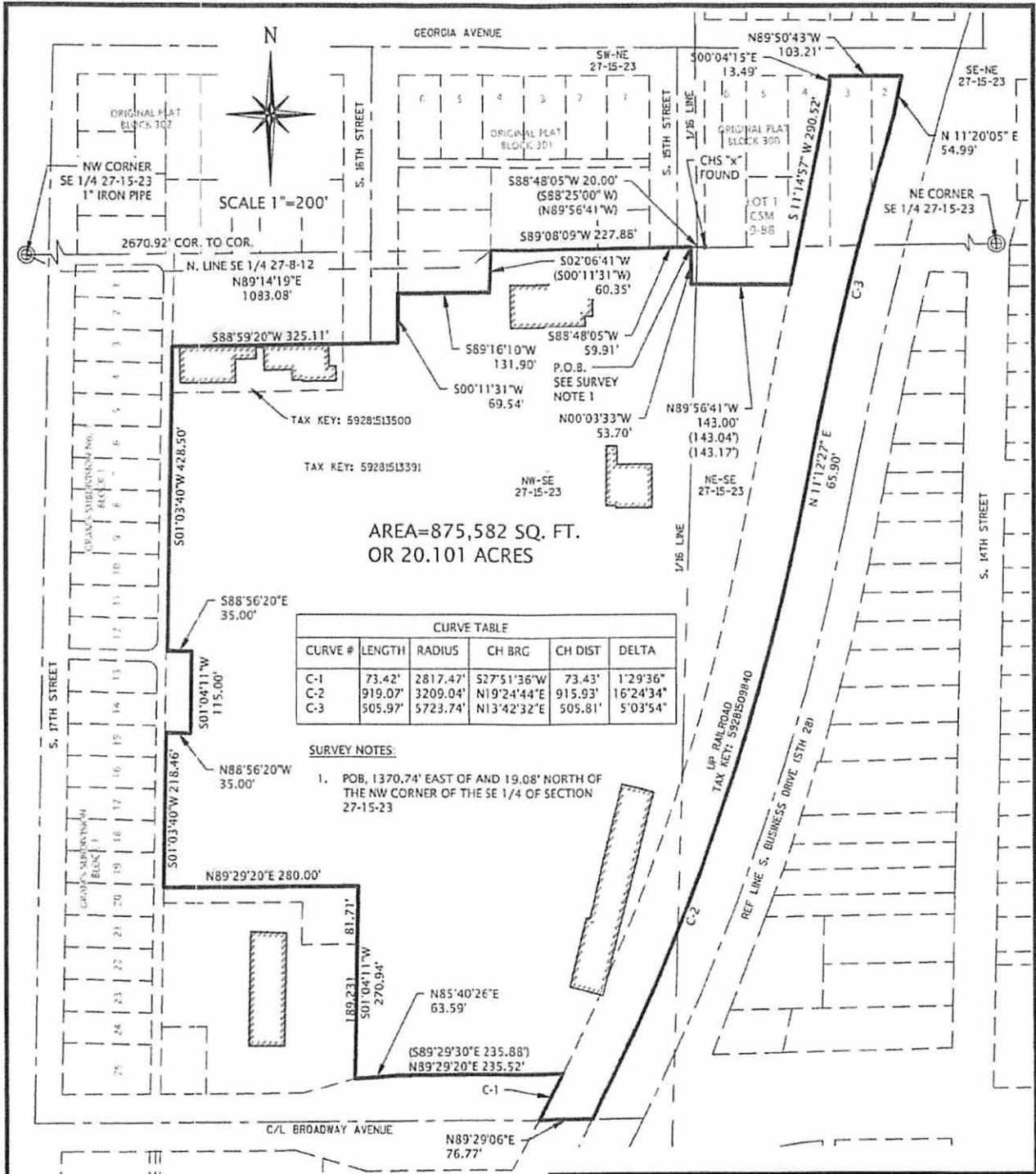


EXHIBIT A TID 20 LEGAL DESCRIPTION CITY OF SHEBOYGAN, WISCONSIN			
DESIGNED BY RFS	APPROVED BY RFS	DATE 1 28 2020	
REVISION NO.	REVISIONS	DATE	BY
1	CORRECTIONS-ADDITIONS	2-5-20	RFS
2			
TERRATEC PROJECT NO. 2001001		SHEET No. 1	OF 1

TERRATEC ENGINEERING, LLC.
 1607 N222 EVERGREEN BLVD., STE. 205
 CEDARBURG, WI 53012
 TEL: 262.377.1905

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BEARINGS REFERENCED TO
V3 ALTA/NSPS LAND TITLE
SURVEY, PROJECT
NO.18340, DATED 10/10/18

EXHIBIT
A

Being a part of Block 300 of the Original Plat of the City of Sheboygan, part of the Northeast 1/4, and part of the Southeast 1/4, all located in Section 27, Township 15 North, Range 23 East of the Fourth Principal Meridian, in the City of Sheboygan County, Wisconsin, more particularly described as follows:

Commencing at the intersection of the South line of Block 300 of the Original Plat of the City of Sheboygan (which is also identified in a Plat of Survey dated May 8, 2006 as the North line of the Southeast 1/4 of Section 27) and the Easterly line of South 15th Street; Thence South 88°25'00" West (measured as South 88°48'05" West) along the South line of said Original Plat, 20.00 feet to the point of beginning, said point being 1370.74' east of and 19.08' north of the Northwest corner of said Southeast 1/4 section; Thence continuing South 88°25'00" West, 299.56 feet along the South line of said Block 300 extended and Block 301 (described in said May 8, 2006 Survey as South 88°48'05" West, 59.91 feet and then South 89°08'09" West, 227.88 feet) to a point which is 133.98 feet East of the Easterly line of South 16th Street; Thence South 60 feet (described in said May 8, 2006 Survey as South 00°11'31" West, 60.35 feet) measured at South 02°06'41" West, 60.35 feet according to ALTA/NSPS Land Title Survey dated 10-10-2018, revised 12-16-2019 by V3 Engineers; Thence West 131.85 feet parallel to the South line of said Block 301 (described in said May 8, 2006 Survey as South 89°16'10" West, 131.90 feet) to a point in the Easterly line of South 16th Street; Thence South, 70 feet (described in said May 8, 2006 Survey as South 00°11'31" West, 69.54 feet) along the Easterly line of said South 16th Street to the Northerly line of the vacated portion of said street; Thence West 326 feet, more or less, parallel with the South line of said Block 301 (described in said May 8, 2006 Survey as South 88°59'20" West, 325.11 feet) to the point in the East line of Grams Subdivision No. 1; Thence South 429 feet along the East line of said Grams Subdivision No. 1 (described in said May 8, 2006 Survey as South 01°03'40" West, 428.50 feet); Thence East 35 feet (described in said May 8, 2006 Survey as South 88°56'20" East, 35.00 feet); Thence South 115 feet (described in said May 8, 2006 Survey as South 01°04'11" West, 115.00 feet); Thence West 35 feet (described in said May 8, 2006 Survey as North 88°56'20" West, 35.00 feet) to the point in the East line of said Grams Subdivision No. 1; Thence South along said East line measured as South 01°03'40" West, 218.46 feet according to ALTA/NSPS Land Title Survey dated 10-10-2018 revised, 12-16-2019 by V3 Engineers; Thence North 89°29'20" East, 280.00 feet according to ALTA/NSPS Land Title Survey dated 10-10-2018, revised 12-16-2019 by V3 Engineers; Thence South 01°04'11" West, 270.94 feet according to ALTA/NSPS Land Title Survey dated 10-10-2018 revised, 12-16-2019 by V3 Engineers, to a point in the Northerly line of a parcel conveyed to the City of Sheboygan for expansion of Broadway Avenue by Warranty Deed recorded as Document No. 1687705; Thence North 85°40'26" East, 63.59 feet along the Northerly line of Broadway Avenue; Thence North 89°29'20" East, 235.52 feet (measured as North 89°29'30" East, 235.88 feet per ALTA/NSPS Land Title Survey dated 10-10-2018

revised, 12-16-2019 by V3 Engineers) along said Northerly line to its intersection with the Westerly right-of-way line of the Union Pacific Railroad; Thence Southerly on said Westerly right-of-way line 73.42 feet along the arc of a curve deflecting to the right having a chord bearing and distance of South 27°51'36" West, 73.43 feet with a radius of 2817.47 feet to the centerline of Broadway Avenue; Thence along the extension of said centerline North 89°29'06" East, 76.77 feet to the intersection of said extension and the Easterly right-of-way line of the Union Pacific Railroad, also being the Westerly line of South Business Drive (STH 28); Thence along said Easterly Railroad right-of-way and Westerly line of South Business Drive (STH 28) the following courses, Northerly 919.07 feet along the arc of a curve deflecting to the left having a chord bearing and distance of North 19°24'44" East, 915.93 feet and a radius of 3209.04 feet; Thence North 11°12'27" East, 65.90 feet; Thence Northerly 505.97 feet along the arc of a curve deflecting to the right having a chord bearing and distance of North 13°42'32" East, 505.81 feet and a radius of 5723.74 feet; Thence North 11°20'05" East, 54.99 feet to the intersection of the South line of Georgia Avenue also being the north line of Block 300 of the Original Plat of the City of Sheboygan; Thence along said north line North 89°50'43" West, 103.21 feet to the northwest corner of Lot 3, Block 300 of the Original Plat of the City of Sheboygan; Thence South 00°04'15" East, 13.49 feet along the west line of said Lot 3 also being the Westerly line of the Union Pacific Railroad right-of-way; Thence along the Westerly right-of-way line of the Union Pacific Railroad South 11°14'57" West, 290.52 feet to the Southeast corner of Lot 1 of Certified Survey Map recorded in Volume 9 of Certified Survey Maps, at Page 88, as Document No. 1199254; Thence South 89°53'20" West 143.04 feet, of record, along the Southerly line of said Certified Survey Map (described in said May 8, 2006 Survey as North 89°56'41" West, 143.17 feet), measured at North 89°56'41" West 143.00 feet to the Southwest corner thereof; Thence North (described in said May 8, 2006 Survey as North 00°03'33" West) 53.70 feet along the Westerly line of said Certified Survey Map, to the point of beginning and including that portion of Vacated South 16th Street lying within said boundary described.

This parcel contains **875,582 sq. ft. or 20.101 acres** of land, more or less.

Tax Key Number: 59281513391

Tax Key Number: 59281513500

Tax Key Number: 59281509840

The above description is based on an ALTA/NSPS Land Title Survey done by V3 Engineering, dated 10/18/2018, a Fidelity National Title Insurance Company Policy, Commitment No. 1808T0123, dated 8/1/2016, revised 2/24/19 and an ongoing survey of the UP Railroad by TerraTec Engineering, LLC, 2019/2020.

SUGGESTED TID 20 Legal Description

Being a part of Block 300 of the Original Plat of the City of Sheboygan, part of the NE 1/4 and the NW 1/4 of the SE 1/4, and part of the SE 1/4 and the SW 1/4 of the NE 1/4, all located in Section 27, Township 15 North, Range 23 East of the Fourth Principal Meridian, in the City of Sheboygan County, Wisconsin, more particularly described as follows:

Commencing at the point on the south line of the Original Plat of the City of Sheboygan, being S 88° 48' 05" W, 20.00 feet of the southwest corner of Lot 6, Block 300 of the Original Plat of the City of Sheboygan, said point being 1370.74' East of and 19.08' North of the northwest corner of the SE 1/4 of said Section 27, also being the point of beginning of this description; Thence South 88°48'05" West, 59.91 feet along said south line of the Original Plat to the southeast corner of Lot 1 of Block 301 of the Original Plat of the City of Sheboygan; Thence along the south line of said Block 301, South 89°08'09" West, 227.88 feet; Thence South 02°06'41" West, 60.35 feet; Thence South 89°16'10" West, 131.90 feet to the east line of South 16th Street; Thence South 00°11'31" West, 69.54 feet along said east line of South 16th Street to the north line of the vacated portion of said South 16th street; Thence South 88°59'20" West, 325.11 feet to the east line of Grams Subdivision No. 1; Thence along said east line, South 01°03'40" West, 428.50 feet; Thence South 88°56'20" East, 35.00 feet; Thence South 01°04'11" West, 115.00 feet; Thence North 88°56'20" West, 35.00 feet to said east line of Grams Subdivision No. 1; Thence along said east line South 01°03'40" West, 218.46 feet; Thence North 89°29'20" East, 280.00 feet; Thence South 01°04'11" West, 270.94 feet to the northerly line of a parcel conveyed to the City of Sheboygan for expansion of Broadway Avenue by Warranty Deed recorded as Document No. 1687705; Thence North 85°40'26" East, 63.59 feet along said northerly line of Broadway Avenue; Thence North 89°29'20" East, 235.52 feet along said northerly line to its intersection with the westerly right-of-way line of the Union Pacific Railroad; Thence Southerly on said westerly right-of-way line 73.42 feet along the arc of a curve deflecting to the right having a chord bearing and distance of South 27°51'36" West, 73.43 feet with a radius of 2817.47 feet to the centerline of Broadway Avenue; Thence along the extension of said centerline North 89°29'06" East, 76.77 feet to the intersection of said extension and the easterly right-of-way line of the Union Pacific Railroad, also being the west line of South Business Drive (STH 28); Thence along said easterly Railroad right-of-way and west line of South Business Drive (STH 28) the following courses, Northerly 919.07 feet along the arc of a curve deflecting to the left having a chord bearing and distance of North 19°24'44" East, 915.93 feet and a radius of 3209.04 feet; Thence North 11°12'27" East, 65.90 feet; Thence Northerly 505.97 feet along the arc of a curve deflecting to the right having a chord bearing and distance of North 13°42'32" East, 505.81 feet and a radius of 5723.74 feet; Thence North 11°20'05" East, 54.99 feet to the intersection of the south line of Georgia Avenue also being the north line of Block 300 of the Original Plat of the City of Sheboygan; Thence along said north line North 89°50'43" West, 103.21 feet to the northwest corner of Lot 3, Block 300 of the Original Plat of the City of Sheboygan; Thence South 00°04'15" East, 13.49 feet along the west line of said Lot 3 also being the westerly line of the Union Pacific Railroad right-of-way; Thence along

said westerly right-of-way line of the Union Pacific Railroad South 11°14'57" West, 290.52 feet to the southeast corner of Lot 1 of Certified Survey Map recorded in Volume 9 of Certified Survey Maps, at Page 88, as Document No. 1199254; Thence along the south line of said Certified Survey Map North 89°56'41" West, 143.00 feet to the southwest corner of said Lot 1; Thence North 00°03'33" West, 53.70 feet along the west line of said Certified Survey Map, to the point of beginning.

This parcel contains **875,582 sq. ft. or 20.101 acres** of land, more or less.



Project Plan
Tax Incremental District No. 20
Former VanDerVart Redevelopment Site



EXHIBIT
B



Tax Incremental District No. 20 Project Plan Action Dates



Organizational Joint Review Board Meeting Held:	1/14/2020
Public Hearing Held:	1/14/2020
Approval by Plan Commission:	1/14/2020
Adoption by Common Council:	Scheduled for 2/17/2020
Approval by the Joint Review Board:	Scheduled for TBD

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SECTION 1:

Executive Summary

Description of District

Tax Incremental District (“TID”) No. 20 (“District”) is a proposed In Need of Rehabilitation or Conservation District comprising approximately 19.7 acres located at the Northwest corner of Broadway Avenue and South Business Drive. The District will be created to pay the costs of intersection improvement, pedestrian trail construction and development incentives needed (“Project”) to be developed by Oscar Apartments LLC (“Developer”). In addition to the incremental property value that will be created, the City expects the Project will result in a new 230,000 square foot multi-family development.

Authority

The city is creating the District under the provisions of Wis. Stat. § 66.1105.

Estimated Total Project Cost Expenditures

The city anticipates making total expenditures of approximately \$9.2 million (“Project Costs”) to undertake the projects listed in this Project Plan (“Plan”). Project Costs include an estimated \$1.4 million of infrastructure costs, \$7.25 million in developer incentives and \$531,000 in administrative and financing costs.

Incremental Valuation

The city projects that new land and improvements value of approximately \$31.2 million will result from the Project. Creation of this additional value will be made possible by the Project Costs made within the District. A table detailing assumptions as to the development timing and associated values is included in the Economic Feasibility Study located within this Plan.

Expected Termination of District

Based on the Economic Feasibility Study located within Section 9 of this Plan, the city anticipates that the District will generate sufficient tax increment to pay all Project Costs within 17 of its allowable 27 years.

Summary of Findings

As required by Wis. Stat. § 66.1105, and as documented in this Plan and the exhibits contained and referenced herein, the following findings are made:

1. That “but for” the creation of this District, the development projected to occur as detailed in this Plan: 1) would not occur; or 2) would not occur in the manner, at the values, or within the timeframe desired by the city. In reaching this determination, the city has considered:

A review of the Project's sources and uses, and cash flow proforma. The Project's projected return on investment (Internal Rate of Return, or "IRR") over 10 years without TIF assistance is (-5.17%). The Developer has requested that the city provide incentive payments on a pay-as-you-go basis with a present value of \$7,275,000, which does not contain an interest component. Provision of the requested assistance would improve the Project's return on investment to 0.89% in Year 10. If held for a 15 year investment horizon, an 8.96% IRR may be achieved. Projects of this type asking market rental rates typically need to provide a return in the range of 11% to 18% to attract the necessary investment capital. In this instance, however, the Project is funded in most part by a low-interest rate loan from Housing & Urban Development (HUD), which provides the developer with the ability to offer lower-than-market rents on almost 98% of the units. Based on Ehlers review, the provision of a pay as you go incentive in the amount requested is necessary to provide a positive return on investment and satisfy HUD lending requirements, and indicates that "but for" the incentives, the project would not likely proceed.

2. The economic benefits of the District, as measured by increased employment, business and personal income, and property value, are sufficient to compensate for the cost of the improvements. In making this determination, the city has considered the following information:

That the Developer is likely to purchase goods and services from local suppliers in construction of the Project, and induced effects of developer and supplier employee households spending locally for goods and services from retailers, restaurants and service companies.

3. The benefits of the proposal outweigh the anticipated tax increments to be paid by the owners of property in the overlying taxing jurisdictions. As required by Wis. Stat. § 66.1105(4)(i)4., a calculation of the share of projected tax increments estimated to be paid by the owners of property in the overlying taxing jurisdictions has been prepared and can be found in this Plan. However, because the Project would not occur without the use of tax incremental financing, these tax increments would not be paid but for creation of the District. Accordingly, the city finds that the benefits expected to be realized as set forth in this Plan outweigh the value of the tax increments to be invested in the Project.
4. Not less than 50% by area of the real property within the District is in need of rehabilitation or conservation work as defined by Wis. Stat. § 66.1337(2m)(a).

5. Based on the foregoing finding, the District is designated as a district in need of rehabilitation or conservation.
6. The Project Costs relate directly to the rehabilitation and conservation of property and improvements in the District, consistent with the purpose for which the District is created.
7. Improvements to be made in the District are likely to significantly enhance the value of substantially all of the other real property in the District.
8. The equalized value of taxable property in the District, plus the incremental value of all existing tax incremental districts within the city does not exceed 12% of the total equalized value of taxable property within the city.
9. The city estimates that less than 35% of the territory within the District will be devoted to retail business at the end of the District's maximum expenditure period, pursuant to Wis. Stat. § 66.1105(5)(b).
10. The Plan for the District is feasible and is in conformity with the Master Plan of the city.
11. That there are no parcels to be included within the District that were annexed by the city within the preceding three-year period.

SECTION 2: Preliminary Map of Proposed District Boundary

Map Found on Following Page.

To the extent District boundaries include wetlands identified on a map prepared under Wis. Stat. § 23.32, the wetlands are excluded from the District.



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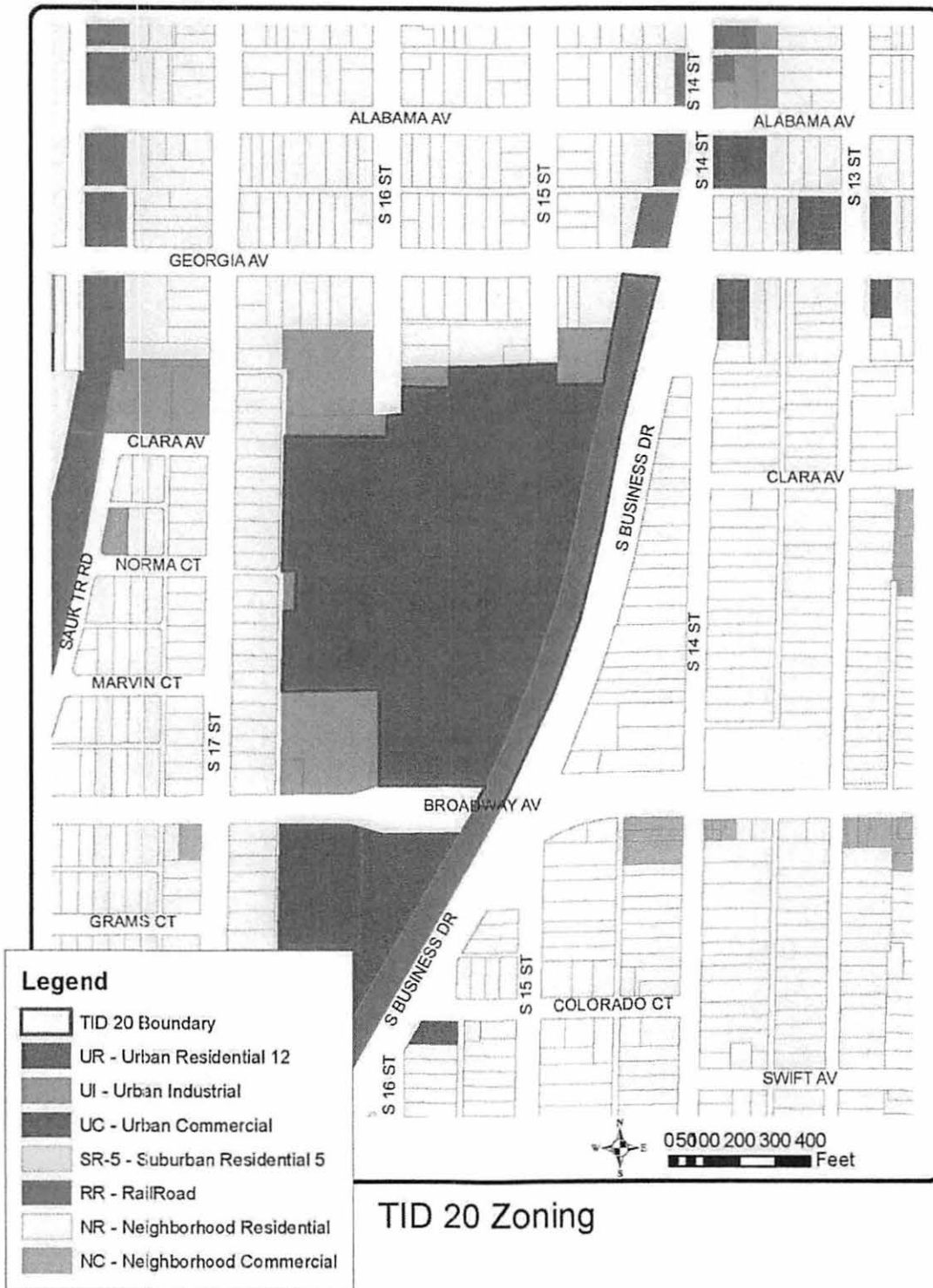
Date: 11/15/2019

TID 20 BOUNDARY



SECTION 3:
Map Showing Existing Uses and Conditions

Map Found on Following Page.



**SECTION 4:
Preliminary Parcel List and Analysis**

City of Sheboygan, Wisconsin																			
Tax Increment District No. 20																			
Base Property Information																			
							Assessment Information				Equalized Value				District Classification				
Parcel Number	Street Address	Owner	Acreage	Annexed Post 1/1/04? ...Indicate date	Part of Existing TID? Indicate TID #		Land	Imp	PP	Total	Equalized Value Ratio	Land	Imp	PP	Total	Blighted	Rehab/ Conservation	Vacant	
59281509840		Union Pacific RR	2.60	No	No	Exempt	Exempt	Exempt	0	100.00%	0	0	0	0	0			0.00	
59281513391	1436 S. 15th Street	Lohr Properties, Sheboygan, LLC	17.08	No	No	247,300	189,700	34,000	471,000	100.00%	247,300	189,700	34,000	471,000			17.08	17.08	
Total Acreage			19.68			247,300	189,700	34,000	471,000		247,300	189,700	34,000			0	17.08	17.08	
														Estimated Base Value 471,000			0.00%	86.79%	86.79%

SECTION 5: Equalized Value Test

The following calculations demonstrate that the city expects to be in compliance with Wis. Stat. § 66.1105(4)(gm)4.c., which requires that the equalized value of the taxable property in the proposed District, plus the value increment of all existing tax incremental districts, does not exceed 12% of the total equalized value of taxable property within the city.

The equalized value of the increment of existing tax incremental districts within the city, plus the base value of the proposed District, totals \$190,457. This value is less than the maximum of \$350,308,716 or 12% LIMIT in equalized value that is permitted for the city.

City of Sheboygan, Wisconsin				
Tax Increment District No. 20				
Valuation Test Compliance Calculation				
District Creation Date	1/1/2020			
	Valuation Data Currently Available 2019	Dollar Charge	Percent Change	Valuation Data Est. Creation Date
Total EV (TID In)	2,919,239,300			2,919,239,300
12% Test	350,308,716			350,308,716
Total Existing Increment	189,986,000			0
Projected Base of New or Amended District	471,000			471,000
Less Value of Any Underlying TID Parcels	0 ⁿ			0
Total Value Subject to 12% Test	190,457,000			471,000
Compliance	PASS			PASS

SECTION 6: Statement Listing the Kind, Number and Location of All Proposed Public Works or Improvements Within the District

Project Costs are any expenditure made, estimated to be made, or monetary obligations incurred or estimated to be incurred as outlined in this Plan. Project Costs will be diminished by any income, special assessments or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received in connection with the implementation of the Plan. If Project Costs incurred benefit territory outside the District, a proportionate share of the cost is not a Project Cost. Costs identified in this Plan are preliminary estimates made prior to design considerations and are subject to change after planning, design and construction is completed.

With all Project Costs, the costs of engineering, design, survey, inspection, materials, construction, restoring property to its original condition, apparatus necessary for public works, legal and other consultant fees, testing, environmental studies, permits, updating city ordinances and plans, judgments or claims for damages and other expenses are included as Project Costs.

The following is a list of public works and other tax incremental financing eligible Project Costs that the city expects to make, or may need to make, in conjunction with the implementation of the District's Plan. The map found in Section 7 of this Plan along with the Detailed List of Project Costs found in Section 8 provide additional information as to the kind, number and location of potential Project Costs.

Property, Right-of-Way and Easement Acquisition

Property Acquisition for Development

To promote and facilitate development, the city may acquire property within the District. The cost of property acquired, and any costs associated with the transaction, are eligible Project Costs. Following acquisition, other Project Costs within the categories detailed in this Section may be incurred to make the property suitable for development. Any revenue received by the city from the sale of property acquired pursuant to the execution of this Plan will be used to reduce the total project costs of the District. If total Project Costs incurred by the city to acquire property and make it suitable for development exceed the revenues or other consideration received from the sale or lease of that

property, the net amount shall be considered “real property assembly costs” as defined in Wis. Stat. § 66.1105(2)(f)1.c., and subject to recovery as an eligible Project Cost.

Property Acquisition for Conservancy

To promote the objectives of this Plan, the city may acquire property within the District that it will designate for conservancy. These conservancy objectives include: preserving historic resources or sensitive natural features; protection of scenic and historic views; maintaining habitat for wildlife; maintaining adequate open space; reduction of erosion and sedimentation by preserving existing vegetation; and providing adequate areas for management of stormwater. The cost of property acquired for conservancy, and any costs associated with the transaction, are eligible Project Costs.

Acquisition of Rights-of-Way

The city may need to acquire property to allow for installation of streets, driveways, sidewalks, utilities, stormwater management practices and other public infrastructure. Costs incurred by the city to identify, negotiate and acquire rights-of-way are eligible Project Costs.

Acquisition of Easements

The city may need to acquire temporary or permanent easements to allow for installation and maintenance of streets, driveways, sidewalks, utilities, stormwater management practices and other public infrastructure. Costs incurred by the city to identify, negotiate and acquire easement rights are eligible Project Costs.

Relocation Costs

If relocation expenses are incurred in conjunction with the acquisition of property, those expenses are eligible Project Costs. These costs may include, but are not limited to: preparation of a relocation plan; allocations of staff time; legal fees; publication of notices; obtaining appraisals; and payment of relocation benefits as required by Wis. Stat. Chapter 32 and Wis. Admin. Code ADM 92.

Site Preparation Activities

Environmental Audits and Remediation

If it becomes necessary to evaluate any land or improvement within the District, any cost incurred by the city related to environmental audits, testing, and remediation are eligible Project Costs.

Demolition

To make sites suitable for development, the city may incur costs related to demolition and removal of structures or other land improvements, to include abandonment of wells or other existing utility services.

Site Grading

Land within the District may require grading to make it suitable for development, to provide access, and to control stormwater runoff. The city may need to remove and dispose of excess material, or bring in fill material to provide for proper site elevations. Expenses incurred by the city for site grading are eligible Project Costs.

Utilities

Sanitary Sewer System Improvements

To allow development to occur, the city may need to construct, alter, rebuild or expand sanitary sewer infrastructure within the District. Eligible Project Costs include, but are not limited to, construction, alteration, rebuilding or expansion of: collection mains; manholes and cleanouts; service laterals; force mains; interceptor sewers; pumping stations; lift stations; wastewater treatment facilities; and all related appurtenances. To the extent sanitary sewer projects undertaken within the District provide direct benefit to land outside of the District, the city will make an allocation of costs based on such benefit. Those costs corresponding to the benefit allocated to land within the District, and necessitated by the implementation of the Project Plan, are eligible Project Costs. Implementation of the Project Plan may also require that the city construct, alter, rebuild or expand sanitary sewer infrastructure located outside of the District. That portion of the costs of sanitary sewer system projects undertaken outside the District which are necessitated by the implementation of the Project Plan are eligible Project Costs. The improvements to the wastewater treatment facilities, although not within the ½ mile radius, is an eligible project cost under Wis. Stat. § 66.1105(2)(f)1 k.

Water System Improvements

To allow development to occur, the city may need to construct, alter, rebuild or expand water system infrastructure within the District. Eligible Project Costs include, but are not limited to, construction, alteration, rebuilding or expansion of: distribution mains; manholes and valves; hydrants; service laterals; pumping stations; wells; water treatment facilities; storage tanks and reservoirs; and all related appurtenances. To the extent water system projects undertaken within the District provide direct benefit to land outside of the District, the city will

make an allocation of costs based on such benefit. Those costs corresponding to the benefit allocated to land within the District, and necessitated by the implementation of the Project Plan, are eligible Project Costs. Implementation of the Project Plan may also require that the City construct, alter, rebuild or expand water system infrastructure located outside of the District. That portion of the costs of water system projects undertaken outside the District which are necessitated by the implementation of the Project Plan are eligible Project Costs.

Stormwater Management System Improvements

Development within the District will cause stormwater runoff. To manage this stormwater runoff, the city may need to construct, alter, rebuild or expand stormwater management infrastructure within the District. Eligible Project Costs include, but are not limited to, construction, alteration, rebuilding or expansion of: stormwater collection mains; inlets, manholes and valves; service laterals; ditches; culvert pipes; box culverts; bridges; stabilization of stream and river banks; and infiltration, filtration and detention Best Management Practices (BMP's). To the extent stormwater management system projects undertaken within the District provide direct benefit to land outside of the District, the city will make an allocation of costs based on such benefit. Those costs corresponding to the benefit allocated to land within the District, and necessitated by the implementation of the Project Plan, are eligible Project Costs. Implementation of the Project Plan may also require that the city construct, alter, rebuild or expand stormwater management infrastructure located outside of the District. That portion of the costs of stormwater management system projects undertaken outside the District which are necessitated by the implementation of the Project Plan are eligible Project Costs.

Electric Service

To create sites suitable for development, the city may incur costs to provide, relocate or upgrade electric services. Relocation may require abandonment and removal of existing poles or towers, installation of new poles or towers, or burying of overhead electric lines. Costs incurred by the city to undertake this work are eligible Project Costs.

Gas Service

To create sites suitable for development, the city may incur costs to provide, relocate or upgrade gas mains and services. Costs incurred by the city to undertake this work are eligible Project Costs.

Communications Infrastructure

To create sites suitable for development, the city may incur costs to provide, relocate or upgrade infrastructure required for voice and data communications, including, but not limited to: telephone lines, cable lines and fiber optic cable. Costs incurred by the city to undertake this work are eligible Project Costs.

Streets and Streetscape

Street Improvements

To allow development to occur, the city may need to construct or reconstruct streets, highways, alleys, access drives and parking areas. Eligible Project Costs include, but are not limited to: excavation; removal or placement of fill; construction of road base; asphalt or concrete paving or repaving; installation of curb and gutter; installation of sidewalks and bicycle lanes; installation of culverts, box culverts and bridges; rail crossings and signals; utility relocation, to include burying overhead utility lines; street lighting; installation of traffic control signage and traffic signals; pavement marking; right-of-way restoration; installation of retaining walls; and installation of fences, berms, and landscaping.

Streetscaping and Landscaping

To attract development and/or redevelopment consistent with the objectives of this Plan, the city may install amenities to enhance development sites, rights-of-way and other public spaces. These amenities include, but are not limited to: landscaping; lighting of streets, sidewalks, parking areas and public areas; installation of planters, benches, clocks, tree rings, trash receptacles and similar items; and installation of brick or other decorative walks, terraces and street crossings. These and any other similar amenities installed by the city are eligible Project Costs.

Community Development

Cash Grants (Development Incentives)

The city may enter into agreements with property owners, lessees, or developers of land located within the District for sharing costs to encourage the desired kind of improvements and assure tax base is generated sufficient to recover Project Costs. No cash grants will be provided until the city executes a developer agreement with the recipient of the cash grant. Any payments of cash grants made by the city are eligible Project Costs.

Contribution to Redevelopment Authority (RDA)

As provided for in Wis. Stat. § 66.1105(2)(f)1.h and Wis. Stat. § 66.1333(13), the city may provide funds to its RDA to be used for administration, planning

operations, and capital costs, including but not limited to real property acquisition, related to the purposes for which it was established in furtherance of any redevelopment or urban renewal project. Funds provided to the RDA for this purpose are eligible Project Costs.

Revolving Loan/Grant Program (Development Incentives)

To encourage private development consistent with the objectives of this Plan, the city, through its RDA, may provide loans or grants to eligible property owners in the District. Eligible improvements will be those that are likely to improve the value of the property, enhance the visual appearance of the property and surrounding area, correct safety deficiencies, or as otherwise specified by the RDA in the program manual. Any funds returned to the RDA from the repayment of loans made are not considered revenues to the District, and will not be used to offset District Project Costs. Instead, these funds may be placed into a revolving fund and will continue to be used for the program purposes stated above. Any funds provided to the RDA for purposes of implementing this program are considered eligible Project Costs.

Miscellaneous

Projects Outside the Tax Increment District

Pursuant to Wis. Stat. § 66.1105(2)(f)1.n, the city may undertake projects within territory located within one-half mile of the boundary of the District provided that: 1) the project area is located within the city's corporate boundaries; and 2) the projects are approved by the Joint Review Board. The cost of projects completed outside the District pursuant to this section are eligible project costs, and may include any project cost that would otherwise be eligible if undertaken within the District. The city intends to make the following project cost expenditures outside the District: street improvements, intersection improvements and pedestrian pathways and trails.

Professional Service and Organizational Costs

The costs of professional services rendered, and other costs incurred, in relation to the creation, administration and termination of the District, and the undertaking of the projects contained within this Plan, are eligible Project Costs. Professional services include but are not limited to: architectural; environmental; planning; engineering; legal; audit; financial; and the costs of informing the public with respect to the creation of the District and the implementation of the Plan.

Administrative Costs

The city may charge to the District as eligible Project Costs reasonable allocations of administrative costs, including, but not limited to, employee salaries. Costs allocated will bear a direct connection to the time spent by city employees relating to the implementation of the Plan.

Financing Costs

Interest expense, debt issuance expenses, redemption premiums, and any other fees and costs incurred in conjunction with obtaining financing for projects undertaken under this Plan are eligible Project Costs.

SECTION 7:
Map Showing Proposed Improvements and Uses

Map Found on Following Page.



TID 20 Project Locations



SECTION 8: Detailed List of Estimated Project Costs

The following list identifies the Project Costs that the city currently expects to incur in implementing the District's Plan. All projects identified and related costs reflect the best estimates available as of the date of preparation of this Plan. All costs are preliminary estimates and may increase or decrease. Certain Project Costs listed may become unnecessary, and other Project Costs not currently identified may need to be made. (Section 6 details the general categories of eligible Project Costs). Changes in Project Cost totals or the types of Project Costs to be incurred will not require that this Plan be amended. This Plan is not meant to be a budget nor an appropriation of funds for specific Project Costs, but a framework within which to manage Project Costs.

City of Sheboygan, Wisconsin			
Tax Increment District No. 20			
Estimated Project List			
Project ID	Project Name/Type	Phase I 2020-2021	On going Various Years
			Total (Note 1)
1	Developer Incentive	7,250,000	7,250,000
2	Trail Construction/Acquisition Costs	425,000	425,000
3	Intersection Improvements within 1/2 mile	500,000	500,000
4	Trail Construction within 1/2 mile	500,000	500,000
5	Financing Cost		351,375
6	Administration		180,443
Total Projects		<u>8,675,000</u>	<u>531,818</u>
			<u>9,206,818</u>
Notes:			
Note 1	Project costs are estimates and are subject to modification		

SECTION 9: Economic Feasibility Study, Description of the Methods of Financing Estimated Project Costs and the Time When Related Costs or Monetary Obligations are to be Incurred

This Section includes a forecast of the valuation increases expected within the District, the associated tax increment collections, a summary of how Project Costs would be financed, and a projected cash flow demonstrating that the District is economically feasible.

Key Assumptions

The Project Costs the city plans to make are expected to create \$31.3 million in incremental value by 1/1/22. Estimated valuations and timing for construction of the Project are included in Table 1. Assuming the city's current equalized TID Interim tax rate of \$24.87 per thousand of equalized value, and 1% appreciation on the new development, the Project would generate \$23.5 million in incremental tax revenue over the 27-year term of the District as shown in Table 2.

Table 1 – Development Assumptions

City of Sheboygan, Wisconsin						
Tax Increment District No. 20						
Development Assumptions						
Construction Year	Actual	Oscar Apartments	Out Lot	Annual Total	Construction Year	
1	2020	17,490,660		17,490,660	2020	1
2	2021	11,297,815	2,500,000	13,797,815	2021	2
3	2022			0	2022	3
4	2023			0	2023	4
5	2024			0	2024	5
6	2025			0	2025	6
7	2026			0	2026	7
8	2027			0	2027	8
9	2028			0	2028	9
10	2029			0	2029	10
11	2030			0	2030	11
12	2031			0	2031	12
13	2032			0	2032	13
14	2033			0	2033	14
15	2034			0	2034	15
16	2035			0	2035	16
17	2036			0	2036	17
18	2037			0	2037	18
19	2038			0	2038	19
20	2039			0	2039	20
21	2040			0	2040	21
22	2041			0	2041	22
23	2042			0	2042	23
24	2043			0	2043	24
25	2044			0	2044	25
26	2045			0	2045	26
27	2046			0	2046	27
Totals		<u>0</u>	<u>28,788,475</u>	<u>2,500,000</u>	<u>31,288,475</u>	

Notes: Development Values provided by Developer and City

Table 2 – Tax Increment Projection Worksheet

City of Sheboygan, Wisconsin							
Tax Increment District No. 20							
Tax Increment Projection Worksheet							
Type of District	Rehabilitation				Base Value	471,000	
District Creation Date	January 1, 2020				Appreciation Factor	1.00%	
Valuation Date	Jan 1,	2020			Base Tax Rate	\$24.87	
Max Life (Years)	27				Rate Adjustment Factor		
Expenditure Period/Termination	22	1/1/2042					
Revenue Periods/Final Year	27						
Extension Eligibility/Years	Yes				Tax Exempt Discount Rate		
Eligible Recipient District	Yes				Taxable Discount Rate	1.50%	

Construction Year	Valuation Year	Value Added	Inflation Increment	Total Increment	Revenue Year	Tax Rate	Tax Increment
1	2020	17,490,660	0	17,490,660	2022	\$24.87	434,980
2	2021	13,797,815	174,907	31,463,382	2023	\$24.87	782,471
3	2022	0	314,634	31,778,016	2024	\$24.87	790,296
4	2023	0	317,780	32,095,796	2025	\$24.87	798,199
5	2024	0	320,958	32,416,754	2026	\$24.87	806,181
6	2025	0	324,168	32,740,921	2027	\$24.87	814,243
7	2026	0	327,409	33,068,331	2028	\$24.87	822,385
8	2027	0	330,683	33,399,014	2029	\$24.87	830,609
9	2028	0	333,990	33,733,004	2030	\$24.87	838,915
10	2029	0	337,330	34,070,334	2031	\$24.87	847,304
11	2030	0	340,703	34,411,037	2032	\$24.87	855,777
12	2031	0	344,110	34,755,148	2033	\$24.87	864,335
13	2032	0	347,551	35,102,699	2034	\$24.87	872,978
14	2033	0	351,027	35,453,726	2035	\$24.87	881,708
15	2034	0	354,537	35,808,264	2036	\$24.87	890,525
16	2035	0	358,083	36,166,346	2037	\$24.87	899,430
17	2036	0	361,663	36,528,010	2038	\$24.87	908,425
18	2037	0	365,280	36,893,290	2039	\$24.87	917,509
19	2038	0	368,933	37,262,223	2040	\$24.87	926,684
20	2039	0	372,622	37,634,845	2041	\$24.87	935,951
21	2040	0	376,348	38,011,193	2042	\$24.87	945,310
22	2041	0	380,112	38,391,305	2043	\$24.87	954,763
23	2042	0	383,913	38,775,218	2044	\$24.87	964,311
24	2043	0	387,752	39,162,970	2045	\$24.87	973,954
25	2044	0	391,630	39,554,600	2046	\$24.87	983,694
26	2045	0	395,546	39,950,146	2047	\$24.87	993,531
27	2046	0	399,501	40,349,648	2048	\$24.87	1,003,466
Totals		31,288,475	9,061,172		Future Value of Increment		23,537,934

Notes:
 Actual results will vary depending on development, inflation of overall tax rates.
 NPV calculations represent estimated amount of funds that could be borrowed (including project cost, capitalized interest and issuance costs).

Financing and Implementation

The project plan was developed with the issuance of debt to finance the public improvement projects, municipal revenue bonds on a pay as you go basis for all development incentives and cashflow of the increment revenue to cover the administration and interest financing costs. The city reserves the right to use other financing options available to them as the plan is implemented. Table 3. provides a summary of the District's financing plan.

Table 3 - Financing Plan
City of Sheboygan, Wisconsin
Tax Increment District No. 20
Estimated Financing Plan

	G.O. Promissory Note 2021	PAYGO Incentive 2020	Ongoing cash flow 2020-2048	Totals
Projects				
Phase I	1,425,000	7,250,000		8,675,000
Admin & Financing Costs			531,818	531,818
Total Project Funds	1,425,000	7,250,000	531,818	9,206,818
Estimated Finance Related Expenses	54,750			
Underwriter Discount	10.00	14,950	0.00	0
Debt Service Reserve				
Capitalized Interest				
Total Financing Required	1,494,700	7,250,000		
Estimated Interest	0.25%	(1,781)	0.00%	0
Assumed spend down (months)	6			
Rounding	2,081	0		
Net Issue Size	1,495,000	7,250,000		8,745,000
Notes:				

Based on the Project Cost expenditures as included within the cash flow exhibit (Table 4), the District is projected to accumulate sufficient funds by the year 2033-2037 to pay off all Project cost liabilities and obligations. The projected early closure is based on the various assumptions noted in this Plan and will vary dependent on actual Project Costs incurred and the actual amount of tax increments collected.

Table 4 - Cash Flow

City of Sheboygan, Wisconsin														
Tax Increment District No. 20														
Cash Flow Projection														
Year	Projected Revenues			Expenditures						Balances			Year	
	Tax Increments	Interest Earnings/ (Cost)	Total Revenues	G.O. Promissory Note 1,495,000 Dated Date: 08/01/21			MRO Oscar Apartments	Other	Admin.	Total Expenditures	Annual	Cumulative		Principal Outstanding & MRO
		1.50%		Principal	Est. Rate	Interest								
2020			0						0	0	0	8,745,000	2020	
2021		0	0						0	0	0	8,745,000	2021	
2022	434,980		434,980	50,000	3.75%	56,063	278,496		6,525	391,083	43,897	43,897	8,416,504	2022
2023	782,471	658	783,130	100,000	3.75%	54,188	461,171		10,804	626,163	156,967	200,864	7,855,333	2023
2024	790,296	3,013	793,309	125,000	3.75%	50,438	465,782		10,913	652,132	141,176	342,040	7,264,551	2024
2025	798,199	5,131	803,329	150,000	3.75%	45,750	470,440		11,022	677,212	126,117	468,157	6,644,111	2025
2026	806,181	7,022	813,203	160,000	3.75%	40,125	471,250		11,132	682,507	130,696	598,854	6,012,861	2026
2027	814,243	8,983	823,225	170,000	3.75%	34,125	471,250		11,243	686,618	136,607	735,461	5,371,611	2027
2028	822,385	11,032	833,417	175,000	3.75%	27,750	471,250		11,356	685,356	148,061	883,522	4,725,361	2028
2029	830,609	13,253	843,862	180,000	3.75%	21,188	471,250		11,469	683,907	159,955	1,043,477	4,074,111	2029
2030	838,915	15,652	854,567	190,000	3.75%	14,438	471,250		11,584	687,271	167,296	1,210,773	3,412,861	2030
2031	847,304	18,162	865,466	195,000	3.75%	7,313	471,250		11,700	685,262	180,204	1,390,976	2,746,611	2031
2032	855,777	20,865	876,642				471,250		11,817	683,067	393,575	1,784,552	2,275,361	2032
2033	864,335	26,768	891,103				471,250		11,935	683,185	407,918	2,192,470	1,804,111	2033
2034	872,978	32,887	905,865				471,250		12,054	683,304	422,561	2,615,031	1,332,861	2034
2035	881,768	39,225	920,934				471,250		12,175	683,425	437,509	3,052,540	861,611	2035
2036	890,525	45,788	936,313				471,250		12,296	683,546	452,767	3,505,306	390,361	2036
2037	899,430	52,580	952,010				390,361		12,419	402,780	549,230	4,054,536	(0)	2037
2038	908,425	60,818	969,243							0	969,243	5,023,779	(0)	2038
2039	917,509	75,357	992,866							0	992,866	6,016,645	(0)	2039
2040	926,684	90,250	1,016,934							0	1,016,934	7,033,578	(0)	2040
2041	935,951	105,504	1,041,455							0	1,041,455	8,075,033	(0)	2041
2042	945,310	121,125	1,066,436							0	1,066,436	9,141,469	(0)	2042
2043	954,763	137,122	1,091,885							0	1,091,885	10,233,354	(0)	2043
2044	964,311	153,500	1,117,811							0	1,117,811	11,351,166	(0)	2044
2045	973,954	170,267	1,144,222							0	1,144,222	12,495,387	(0)	2045
2046	983,694	187,431	1,171,125							0	1,171,125	13,666,512	(0)	2046
2047	993,531	204,998	1,198,528							0	1,198,528	14,865,040	(0)	2047
2048	1,003,466	222,976	1,226,442							0	1,226,442	16,091,482	(0)	2048
Total	23,537,934	1,830,366	25,368,300	1,495,000		351,375	7,250,000	0	180,443	9,276,818			Total	
Notes:	Projected TID Closure													

SECTION 10: Annexed Property

There are no lands proposed for inclusion within the District that were annexed by the city on or after January 1, 2004.

SECTION 11: Estimate of Property to Be Devoted to Retail Business

Pursuant to Wis. Stat. § 66.1105(5)(b), the city estimates that less than 35% of the territory within the District will be devoted to retail business at the end of the District's maximum expenditure period.

SECTION 12: Proposed Changes of Zoning Ordinances, Master Plan, Map, Building Codes and City Ordinances

Zoning Ordinances

The proposed plan is in general conformance with the city's current zoning ordinances. Individual properties may require rezoning at the time of development.

Master (Comprehensive) Plan and Map

The proposed plan is in general conformance with the city's Comprehensive Plan identifying the area as appropriate for the proposed development.

Building Codes and Ordinances

Development within the District will be required to conform to State Building Codes and will be subject to the city's permitting and inspection procedures. The proposed Plan conforms to all relevant State and local ordinances, plans, and codes. No changes to the existing regulations are proposed or needed.

SECTION 13:
**Statement of the Proposed Method for the
Relocation of any Persons to be Displaced**

Should implementation of this Plan require relocation of individuals or business operations, relocations will be handled in compliance with Wis. Stat. Chapter 32 and Wis. Admin. Code ADM 92.

SECTION 14:
**How Creation of the Tax Incremental District
Promotes the Orderly Development of the City**

Creation of the District and the implementation of the projects in its Plan will promote the orderly development of the city by rehabilitating and conserving property, providing necessary public infrastructure improvements and providing appropriate financial incentives for private development projects. Through use of tax increment financing, the city can attract new investment that results in increased tax base. Development will occur in an orderly fashion in accordance with approved plans so that the Projects will be compatible with adjacent land uses. Development of new uses in the District will add to the tax base and will generate positive secondary impacts in the community such as increased employment opportunities and addition housing opportunities within the city.

SECTION 15: List of Estimated Non-Project Costs

Non-project costs are public works projects which only partly benefit the District. Costs incurred that do not benefit the District may not be paid with tax increments. Examples of non-project costs are:

- A public improvement made within the District that also benefits property outside the District. That portion of the total Project Costs allocable to properties outside of the District would be a non-project cost.
- A public improvement made outside the District that only partially benefits property within the District. That portion of the total Project Costs allocable to properties outside of the District would be a non-project cost.
- Projects undertaken within the District as part of the implementation of this Project Plan, the costs of which are paid fully or in part by impact fees, grants, special assessments, or revenues other than tax increments.

No improvements to be made within the District will benefit property outside the District. Furthermore, there will be no improvements made outside the District that will only partially benefit the District.

**SECTION 16:
Legal Opinion Advising Whether the Plan is
Complete and Complies with Wis. Stat. §
66.1105(4)(f)**

Legal Opinion Found on Following Page.

Insert Legal Opinion

SAMPLE

Dear Mayor:

As City Attorney for the City of Sheboygan, I have reviewed the Project Plan and, in my opinion, have determined that it is complete and complies with Wisconsin Statutes Section 66.1105(4)(f).

Sincerely,

City Attorney

SECTION 17: Calculation of the Share of Projected Tax Increments Estimated to be Paid by the Owners of Property in the Overlying Taxing Jurisdictions

The following projection is provided to meet the requirements of Wis. Stat. § 66.1105(4)(i)4.

Estimated portion of taxes that owners of taxable property in each taxing jurisdiction overlying district would pay by jurisdiction.						
Statement of Taxes Data Year:				2018	Percentage	
County				13,587,854		20.16%
Technical College				2,114,618		3.14%
Municipality				27,724,221		41.14%
School District of Sheboygan Area				23,970,770		35.57%
						0.00%
						0.00%
Total				67,397,461		

Revenue Year	County	Technical College	Municipality	School District of Sheboygan Area	Total	Revenue Year
2022	87,695	13,648	178,931	154,706	434,980	2022
2023	157,752	24,550	321,873	278,296	782,471	2023
2024	159,330	24,796	325,091	281,079	790,296	2024
2025	160,923	25,044	328,342	283,890	798,199	2025
2026	162,532	25,294	331,626	286,729	806,181	2026
2027	164,158	25,547	334,942	289,596	814,243	2027
2028	165,799	25,803	338,291	292,492	822,385	2028
2029	167,457	26,061	341,674	295,417	830,609	2029
2030	169,132	26,321	345,091	298,371	838,915	2030
2031	170,823	26,584	348,542	301,355	847,304	2031
2032	172,531	26,850	352,027	304,368	855,777	2032
2033	174,257	27,119	355,548	307,412	864,335	2033
2034	175,999	27,390	359,103	310,486	872,978	2034
2035	177,759	27,664	362,694	313,591	881,708	2035
2036	179,537	27,940	366,321	316,727	890,525	2036
2037	181,332	28,220	369,984	319,894	899,430	2037
2038	183,146	28,502	373,684	323,093	908,425	2038
2039	184,977	28,787	377,421	326,324	917,509	2039
2040	186,827	29,075	381,195	329,587	926,684	2040
2041	188,695	29,366	385,007	332,883	935,951	2041
2042	190,582	29,659	388,857	336,212	945,310	2042
2043	192,488	29,956	392,746	339,574	954,763	2043
2044	194,413	30,256	396,673	342,970	964,311	2044
2045	196,357	30,558	400,640	346,399	973,954	2045
2046	198,320	30,864	404,646	349,863	983,694	2046
2047	200,304	31,172	408,693	353,362	993,531	2047
2048	202,307	31,484	412,780	356,896	1,003,466	2048
	4,745,431	738,510	9,682,425	8,371,568	23,537,934	

Notes:
The projection shown above is provided to meet the requirements of Wisconsin Statute 66.1105(4)(i)4.

II

4.5

R. O. No. 120 - 19 - 20. By CITY CLERK. December 16, 2019.

Submitting a claim from Anna Stacie DeSantos for alleged injuries when she fell due to a lip in the sidewalk on Lakeshore Drive.

*Finance
Personnel*

CITY CLERK

II

3.8

R. O. No. 159 - 19 - 20. By CITY CLERK. February 17, 2020.

Submitting a claim of alleged unlawful tax collected from Midstate Amusement Games, LLC by the City for the 2019 tax year, plus interest as provided by law, with respect to certain property located in the City and known by the personal property tax Account Number 59281860857P.

*Finance
Personnel*

CITY CLERK

II

39

R. O. No. 160 - 19 - 20. By CITY CLERK. February 17, 2020.

Submitting a claim of alleged unlawful tax collected from Midstate Amusement Games, LLC by the City for the 2019 tax year, plus interest as provided by law, with respect to certain property located in the City and known by the personal property tax Account Number 59281860858P.

*Finance
+
Personnel*

CITY CLERK

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.O. No. 120-19-20 is a claim from Anna Stacie DeSantos for alleged injuries due to a lip in the sidewalk on Lakeshore Drive. R.O. No. 159-19-20 is a claim from Midstate Amusement Games, LLC for alleged unlawful tax collected on account number 59281860857P. R.O. No. 160-19-20 is a claim from Midstate Amusement Games, LLC for alleged unlawful tax collected on account number 59281860858P.

REPORT PREPARED BY: Laurie Suhrke, Auditor/Analyst

REPORT DATE: February 20, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

R.O. No. 120-19-20 is a claim from Anna Stacie DeSantos for alleged injuries due to a lip in the sidewalk on Lakeshore Drive.

R.O. No. 159-19-20 is a claim from Midstate Amusement Games, LLC for alleged unlawful tax collected on account number 59281860857P.

R.O. No. 160-19-20 is a claim from Midstate Amusement Games, LLC for alleged unlawful tax collected on account number 59281860858P.

STAFF COMMENTS:

City staff has reviewed the above claims and under the authorization by the Common Council, Resolution No. 64-17-18, the City of Sheboygan has denied all claims listed above.

ACTION REQUESTED:

Motion to recommend the Common Council receive and file the following documents:

- R.O. No. 120-19-20
- R.O. No. 159-19-20
- R.O. No. 160-19-20

ATTACHMENTS:

- I. R.O. No. 120-19-20
- II. R.O. No. 159-19-20
- III. R.O. No. 160-19-20

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.C. No. 321-18-19 (R.O. No. 298-17-18, R.O. No. 303-17-18) is a notice of claim from Amica Mutual Insurance Company on behalf of their insured Linda Shimon for alleged water back-up in her residence, and R.C. No. 322-18-19 (R.C. No. 301-17-18, R.O. No. 311-17-18) is a notice of claim from Cincinnati Insurance Companies on behalf of their client, Schenck SC for alleged injuries to an employee (Jennifer Roszak) due to a fall. 59281860858P.

REPORT PREPARED BY: Laurie Suhrke, Auditor/Analyst

REPORT DATE: February 20, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

R.C. No. 321-18-19 (R.O. No. 298-17-18, R.O. No. 303-17-18) is a notice of claim from Amica Mutual Insurance Company on behalf of their insured Linda Shimon for alleged water back-up in her residence.

R.C. No. 322-18-19 (R.C. No. 301-17-18, R.O. No. 311-17-18) is a notice of claim from Cincinnati Insurance Companies on behalf of their client, Schenck SC for alleged injuries to an employee (Jennifer Roszak) due to a fall.

STAFF COMMENTS:

City staff has reviewed the above notice of claims and they remain pending and the time period to file a claim has passed with no additional contact from the claimants.

ACTION REQUESTED:

Motion to recommend the Common Council receive and file the following documents:

- R.C. No. 321-18-19 (R.O. No. 298-17-18, R.O. No. 303-17-18)
- R.C. No. 322-18-19 (R.C. No. 301-17-18, R.O. No. 311-17-18)

ATTACHMENTS:

- I. R.C. No. 321-18-19 (R.O. No. 298-17-18, R.O. No. 303-17-18)
- II. R.C. No. 322-18-19 (R.C. No. 301-17-18, R.O. No. 311-17-18)

VI

5.17

R. C. No. 321 - 18 - 19. By FINANCE AND PERSONNEL COMMITTEE.
April 15, 2019.

Your Committee to whom was referred R. C. No. 298-17-18 by Finance and Personnel Committee and R. O. No. 303-17-18 by City Clerk submitting a pending claim from Amica Mutual Insurance Company for alleged damages to the residence of their insured (Linda Shimon, 1326 North 27th Street) due to a water back-up; recommends referring to Finance and Personnel Committee of the new council.

*Finance + Personnel
2019-2020*

<u><i>Ronald Penzler</i></u>	_____
<u><i>James A. Bobb</i></u>	_____
<u><i>[Signature]</i></u>	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VI

5.23

R. C. No. 298 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. O. No. 303-17-18 by City Clerk submitting a pending claim from Amica Mutual Insurance Company for alleged damages to the residence of their insured (Linda Shimon, 1326 North 27th Street) due to a water back-up; recommends referring to Finance and Personnel Committee of the new council.

*Finance
Personnel
2018/2019
4-8-19 refer to Finance +
Personnel of new council*

James A. Bobb

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

II

4.5

R. O. No. 303 - 17 - 18. By CITY CLERK. March 5, 2018.

Submitting a pending claim from Amica Mutual Insurance Company for alleged damages to the residence of their insured (Linda Shimon, 1326 North 27th Street) due to a water back-up.

*Finance & Personnel
Finance & Personnel
of new Council*

CITY CLERK

VI

5.18

R. C. No. 322 - 18 - 19. By FINANCE AND PERSONNEL COMMITTEE.
April 15, 2019.

Your Committee to whom was referred R. C. No. 301-17-18 by Finance and Personnel Committee and R. O. No. 311-17-18 by City Clerk submitting a Notice of Claim from Cincinnati Insurance Companies on behalf of their client, Schenck SC, for alleged injuries to an employee (Jennifer Roszak) due to a fall in the parking lot located at 712 Riverfront Drive; recommends referring to Finance and Personnel Committee of the new council.

*Finance & Personnel
2019-2020*

Ronald Pincus
James A. Bohrer
[Signature]

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

VI

5.26

R. C. No. 301 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.
April 4, 2018.

Your Committee to whom was referred R. O. No. 311-17-18 by City Clerk submitting a Notice of Claim from Cincinnati Insurance Companies on behalf of their client, Schenck SC, for alleged injuries to an employee (Jennifer Roszak) due to a fall in the parking lot located at 712 Riverfront Drive; recommends referring to Finance and Personnel Committee of the new council.

*Finance + Personnel
2018-2019
refer to Finance + Personnel
of new council*

James A. Boh

_____ Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

II

5.2

R. O. No. 311 - 17 - 18. By CITY CLERK. March 19, 2018.

Submitting a Notice of Claim from Cincinnati Insurance Companies on behalf of their client, Schenck SC, for alleged injuries to an employee (Jennifer Roszak) due to a fall in the parking lot located at 712 Riverfront Drive.

*Finance
+ Personnel
finance + personnel
of new council*

CITY CLERK

VI

5.39

R. C. No. 343 - 18 - 19. By FINANCE AND PERSONNEL COMMITTEE.
April 15, 2019.

Your Committee to whom was referred R. O. No. 215-18-19 by City Clerk submitting a claim from Ryan, LLC on behalf of their client, O'Reilly Automotive Stores, Inc., for alleged incorrect assessed value of their property for tax purposes; recommends referring to Finance and Personnel Committee of the new council.

*Finance + Personnel
2019-2020*

James A. Bohner

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

II

3.4

R. O. No. 215 - 18 - 19. By CITY CLERK. February 4, 2019.

Submitting a claim from Ryan, LLC on behalf of their client, O'Reilly Automotive Stores, Inc., for alleged incorrect assessed value of their property for tax purposes.

*Finance +
Personnel
4819 refer to Finance +
Personnel of new council.*

CITY CLERK

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.C. No. 343-18-19 (R.O. No. 215-18-19) is a claim from Ryan, LLC on behalf of O'Reilly Automotive Stores, Inc. for alleged incorrect assessed value of their property.

REPORT PREPARED BY: Laurie Suhrke, Auditor/Analyst

REPORT DATE: February 20, 2020

MEETING DATE: February 24, 2020

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

R.C. No. 343-18-19 (R.O. No. 215-18-19) is a claim from Ryan, LLC on behalf of O'Reilly Automotive Stores, Inc. for alleged incorrect assessed value of their property.

STAFF COMMENTS:

City staff has reviewed the above claim and under the authorization by the Common Council, Res. No. 64-17-18, has determined it is in the best interest of the City of Sheboygan to pay the O'Reilly Automotive Parts, LLC claim in the amount of \$952.92 due to a clerical error.

ACTION REQUESTED:

Motion to recommend the Common Council receive and file the following document:

- R.C. No. 343-18-19 (R.O. No. 215-18-19)

ATTACHMENTS:

- I. R.C No. 343-18-19 (R.O. No. 215-18-19)