

*****ATTACHMENTS*****

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Res. No. 154-18-19 by Alderpersons Rindfleisch and Bohren. A Resolution supporting placing an advisory referendum question on the April, 2019 ballot, to determine if the Wisconsin Legislature should consider and pass legislation requiring all businesses to pay their full share of property taxes by closing perceived loopholes in the assessment process.

REPORT PREPARED BY: Marty Halverson, Finance Director

REPORT DATE: December 18, 2018

MEETING DATE: December 20, 2018

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:

Under current Wisconsin law, to assure uniformity and fairness, property is assessed by certified assessors who pursuant to law must use a three-step process in order to properly assess a property to determine its full value at its highest and best use, which steps include in order of priority: (1) basing the assessment on any recent arm's-length sale of the subject property; (2) if the subject property has not been recently sold, next considering sales of reasonably comparable properties; (3) if no such comparable sales are present, employing a "cost" or "income" assessment approach, considering all factors that have a bearing on the value of the property.

Several national-chain businesses are successfully arguing before courts either of two theories to lower property assessments, and hence the taxes associated with those assessments: the first is a "dark store" theory, whereby a thriving store is valued for property tax purposes using vacant and abandoned stores from different market segments as comparable properties ("Dark Store Theory"), and the second is the net-leased land argument accepted by the courts in the Wisconsin Supreme Court decision in Walgreen Co. v. City of Madison, reported at 2008 WI 80, ¶¶65, 311 Wis. 2d 158, 752 N.W.2d 687 ("Walgreen's Decision"), whereby actual property value is not determined by actual arm's-length leases, which leases are required to be purposely ignored.

STAFF COMMENTS:

The City of Sheboygan desires all businesses to pay their fair share of property taxes by closing perceived loopholes in the assessment process.

ACTION REQUESTED:

Motion to recommend the Common Council approve Res. No. 154-18-19 by Alderpersons Rindfleisch and Bohren supporting placing an advisory referendum question on the April, 2019 ballot, to determine if the Wisconsin Legislature should consider and pass legislation requiring

all businesses to pay their full share of property taxes by closing perceived loopholes in the assessment process.

ATTACHMENTS:

- I. Res. No. 154-18-19

III

4.8

Res. No. 154- 18 - 19. By Alderpersons Rindfleisch and Bohren.
December 17, 2018.

A RESOLUTION to support placing an Advisory Referendum question on the April, 2019 election ballot, to determine if the Wisconsin Legislature should consider and pass legislation requiring all businesses to pay their fair share of property taxes by closing perceived loopholes in the assessment process.

WHEREAS, Wisconsin governments, including all cities, villages, towns, counties, public school systems, and the vocational schools, and including the state government, are funded by property taxes, which are levied uniformly on all non-exempt property in the state; and

WHEREAS, homeowners already currently pay sixty-eight percent (68%) of the statewide property tax levy; and

WHEREAS, under current Wisconsin law, to assure uniformity and fairness, property is assessed by certified assessors who pursuant to law must use a three-step process in order to properly assess a property to determine its full value at its highest and best use, which steps include in order of priority: (1) basing the assessment on any recent arm's-length sale of the subject property; (2) if the subject property has not been recently sold, next considering sales of reasonably comparable properties; (3) if no such comparable sales are present, employing a "cost" or "income" assessment approach, considering all factors that have a bearing on the value of the property; and

WHEREAS, to avoid being properly taxed, several national-chain businesses are successfully arguing before courts either of two theories to lower property assessments, and hence the taxes associated with those assessments: the first is a "dark store" theory, whereby a thriving store is valued for property tax purposes using vacant and abandoned stores from different market segments as comparable properties ("Dark Store Theory"), and the second is the net-leased land argument accepted by the courts in the Wisconsin Supreme Court decision in Walgreen Co. v. City of Madison, reported at 2008 WI 80, ¶65, 311 Wis. 2d 158, 752 N.W.2d 687 ("Walgreen's Decision"), whereby actual property value is not determined by actual arm's-length leases, which leases are required to be purposely ignored; and

WHEREAS, a carefully-orchestrated wave of lawsuits using either the Dark Store Theory or the Walgreen's Decision are forcing local governments, such as the City of Sheboygan, to lower the market value of thriving national chain stores, shifting the tax burden to local businesses, apartment owners and homeowners; and

WHEREAS, some national chain stores in Wisconsin, using the Dark Store Theory, have argued that the assessed value of their property, for property tax purposes, should be only half of its actual value on the open market; and

Finance
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Personnel

WHEREAS, proposed legislation such as 2017 Assembly Bill 386 and Senate Bill 292, which had been clarifications of the existing, long-standing statutory directives found in Wisconsin Statutes that when using the comparable sale method of valuation, assessors should consider as comparable only those sales within the same market segment exhibiting a similar highest and best use rather than similarly sized but vacant properties in abandoned locations, and which proposed legislation had been drafted, had been introduced, had been subjected to public hearings by the Wisconsin legislature, and had sufficient bipartisan support in both houses of the Wisconsin legislature to pass with wide margins in that a majority of the members of both the Wisconsin State Assembly and Wisconsin State Senate were co-sponsors of the proposed legislation, but which were not allowed to the legislative floor for vote; and

WHEREAS, without new legislation similar to 2017 Assembly Bill 386 and Senate Bill 292, residential assessments could go up 9.5 percent, which for the average home in the City of Sheboygan valued at \$100,000, would result in an increase in property taxes that could be more than \$226.63 per year; and

WHEREAS, the Indiana state legislature has on two occasions in the last two years overwhelmingly passed legislation prohibiting assessors from valuing new big box stores the same as nearby abandoned stores from a different market segment; and

WHEREAS, the Michigan legislature overwhelmingly passed legislation similar to the Indiana legislation referenced, in May of 2016; and

WHEREAS, the Walgreen's Decision addressed the assessment of retail drug stores that rent retail space through net leases, by which the tenant is obligated to pay the real estate taxes, and by which the tenant pays a premium to the landlord for either an investment by the landlord or as consideration for custom building the property; and

WHEREAS, in the Walgreen's Decision, the Wisconsin Supreme Court determined that the income approach was the best fit for valuation of commercial rental property, but that when applying the income approach, the assessor was required to use an arguable market rent, rather than use the actual contract rent; and

WHEREAS, proposed legislation such as 2017 Assembly Bill 387 and 2017 Senate Bill 291 were introduced to reverse the Walgreen's Decision, and which proposed legislation had been drafted, had been introduced, had been subjected to public hearings by the Wisconsin legislature, and had sufficient bipartisan support in both houses of the Wisconsin legislature to pass with wide margins in that a majority of the members of both the Wisconsin State Assembly and Wisconsin State Senate were cosponsors of the proposed legislation, but which were not allowed to the legislative floor for vote; and

WHEREAS, the disproportionate burden of property taxes on homeowners

will worsen unless state legislators take action to clarify language in the property tax law to prohibit misapplication of the law in a manner that allows some national chain stores use to gain substantial reductions in property taxes; and

WHEREAS, this issue appears to be one of great import and great controversy such that it is desirable for the state legislature to understand the wishes of the citizens of the City of Sheboygan in a formal and unequivocal way.

NOW, THEREFORE, BE IT RESOLVED, that an Advisory Referendum be held coincident with the general election on April 2, 2019, asking the citizens of Sheboygan to answer the following question: "Should the state legislature protect residential property taxpayers by preventing commercial and manufacturing property owners from using tax loopholes that shift an ever-increasing tax burden to homeowners who already pay 68% of the statewide property tax levy by enacting legislation that: 1) prohibits using closed, vacant (dark) properties as comparable properties for determining the assessed value of open, occupied, and fully operational properties; and 2) overturns the 2008 Wisconsin Supreme Court decision in Walgreens v. City of Madison, which is being interpreted by the courts as requiring municipalities to assess many leased commercial properties at a substantial discount, often 50% below the actual sale prices of such properties?"

Ronald Puffinger

James A. Behre

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

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Gen. Ord. 34-18-19. 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: December 18, 2018

MEETING DATE: December 20, 2018

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:

In the last few years, greater detail has been provided as part of the budget process relating to personnel and departmental table of organizations. Some of the requirements identified in Chapter 82 of the Municipal Code are a duplicate of actions already approved as part of the budget process. In addition, other changes to the municipal are recommended.

The following changes are listed in the updated document, including the following:

1) Sec. 82-1: Maintenance of the Plan

On a yearly basis, department leaders are responsible to develop a budget and adhere to the plan. Yet current policies require that all personnel movement relating to the table of organization be approved by Common Council. This process delays the efficient operational needs of the department.

On a go-forward basis, only changes to the table of organization that affect the approved department budget or require a transfer of funds between departments require the approval of the Common Council. All other modifications to a department's table of organization require the approval of the Director of Human Resources and Labor Relations and the City Administrator.

2) Sec. 82-55: Language clean-up only: only police personnel include reporting time.

3) Sec. 82-57:

(a) Acting pay after 4 week (not 2) and up to 10% additional compensation rather than a defined 10%. This allows partial responsibility to receive partial acting pay.

(b) Relates to communication with acting employee who "may" (vs. "shall") be considered for the position or will be communicated if the position is no longer available.

- 4) Sec. 82.60: Car Allowance: Add language to identify that proof of driver's license and insurance
- 5) Sec. 82-66: Demotion – starting salary upon demotion is generally a set amount but may be another amount, depending on the circumstance.
- 6) Sec. 82.67: Increases in compensation
Allows the Director of Human Resources and Labor Relations, as well as the City Administrator, the ability to change job descriptions, titles and pay grades that support the needs of the department while maintaining the approved city budget.
- 7) Sec. 82-68: Continuity of service: Leave of absence (non-FML) of greater than thirty days may reduce the eligible performance increase amount.
- 8) Sec. 82-69: Holiday pay issued counts as work-time for overtime calculation purposes.
- 9) Sec. 82.70:
In the past, Chapter 82 identified specific job titles as classified and non-classified or exempt and non-exempt. This modification removes specific titles and replaces those titles with a reference to the Fair Labor Standards Act.
- 10) Sec. 82.94: Jury Duty clean-up language (already approved by Common Council).

STAFF COMMENTS:

Upon further review, however, this document contains many duplicating statements of departmental or personnel policies or state statutes. Examples include the Personnel Handbook and Compensation Program.

Over the last few years, Common Council has elected to move in the direction of a new governance style with the addition of the City Administrator's position. As such, perhaps it is time to review this chapter to reflect the new professional organizational structure of the City of Sheboygan.

Consequently, I am recommending the Finance and Personnel Committee table action in preparation for a completely new approach.

ACTION REQUESTED:

Motion to table Gen. Ord. 34-18-19.

ATTACHMENTS:

- I. Gen. Ord. 34-18-19

~~II~~

6.1

Gen. Ord. No. 34 - 18 - 19. By Alderpersons Rindfleisch and Bohren.
December 17, 2018.

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) Each year, the common council shall approve an employee classification and compensation program. In preparation for such approval:
- (1) The director of human resources and labor relations shall review, update, and introduce the plan. 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 introduce a yearly budget.
 - (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 director of human resources and labor relations shall annually review the table of organization described in Section 82-32 of this Code and approve mid-year changes to the table of organization not requiring council approval. .
 - (5) The city administrator shall maintain the council-approved operating budget and may approve modifying, adding, or deleting positions to facilitate the needs of the business while maintaining the approved city-wide budget.

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Sec. 82-2. *Medical insurance.*

- (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 pay 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 (30) 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 (15) 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 (30) 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 82-4 through 82-6 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 82-4 through 82-6 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 (30) 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, 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 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 82-6 and 82-7) 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. *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 department, except employees of city boards, utilities or authorities, he or she shall forward a written request to the director of human resources and labor relations to fill the vacant position for approval. 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. 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 finance and personnel committee shall, in writing and within thirty (30) days after receipt of such request, approve 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.
- (b) The filling of any vacant position approved by either the finance and personnel committee or the common council 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 items (1) or (2) of subsection (a) even though the incumbent has not yet vacated the position provided approval has been received in accordance with 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. *Abolition of positions generally.*

Whenever in the judgment of 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, the appointing authority shall 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 hours per week average will be given credit for one-half (1/2) year of service.

Sec. 82-27. *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. *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. *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. 82-30. *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. 82-31. *Classification plan.*

The classification plan shall consist of the classes referred to in section 82-32, 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 82-32 and the rates for such class grades referred to in section 82-54.

Sec. 82-32. *List of classes and class specifications.*

The director of human resources and labor relations shall maintain and update 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. 82-33 - 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 82-32; 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 40 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 10% 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 committee on salaries and grievances 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 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. *Adjustment.*

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 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. 82-64. Starting rates on new position.

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 shall receive the entrance rate in the range established for such position or such other rate within the applicable range as he 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. 82-65. 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 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. Starting rates on demotion.

Whenever an employee is demoted to a position for which he is qualified, be it voluntary or involuntary, he or she shall receive a decrease in pay of \$1.25 per hour, but not less than the minimum pay for the new position. An exception to the decrease in pay may be made by the director of human resources and labor relations after a request by the employee or his or her supervisor.

Sec. 82-67. 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. 82-68. *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. 82-69. *Overtime for non-represented employees.*

- (a) The normal work schedule for full-time, nonexempt employees is five eight-hour periods, totaling 40 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 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-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. 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 40 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) 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 40 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. 82-70. 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. 82-71. Hours of employment.

- (a) Except as otherwise provided, the standard work week for regular, full-time employees of the city will be forty (40) 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. 82-72. 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. 82-73. *Computation generally.*

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

Secs. 82-74 - 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 40 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 (10) working days in any calendar year.

Sec. 82-96. *Special leave.*

The council, upon the recommendation of the chief administrative officer, 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.

Paul Rindler
James A. Bohrer

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