

*****ATTACHMENTS*****

III

4.4

Res. No. 24 - 18 - 19. By Alderperson Wolf. May 21, 2018.

A RESOLUTION authorizing the signing of a drainage / storm sewer easement across the property located at 4717 South Taylor Drive (Markwardt Sales and Service).

NOW, THEREFORE, BE IT RESOLVED: That the Common Council hereby authorizes the Mayor and City Clerk to sign and record the Storm Sewer Easement, a copy of which is attached hereto and incorporate herein.

Public Works



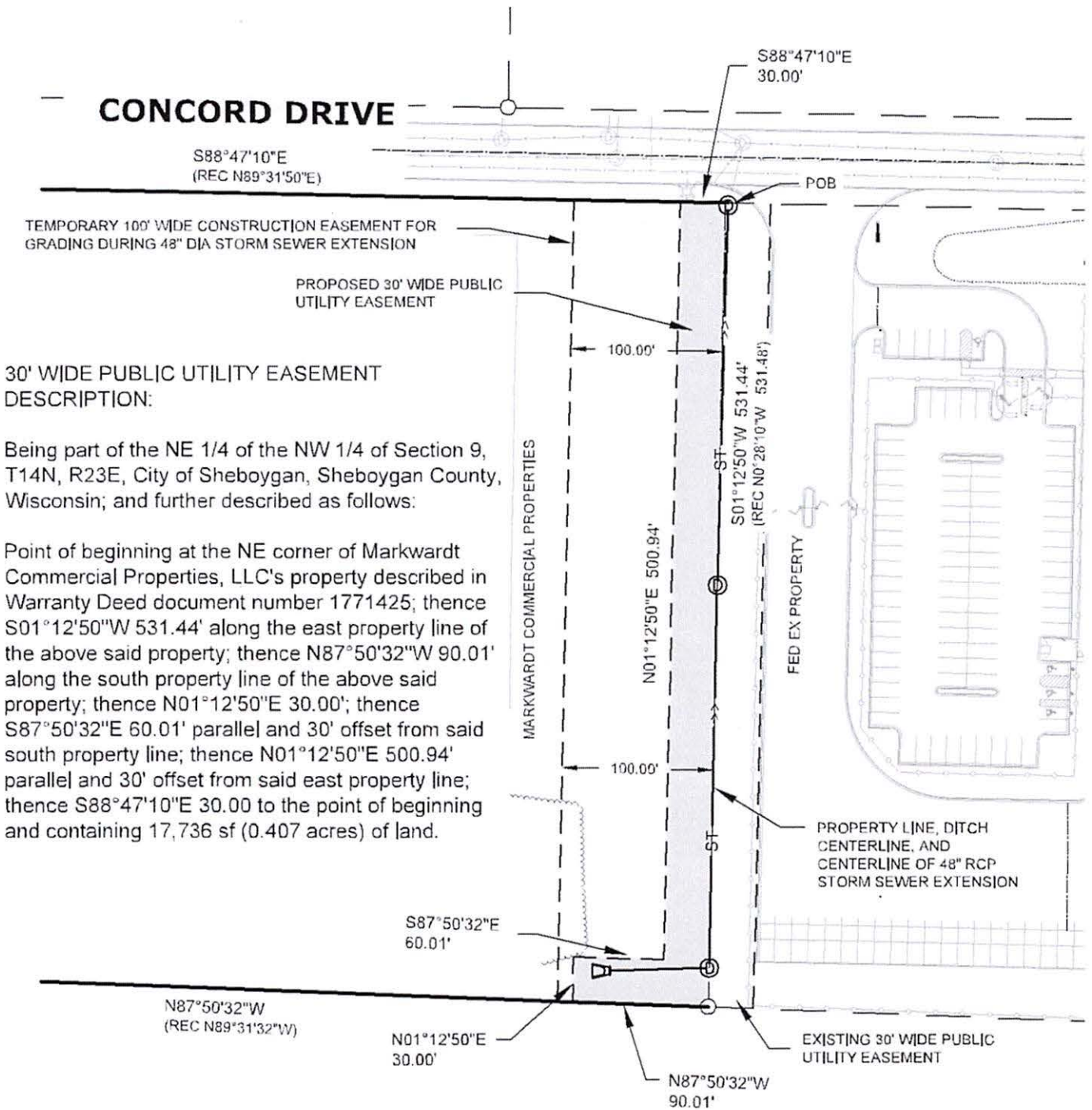
I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

EASEMENT EXHIBIT "A"

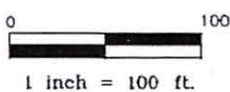
PROPOSED EASEMENTS



DRAWING DATE: APRIL 11, 2017
REVISION DATE: MAY 4, 2017



GRAPHIC SCALE



City of Sheboygan
Sheboygan Business Park
Markwardt Commercial Prop

IN SENATE

January 11, 1907

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

FOR THE YEAR ENDING DECEMBER 31, 1906

Printed by the State Printer, Austin, Texas.

1907

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CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing the signing of a drainage / storm sewer easement across the property located at 4717 South Taylor Drive (Markwardt Sales and Service).

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: May 25, 2018

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: With the planned development of the new FedEx site on Concord Drive, the drainage ditch along the common property line between Markwardt Sales and Service and the FedEx property is planned to be filled in. The City is planning to install a new storm sewer line along that property line to provide drainage for the field South of the South property line of the Markwardt and FedEx properties.

STAFF COMMENTS: Currently there exists a 30-foot wide public utility easement along the East side (FedEx side) of that common property line. An additional 30-foot wide easement along the West side (Markwardt side) will also be required for the storm sewer line. A 100-foot wide temporary construction easement will also be obtained for grading activities during the sewer construction. This temporary easement will cease upon completion of sewer construction.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 24-18-19 (4.4) A RESOLUTION authorizing the signing of a drainage / storm sewer easement across the property located at 4717 South Taylor Drive (Markwardt Sales and Service).

ATTACHMENTS:

- I. Res. No. 24-18-19
- II. Proposed Easement with Exhibit A

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing a professional services agreement with Strand Associates for the design phase of the City of Sheboygan (City) Storm Water Management Plan Update.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: May 25, 2018

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

Budget Line Item: 40033150-631500
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 Department of Public Works in 2017 applied for a Grant to assist the City of Sheboygan to update the City's Storm Water Management Plan. The City in May of 2018 was awarded the grant from the Wisconsin DNR. The total cost of the Storm Water Management Plan Update is \$211,900. The City's portion of the \$211,900 is \$126,900 and the WI DNR portion of the grant is \$85,000 (\$126,900 City+ \$85,000 DNR = \$211,900).

STAFF COMMENTS: This Storm Water Management Plan will address/study the following items throughout the City of Sheboygan starting in June of 2018 and be completed in June of 2019.

- Infiltrometer Testing
- Storm Water Quality Modeling & BMP Analysis
- Storm Hydrologic Analysis
- Map Upgrades to the City GIS System
- Storm Water program Updates and Ordinances
- Storm Water Utility Feasibility Study

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 25-18-19 (4.5) A RESOLUTION authorizing a professional services agreement with Strand Associates for the design phase of the City of Sheboygan (City) Storm Water Management Plan Update.

ATTACHMENTS:

- I. Res. No. 25-18-19
- II. Agreement for Technical Services with Strand Associates

III

4.5

Res. No. 25 - 18 - 19. By Alderperson Wolf. May 21, 2018.

A RESOLUTION authorizing a professional services agreement with Strand Associates for the design phase of the City of Sheboygan (City) Storm Water Management Plan Update.


WHEREAS, the City is acting as the lead agency for the Storm Water Management Plan Updates; and

WHEREAS, the proposal for services submitted by Strand Associates was considered the most advantages after review of 3 proposals received by a team of City Staff; and

WHEREAS, the work under this contract is funded thru an agreement with the Wisconsin DNR matching 50% of all eligible expenses up to \$85,000. The total Cost of the project is \$211,900; therefore the City's portion is \$126,900.

RESOLVED: That the proposal of Strand Associates for the design phase of the Storm Water Management Plan Update is deemed most advantageous, and the appropriate City officials are hereby authorized to enter into a professional service agreement with Strand Associates in an amount not to exceed \$211,900; payment from Account No. 40033150-631500.

Public Works



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



Strand Associates, Inc.[®]
910 West Wingra Drive
Madison, WI 53715
(P) 608-251-4843
(F) 608-251-8655

AGREEMENT FOR TECHNICAL SERVICES

CITY OF SHEBOYGAN, WISCONSIN AND STRAND ASSOCIATES, INC.[®]

This Agreement is made and entered into this ____ day of _____, 20 ____, between the City of Sheboygan, Wisconsin, hereinafter referred to as OWNER, located at 2026 New Jersey Avenue, Sheboygan, Wisconsin 53081, and Strand Associates, Inc.[®], hereinafter referred to as ENGINEER. This Agreement shall be in accordance with the following elements.

Scope of Services

Services to be provided under this Agreement can be described as engineering, scientific, computer-aided design drafting, clerical, and administrative activities performed in accordance with the terms and conditions of this Agreement and subsequently issued Task Orders. Prior to ENGINEER's engagement by OWNER, a mutually agreeable Task Order document shall be developed and executed by both parties. The Task Order will include **Project Information**, a detailed **Scope of Services**, **Compensation**, and **Schedule**. The general form of the Task Order shall be in accordance with the enclosed Task Order No. 18-01.

Service Elements Not Included

The following services are not included under this Agreement. If such services are required, they will be provided as noted in each subsequently issued task order.

1. Additional and Extended Services: Any services during construction made necessary by:
 - a. Work damaged by fire or other cause during construction.
 - b. A significant amount of defective or neglected work of any contractor.
 - c. Prolongation of the time of the construction contract.
 - d. Default by contractor under the construction contract.
2. Additional OWNER-required Site Visits and/or Meetings: Additional OWNER-required site visits or meetings.
3. Archaeological or Botanical Investigations: ENGINEER will assist OWNER in engaging the services of an archaeologist or botanist, if required, to perform the field investigations necessary for agency review.
4. Bidding- and Construction-Related Services: Any services involved in performing bidding- and construction-related services.
5. Drawings and Specifications: Final design services including drawings and specifications.
6. Flood Studies: Any services involved in performing flood and floodway studies.
7. Geotechnical Engineering: Geotechnical engineering information, if required, shall be provided through OWNER and OWNER's geotechnical consultant. ENGINEER will assist OWNER with defining initial scope of geotechnical information that is required to allow OWNER to procure geotechnical engineering services.
8. Land and Easement Surveys/Procurement: Any services of this type including, but not limited to, a record search, field work, preparation of legal descriptions, or assistance to OWNER for securing land rights necessary for siting sanitary sewer, tanks, and appurtenances.
9. Preparation for and/or Appearance in Litigation on Behalf of OWNER: Any services related to litigation.

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10. Review of Product Substitutions or Means, Method, Technique, Sequence, or Procedure Substitutions Proposed by Contractor: The terms of the construction Contract call for the construction contractor to reimburse OWNER for ENGINEER's cost for evaluating substitute products, means, method, technique, sequence, or procedure of construction. ENGINEER's cost for such evaluations is not included.
11. Revising Designs, Drawings, Specifications, and Documents: Any services required after these items have been previously approved by state or federal regulatory agencies, because of a change in the project scope or where such revisions are necessary to comply with changed state and federal regulations that are put in force after Services have been partially completed.
12. Services Furnished During Readvertisement for Bids, if Ordered by OWNER: Any services of this type if a contract is not awarded pursuant to the original bids.
13. Services Related to Buried Wastes and Contamination: Should buried solid, liquid, or potentially hazardous wastes or subsurface or soil contamination be uncovered at the site, follow-up investigations may be required to identify the nature and extent of such wastes or subsurface soil or groundwater contamination and to determine appropriate methods for managing of such wastes or contamination and for follow-up monitoring.

Compensation

OWNER shall compensate ENGINEER for Services indicated in each subsequently issued Task Order for a lump sum or for an estimated fee on an hourly rate basis plus expenses.

Expenses incurred such as those for travel, meals, printing, postage, copies, computer, electronic communication, and long distance telephone calls will be billed at actual cost plus ten percent.

Only sales taxes or other taxes on Services that are in effect at the time this Agreement is executed are included in the Compensation. If the tax laws are subsequently changed by legislation during the life of this Agreement, this Agreement will be adjusted to reflect the net change.

The lump sum or estimated fee for the Services is based on wage scale/hourly billing rates, adjusted annually on July 1, that anticipates the Services will be completed as indicated. Should the completion time be extended, it may be cause for an adjustment in the lump sum or estimated fee that reflects any wage scale adjustments made.

The lump sum or estimated fee will not be exceeded without prior notice to and agreement by OWNER but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**. Any adjustments will be negotiated based on ENGINEER's increase or decrease in costs caused by delays, extensions, amendments, or changes.

Schedule

Services will begin upon execution of this Agreement, which is anticipated on June 4, 2018. This Agreement will terminate two years following its execution. The schedule for individual tasks will be included on each subsequently issued Task Order.

Standard of Care

The Standard of Care for all Services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's Services.

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OWNER's Responsibilities

1. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Task Order-specified project including previous reports, previous drawings and specifications, and any other data relative to the scope of the Task Order-specified project.
2. Furnish to ENGINEER, as required by ENGINEER for performance of Services as part of this Agreement, data prepared by or services of others obtained or prepared by OWNER relative to the scope of the Task Order-specified project, such as soil borings, probings and subsurface explorations, and laboratory tests and inspections of samples, all of which ENGINEER may rely upon in performing Services under this Agreement.
3. Provide access to the site as required for ENGINEER to perform Task Order-specified project Services under this Agreement.
4. Guarantee access to and make all provisions for ENGINEER to enter upon public and private lands as required for ENGINEER to perform Task Order-specified project Services under this Agreement.
5. Examine all reports, sketches, estimates, special provisions, drawings, and other documents presented by ENGINEER and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the performance of ENGINEER.
6. Provide all legal services as may be required for the development of the Task Order-specified project.
7. Retain the services of a soils consultant to provide any necessary geotechnical evaluation and recommendations.
8. Provide the front end documents that require the contractor to name ENGINEER as an additional insured on contractor's General Liability and Automobile Liability insurance policies and to indemnify ENGINEER to the same extent that the contractor insures and indemnifies OWNER.
9. Pay all permit and plan review fees payable to regulatory agencies.

Opinion of Probable Cost

Any opinions of probable cost prepared by ENGINEER are supplied for general guidance of OWNER only. ENGINEER has no control over competitive bidding or market conditions and cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to OWNER.

Observation Services

In furnishing observation services, ENGINEER's efforts will be directed toward determining for OWNER that the completed project will, in general, conform to the Contract Documents; but ENGINEER will not supervise, direct, or have control over the contractor's work and will not be responsible for the contractor's construction means, methods, techniques, sequences, procedures, or health and safety precautions or programs, or for the contractor's failure to perform the construction work in accordance with the Contract Documents.

Payment Requests

ENGINEER's review of Payment Requests from contractor(s) will not impose responsibility to determine that title to any of the work has passed to OWNER free and clear of any liens, claims, or other encumbrances. Any such service by ENGINEER will be provided through an amendment to this Agreement.

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Changes

1. OWNER may make changes within the general scope of this Agreement in the Services to be performed. If such changes cause an increase or decrease in ENGINEER's cost or time required for performance of any Services under this Agreement, an equitable adjustment will be made and this Agreement will be modified in writing accordingly.
2. No services for which additional compensation will be charged by ENGINEER will be furnished without the written authorization of OWNER. The fee established herein will not be exceeded without agreement by OWNER but may be adjusted for time delays, time extensions, amendments, or changes in the **Scope of Services**.
3. If there is a modification of Agency requirements relating to the Services to be performed under this Agreement subsequent to the date of execution of this Agreement, the increased or decreased cost of performance of the Services provided for in this Agreement will be reflected in an appropriate modification of this Agreement.

Extension of Services

This Agreement may be extended for additional Services upon OWNER's authorization. Extension of Services will be provided for a lump sum or an hourly rate plus expenses.

Payment

OWNER shall make monthly payments to ENGINEER for Services performed in the preceding month based upon monthly invoices. Nonpayment 30 days after the date of receipt of invoice may, at ENGINEER's option, result in assessment of a 1 percent per month carrying charge on the unpaid balance.

Nonpayment 45 days after the date of receipt of invoice may, at ENGINEER's option, result in suspension of Services upon five calendar days' notice to OWNER. ENGINEER will have no liability to OWNER, and OWNER agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by OWNER. Upon receipt of payment in full of all outstanding sums due from OWNER, or curing of such other breach which caused ENGINEER to suspend Services, ENGINEER will resume Services and there will be an equitable adjustment to the remaining project schedule and compensation as a result of the suspension.

Data Provided by Others

ENGINEER is not responsible for the quality or accuracy of data nor for the methods used in the acquisition or development of any such data where such data is provided by or through OWNER, contractor, or others to ENGINEER and where ENGINEER's Services are to be based upon such data. Such data includes, but is not limited to, soil borings, groundwater data, chemical analyses, geotechnical testing, reports, calculations, designs, drawings, specifications, record drawings, contractor's marked-up drawings, and topographical surveys.

Termination

This Agreement may be terminated with cause in whole or in part in writing by either party subject to a two-week notice and the right of the party being terminated to meet and discuss the termination before the termination takes place. ENGINEER will be paid for all completed or obligated Services up to the date of termination.

Third-Party Beneficiaries

Nothing contained in this Agreement creates a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER. ENGINEER's Services under this Agreement are



Strand Associates, Inc.[®]
910 West Wingra Drive
Madison, WI 53715
(P) 608-251-4843
(F) 608-251-8655

Task Order No. 18-01
City of Sheboygan, Wisconsin (OWNER)
and Strand Associates, Inc.[®] (ENGINEER)
Pursuant to Technical Services Agreement dated _____, 20__

Project Information

Services Name: Stormwater Management Plan Update

Services Description: Prepare a Stormwater Management Plan update for stormwater quality consistent with OWNER's Municipal Separate Storm Sewer System (MS4) permit and stormwater quantity planning services in targeted areas of the municipality. This project is partially funded by a Wisconsin Department of Natural Resources (WDNR) Urban Nonpoint Source and Stormwater Grant.

Scope of Services

ENGINEER will provide the following services to OWNER:

1. Administration and Meetings

Provide general project administration and prepare for, attend, and provide a meeting summary for each of the following meetings, as applicable:

- a. Meeting No. 1–Kickoff meeting
- b. Meeting No. 2–Progress meeting to discuss preliminary existing conditions modeling (Water Quality and Water Quantity Modeling)
- c. Meeting No. 3–Progress meeting to discuss stormwater program updates, existing conditions modeling (Water Quality and Water Quantity), and potential alternatives to evaluate
- d. Meeting No. 4–Progress meeting to discuss draft alternatives evaluation
- e. Meeting No. 5–Final plan presentation to City Council, including discussion regarding the concept-level stormwater utility feasibility study findings.

2. Double-Ring Infiltrometer Testing

Provide field infiltration testing on existing grass swales at 12 locations throughout the city and communicate results to the WDNR. OWNER shall provide water source for performing tests.

3. Stormwater Program Updates

- a. Review and prepare updated OWNER construction site erosion control and postconstruction stormwater management ordinances and programs in accordance with recent NR 151 revisions for OWNER review.
- b. Review and prepare updates to OWNER's Illicit Discharge Detection and Elimination (IDDE) program in accordance with WDNR's March 2012 guidance document and OWNER's MS4 Permit.
- c. Review and prepare updates to OWNER's existing Stormwater Pollution Prevention Programs (SWPPP) including Public and Private Best Management Practice (BMP) Inspection/Maintenance Program, Leaf Pick-Up Program, Winter Road Management Plan based on OWNER-provided information. This will include one SWPPP for OWNER's Municipal Service Building.

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4. Stormwater Quality Modeling, Pollutant Reduction Strategy Evaluation, and Proposed Implementation Plan
 - a. Data Gathering and Review—Submit a data request to OWNER for existing stormwater-related reports, existing stormwater BMP information, and existing geographic information system (GIS) files showing locations of existing stormwater quality BMPs for which OWNER seeks pollutant reduction credit. Review existing reports and findings.
 - b. Stormwater Quality Modeling—Prepare WinSLAMM modeling with the latest version of WinSLAMM in accordance with WDNR’s October 20, 2014, Total Maximum Daily Load (TMDL) Guidance for MS4 Permits: Planning, Implementation and Modeling Guidance, including the following.
 - (1) Update GIS maps based on OWNER-provided information: Soils (silty, sandy, clayey), WinSLAMM landuse map (based on most recent landuse data), drainage basin map (including watersheds/reachsheds, BMP locations, Wisconsin Pollutant Discharge Elimination System (WPDES) holders, and excluded areas from modeling), drainage type map (curb and gutter and grass swales), and street sweeping location/frequency.
 - (2) Prepare a single WinSLAMM file for each drainage basin that calculates both “Base/No Control Condition” and “Existing Conditions” for Total Suspended Solids (TSS) and Total Phosphorus (TP). Existing Conditions WinSLAMM files will include modeling of existing BMPs (such as wet ponds, dry ponds, bioretention, infiltration, hydrodynamic separators, catch basins with sumps, and street sweeping) based on OWNER-provided information. Contact WDNR to obtain a list of Notice of Intents (NOIs) issued between October 1, 2004 (advent of NR151 date) and submit to OWNER to review which BMPs have not previously been modeled in OWNER’s 2007 Citywide Nonpoint Pollution WinSLAMM Analysis.
 - (3) Prepare a tabular summary of the “Base/No Control Conditions” and “Existing Conditions” WinSLAMM modeling results in accordance with OWNER’s MS4 permit broken out by drainage basin. Provide GIS figures showing baseline and existing conditions TSS and TP load/acre/year per drainage subbasin.
 - c. Pollutant Reduction Strategy Evaluation (Within City Limits)—Provide alternatives evaluation for up to three alternatives within the city limits to assist in meeting or exceeding theoretical wasteload allocations from a future TMDL for one theoretical scenario to be agreed upon with OWNER (anticipated to be a wasteload allocation of 40 percent TSS reduction, which is equivalent to a 27 percent TP reduction). In the two Hot Spot Area Watersheds defined in item No. 5, the deliverables from the item No. 5 services will be used to assist in sizing potential stormwater quality BMPs. Prepare a figure, evaluation, opinion of probable construction cost, and 20-year present-worth cost for each alternative.
 - d. Pollutant Reduction Strategy Evaluation (Alternative Compliance Strategies)—Prepare alternatives evaluation documenting the mechanism for achieving TMDL compliance through water quality trading (with OWNER’s wastewater treatment facility, other MS4s, private point dischargers, and agricultural lands). Develop a concept level 20-year present-worth cost for water quality trading (with agricultural lands) to assist in meeting or exceeding theoretical wasteload allocations from a future TMDL for one theoretical scenario to be agreed upon with OWNER (anticipated to be a wasteload allocation of 40 percent TSS reduction, which is equivalent to a 27 percent TP reduction). Communicate with Sheboygan County to identify potential agricultural BMPs, trading partners, and mechanisms.

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- e. **Proposed Implementation Plan**—Develop a proposed implementation plan considering engineering requirements, amount of water quality or water quantity benefit, available funding sources, land availability, and proximity to wetlands. The proposed implementation plan will include prioritization of improvements, potential schedule of improvements, and a budgeting plan with identification of potential funding sources.
5. **Small Storm Conveyance System Analysis (Grant Eligible)**
 - a. **Data Gathering and Review**—Provide a data request to OWNER for existing stormwater-related reports, existing stormwater BMP information, existing storm sewer conveyance system information (rim/invert elevations, and pipe size/type), and existing GIS files showing locations of existing stormwater quantity and stormwater quality BMPs. Review relevant existing reports and findings.
 - b. **Hydrology and Hydraulics Parameters**—Develop hydrology parameters (watershed, runoff curve numbers based on WinSLAMM land use, and time of concentration) that will represent the watersheds leading to storm sewers in the city at two Hot Spot Areas. Develop hydraulic parameters (pipe size, pipe type, invert and rim elevations) for storm sewer (33,050 linear feet (LF) of mainline storm sewer that is 24 inches or more in diameter; 4,480 LF of critical mainline storm sewer less than 24 inches in diameter near the two Hot Spot Areas; and 4,410 LF of interconnection mainline storm sewer less than 24 inches in diameter) within the watersheds leading to the two Hot Spot Areas. The two Hot Spot Areas are stormwater quantity and stormwater quality areas determined by OWNER. The two Hot Spot Areas are defined as flood-prone and high-pollutant load areas in the city's urban core along Union Avenue served by a storm sewer mainline west of Sauk Trail Road serving a 118-acre watershed that discharges to the Sheboygan River; and flood-prone and high-pollutant load areas in the city's urban core along Wilson Avenue served by two storm sewer mainlines, one along Wilson Avenue serving a 452-acre watershed that discharges to Lake Michigan, and one extending from near the intersection of South 21st Street and Wilson Avenue to the intersection of Camelot Boulevard and South 12th Street serving a 408-acre watershed that discharges to Fisherman's Creek.
 - c. **Existing Conditions Modeling**—Provide existing conditions XPSWMM 2D modeling that incorporates the conveyance features in the two Hot Spot Areas listed above, existing stormwater flood control and applicable stormwater quality control features that are contiguous to the conveyance features listed and overland flow routes. Provide industry standard skeletonization of storm sewer system along the conveyance features in the two Hot Spot Areas, as appropriate. Perform a critical duration evaluation using Bulletin 71 Rainfall Amounts and Huff Rainfall Distribution.
 - d. **Small Storm Existing Conditions Flood Extent Maps**—Prepare flood extent and depth mapping for the two modeled Hot Spot Areas for the two-year design storm event using Bulletin 71 Rainfall Amounts and Huff Rainfall Distribution for the critical duration storm.
 - e. **Prepare a draft and final narrative describing item No. 5 efforts including figures and table of flows for the two-year design storm event.**
 6. **Large Storm Conveyance System Evaluation (Non-Grant Eligible)**
 - a. **Large Storm Existing Conditions Flood Extent Maps**—Prepare existing conditions flood extent and depth mapping for the two modeled Hot Spot Areas for the five-, ten-, 25-, and 100-year design storms using Bulletin 71 Rainfall Amounts and Huff Rainfall Distribution for the critical duration storm starting with the existing conditions XPSWMM modeling completed for the grant-eligible portion of the project (Item No. 5).

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- c. Prepare a rate base estimate of potential annual revenues for a range of stormwater utility rates. The rate base estimate will be based on development of a preliminary estimate of impervious area in the city using available land-use GIS and parcel data. The amount of impervious area on various parcels will be based on typical percent impervious for each land-use classification.
 - d. Prepare an estimate of potential impacts to various land-use classes at up to ten parcels by comparing costs under a tax-based and a fee-based funding mechanism.
 - e. Prepare a narrative documenting item No. 9 efforts.
10. GIS Support for IDDE Screening and Stormwater BMP Inspection/Maintenance Mapping Tools
- a. Provide up to 24 hours of remote on-call assistance to OWNER.
 - b. Provide two site visits (four hours on-site for each visit) to assist OWNER.

OWNER Responsibilities

In addition to those listed in the associated Technical Services Agreement, the following items are considered OWNER responsibilities.

1. Provide list/location of new, redevelopment, and in-fill development projects with an NOI submitted on or after October 1, 2004, and a map showing the location of each.
2. Assist ENGINEER in field inventory of BMPs and conveyance features.
3. Assist ENGINEER in field inspection of existing stormwater BMPs including a boat for performing GPS depth probes in wet ponds.
4. Develop IDDE Screening and Stormwater BMP Inspection/Maintenance Mapping Tools for which ENGINEER is assisting OWNER under item No. 10.
5. Provide list/description (and digital map of the locations), design and record drawings (grading plans/details), and stormwater management reports of all known existing stormwater BMPs (including privately owned, as appropriate) and practices for which stormwater quality credit is pursued, as available. Provide existing stormwater maintenance agreements for privately owned BMPs. For wet ponds, minimum necessary information includes stage/storage, outlet structure/pipes, and approximate depth of water in the pond today (i.e., has sediment accumulated such that there is less than three feet of wet pond water depth?), as available.
6. Provide available existing soil borings at dry detention basins/stormwater facilities.
7. Provide the most recent version of the following maps in a digital format, some of which have already been received:
 - a. Stormwater system map
 - b. City boundary map
 - c. Existing land use map
 - d. City street parking map, showing type and extent of parking control on curb and gutter drainage-type streets, as available
 - e. Zoning map
 - f. Street map
 - g. Parcel map

III


4.6

Res. No. 26 - 18 - 19. By Alderperson Wolf. May 21, 2018.

A RESOLUTION authorizing the signing of a general municipal facilities easement across the Wisconsin Power and Light Company property located adjacent to the Southeast side of the Union Pacific Railroad on South Taylor Drive.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council hereby authorizes the Mayor and City Clerk to sign and record a general municipal facilities easement, a copy of which is attached hereto and incorporate herein.

Public Works



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

Easement For:

- Aboveground Electric Lighting Facilities
- Underground Electric Line Facilities
- Ingress and Egress / Roadway
- ~~- Storm Water Collection Facilities~~
- Water Main Facilities
- Sanitary Sewer Main Facilities
- Storm Water Main Facilities

Strike the above facilities **NOT** included in this easement.

The undersigned **Grantor, Wisconsin Power and Light Company, a Wisconsin corporation, the Grantor herein**, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, convey and warrant unto the **City of Sheboygan**, a corporation organized and existing under and by virtue of the State of Wisconsin **the Grantee herein**, the Grantees successors and assigns, the perpetual right and easement to construct, install, maintain, operate, repair, inspect or remove the above designated facilities upon, in, over and across lands owned by the Grantor in the **City of Sheboygan, County of Sheboygan, State of Wisconsin, said easement to be SEE BELOW feet in width described as follows:**

See Exhibit A and B for map and legal description of easement.

Record this document with the Register of Deeds

Name and Return Address:

Alliant Energy
Attn: Real Estate Department
4902 North Biltmore Lane
P.O. Box 77007
Madison, WI 53707-1007

Parcel Identification Number(s)
Part of 59281470559

The side margins of the easement strip are lengthened or shortened to terminate at the Landowner's property lines that are intersected by the above described reference line.

The Grantee is also granted the associated necessary rights to:

- 1) enter upon the premises described above for the purposes of exercising the rights conferred by this easement,
- 2) have reasonable ingress and egress for personnel, equipment and vehicles to and from said easement area across the property of the Landowner adjacent thereto,
- 3) construct, install, maintain, operate, repair, replace, rebuild, inspect and remove the above designated facilities and other appurtenances upon, over and under said premises.

The Grantee shall pay for all damages to property of the Grantor and all losses arising at any time out of the exercise by it of the rights herein granted caused by the construction, maintenance or removal of said facilities. Prior to the exercise of any of the rights given to the Grantee herein, Grantee agrees to give Grantor reasonable advance notice in writing of the exercise of such rights. Grantee understands that the Grantor is a public utility and in the exercise of its business presently has wires, cables, pipes, poles, structures, and other associated appurtenances upon, over and under the property described in this instrument and in the ordinary exercise of its business may be required to replace, repair or reconstruct said wires, cables, pipes, poles, structures and other associated appurtenances upon, over and under said premises. Therefore, Grantee hereby agrees that if at any time the Grantor is required to go upon the premises described herein or under said premises for the purpose of repairing, replacing or reconstruction or adding to of said wires, cables, pipes, poles, structures and other associated appurtenances, the Grantee will at its own cost and expense remove, relocate or protect its property placed upon said premises at the request of the Grantor in such a manner as Grantor in its sole discretion may request.

The Grantee shall not have the right to erect any fence or building on such land other than the above designated facilities and associated appurtenances and the right is hereby expressly reserved to Wisconsin Power and Light Company, its successors and assigns of every use and enjoyment of said land, including the right to grant additional easements. It is further understood and agreed, by the Grantee that it will at all times protect, indemnify, save and hold harmless Wisconsin Power and Light Company, its officers, employees, and agents, against and from any and all claims arising out of or from any accidents or other occurrences on or about the easement premises causing injury to any person or persons or damage to property, whomsoever or whatsoever (including, but not limited to the employees of the Grantee) and due directly or indirectly to the use of the easement premises or any part thereof by said Grantee, its employees, agents, customers, guests or invitees, provided, however, that in no event shall Grantee indemnify Wisconsin Power and Light Company for direct damage claims to the extent arising out of the negligent acts or omissions of Wisconsin Power and Light Company, its officers, employees or agents.

Grantee agrees that it will call diggers hotline prior to any excavation on the easement/not levy any special assessments against Grantor's land as a result of the facilities placed thereon.

This agreement is binding upon the heirs, successors and assigns of the parties hereto; and shall run with the lands described herein.

WITNESS the signature of the Grantor this 20 day of March, 2018

WISCONSIN POWER AND LIGHT COMPANY

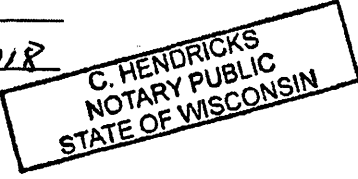
By: DJ de L.
David de Leon, Vice President - Operations

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

The foregoing instrument was acknowledged before me this 20 day of March, 2018 by Davie de Leon to me known as an authorized representative of WISCONSIN POWER AND LIGHT COMPANY, a Wisconsin corporation on behalf of the corporation.

[Signature]
Notary Public, State of Wisconsin
My Commission Expires: 10/7/2018



Authorized By: **CITY OF SHEBOYGAN**

Michael Vandersteen
City of Sheboygan - Mayor

Meredith DeBruin
City of Sheboygan – City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF SHEBOYGAN)

Personally came before me this ____ day of _____, 2018, the above named Michael Vandersteen and Meredith DeBruin to me known to be the persons who authorized the foregoing instrument and acknowledged the same.

Notary Public

My Commission expires _____

This easement is authorized by and in accordance with Resolution Number _____

This instrument drafted by City of Sheboygan

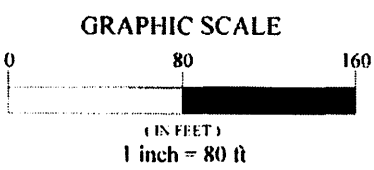
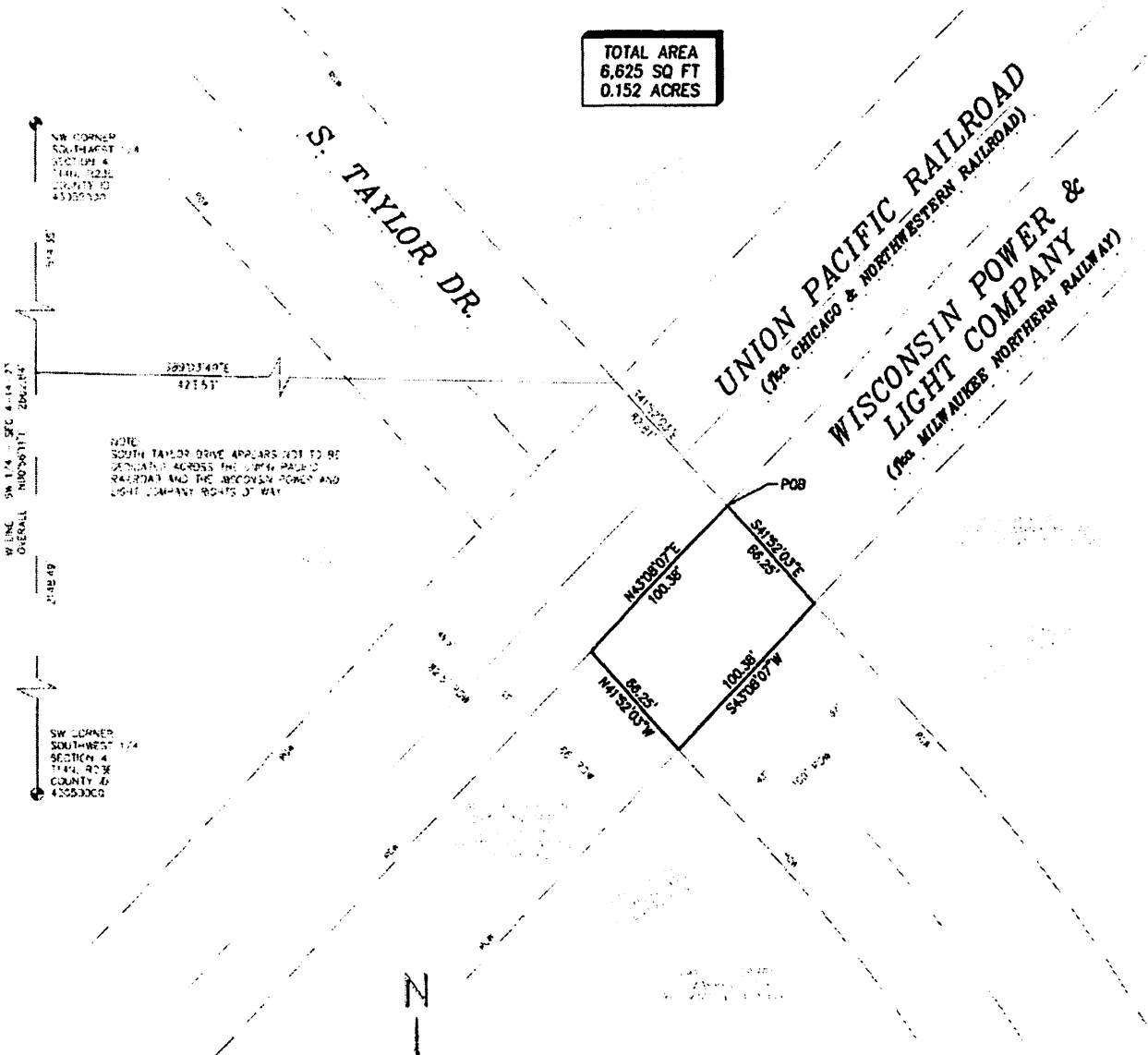
Prepared By

Checked By

EXHIBIT A EASEMENT MAP

UNPLATTED LANDS LOCATED IN THE
NW 1/4 OF THE SW 1/4 OF SECTION 4, T14N - R23E,
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

TOTAL AREA
6,625 SQ FT
0.152 ACRES



PARENT PARCEL ID 59281470559
BEARINGS ARE REFERENCED TO THE WEST
LINE OF THE SW 1/4 OF SECTION 4-14-23 AS
N00°56'11"E (SHEBOYGAN COUNTY
COORDINATES - NAD83 (1991))

MAP PREPARED BY: MICHAEL P. BORN, PLS DATED 1/19/18

**City of
Sheboygan**
spirit on the lake

Department of Public Works
Engineering Division
City of Sheboygan, Wisconsin
Phone: 920-459-1394
Fax: 920-459-0227

LEGEND
 RECORDED SHEBOYGAN
COUNTY MONUMENT

EXHIBIT B
EASEMENT DESCRIPTION

UNPLATTED LANDS LOCATED IN THE
NW 1/4 OF THE SW 1/4 OF SECTION 4, T14N - R23E,
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Unplatted lands located in the Northwest 1/4 of the Southwest 1/4 of Section 4, Town 14 North, Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin and being more particularly described as follows:

Commencing at the Southwest corner of the Southwest 1/4 of said Section 4;
thence North 00°56'11" East, along the West line of said Southwest 1/4, a distance of 2148.49 feet;
thence South 89°03'49" East a distance of 423.53 feet to the intersection of the Northeasterly Right of Way line of South Taylor Drive and the Northwesterly Right of Way line of the Union Pacific Railroad, and the South corner of Lot 1 of a Certified Survey Map recorded in Volume 23 of Certified Survey Maps on Pages 190-191 as document 1840281 in the Sheboygan County Register of Deeds office;
thence South 41°52'03" East, along the Southeasterly extension of said Northeasterly Right of Way line of South Taylor Drive, a distance of 82.81 feet to the Northwesterly line of the Wisconsin Power and Light Company Right of Way as recorded in a Quit Claim Deed in Volume 1167 of Records on Pages 693-695 as document 1218059 and the Point of Beginning for this description;
thence continuing South 41°52'03" East, along said Southeasterly extension of the Northeasterly Right of Way line of South Taylor Drive, a distance of 66.25 feet to the intersection of the Southeasterly line of said Wisconsin Power and Light Company Right of Way and the Northeasterly Right of Way line of said South Taylor Drive, and the West corner of lands described in a Special Warranty Deed recorded as document 2010312 in said Register of Deeds office;
thence South 43°08'07" West, along said Southeasterly Right of Way line, a distance of 100.38 feet to the Southwesterly Right of Way line of said South Taylor Drive and the North corner of lands described in a Warranty Deed recorded in Volume 1970 on Pages 715-718 as document 1631655 in said Register of Deeds office;
thence North 41°52'03" West, along the Northwesterly extension of said Southwesterly Right of Way line of South Taylor Drive, a distance of 66.25 feet to said Northwesterly line of the Wisconsin Power and Light Company Right of Way;
thence North 43°08'07" East, along said Northwesterly line of the Wisconsin Power and Light Company Right of Way, a distance of 100.38 feet to said Southeasterly extension of the Northeasterly Right of Way line of South Taylor Drive and the Point of Beginning for this description.

The above described land contains 0.152 acres (6,625 square feet) of land, more or less.

End of description.

DESCRIPTION PREPARED BY: MICHAEL P. BORN, PLS

DATED 1/19/18



SHEET 5 OF 5 SHEETS

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing the signing of a general municipal facilities easement across the Wisconsin Power and Light Company property located adjacent to the Southeast side of the Union Pacific Railroad on South Taylor Drive.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: May 25, 2018

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: The Wisconsin Power and Light Company (Alliant Energy) owns a property adjacent to the Southeast side of the Union Pacific Railroad. This property was initially acquired by the Milwaukee Northern Railway Company in 1908.

STAFF COMMENTS: In 1991, when South Taylor Drive was constructed, an easement to cross the Wisconsin Power and Light Company property were obtained. With the upcoming sanitary sewer extension project, staff felt it necessary to acquire the proper easement to cover all of the City-owned facility crossings (i.e. roadway, sanitary sewer, water main, storm sewer and electrical).

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 26-18-19 (4.6) A RESOLUTION authorizing the signing of a general municipal facilities easement across the Wisconsin Power and Light Company property located adjacent to the Southeast side of the Union Pacific Railroad on South Taylor Drive.

ATTACHMENTS:

- I. Res. No. 26-18-19
- II. Proposed Easement

III

4.7

Res. No. 27 - 18 - 19. By Alderperson Wolf. May 21, 2018.

A RESOLUTION authorizing the Purchasing Agent to enter into contract for the purchase of a new Single Axle Dump Truck with plow, wing and slide in spreader and brine distribution system for the Motor Vehicle Division of the Department of Public Works.

WHEREAS; The Department of Public Works has included a new, single axle dump truck in the 2018 Motor Vehicle Division Capital Improvement budget and;

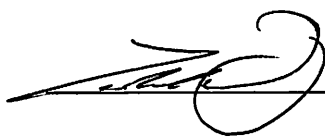
WHEREAS; The new truck will feature a snowplow, wing plow, stainless steel dump body with a slide in spreader and brine application system and;

WHEREAS; The purchase of the truck will utilize the contracts available through the National Joint Powers Alliance (NJPA) which results in the lowest costs available to the city as well as eliminating the need for competitive bidding. As a member in good standing with NJPA, the city is entitled to access this national contract pricing. Following receipt of the truck, a 2007 model dump truck will be sold at auction with the proceeds deposited with the Finance Director and:

RESOLVED: That the Purchasing Agent is authorized to enter into contract with Truck Country of Oak Creek WI for the purchase of a 2019 Freightliner 114SD single axle truck with Monroe Truck Equipment Body and related accessories in the amount of \$215,975.00.

BE IT FURTHER RESOLVED: That the Purchasing Agent is hereby authorized to draw orders on 70136100-641200 2018 Motor Vehicle Capital Improvements Fund in the amount of \$215,975.00 and the need for competitive bidding is hereby waived.

Public Works



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 PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing the Purchasing Agent to enter into contract for the purchase of a new Single Axle Dump Truck with plow, wing and slide in spreader and brine distribution system for the Motor Vehicle Division of the Department of Public Works.

REPORT PREPARED BY: Bernard Rammer, Purchasing Agent

REPORT DATE: May 22, 2018

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

Budget Line Item: 70136100-641100
Budget Summary: 2018 Capital
Improvements
Budgeted Expenditure: \$ 225,000.00
Budgeted Revenue: N/A

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS: The 2018 Capital Improvement Budget includes the purchase of a replacement single axle dump truck equipped with Main Plow, wing plow, a slide-in spreader and brine application equipment. This will replace a 2007 model truck that is worn and rusted and will be auctioned following receipt of the new truck.



STAFF COMMENTS: The Motor Vehicle Division has standardized with Freightliner for the heavy-duty trucks and Monroe Truck Equipment of DePere for Dump bodies, plows, and other equipment. Both Freightliner and Monroe Truck Equipment are contract holders with the National Joint Powers Alliance (NJPA) and the city is able to access national contract pricing without competitive bidding. Both the dump body and the slide in salt spreader to be purchased will be constructed of stainless steel and therefore will not rust. The purchase also includes brine distribution equipment as well as traffic warning lighting. Once complete, the old truck to be replaced is slated for sale at auction.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 27-18-19 (4.7) A RESOLUTION authorizing the Purchasing Agent to enter into contract for the purchase of a new Single Axle Dump Truck with plow, wing and slide in spreader

and brine distribution system for the Motor Vehicle Division of the Department of Public Works.

ATTACHMENTS:

- I. Res. No. 27-18-19

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing the Purchasing Agent to enter into contract for the purchase of a replacement dump truck body for an existing 2007 Model dump truck, including a slide in spreader and brine distribution system and related accessories for the Motor Vehicle Division of the Department of Public Works.

REPORT PREPARED BY: Bernard Rammer, Purchasing Agent

REPORT DATE: May 18, 2018

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

Budget Line Item: 70136100-641100
Budget Summary: 2018 Capital Improvements
Budgeted Expenditure: \$ 85,000.00
Budgeted Revenue: N/A

STATUTORY REFERENCE:

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

BACKGROUND / ANALYSIS: The 2018 Capital Improvement Budget includes the purchase of a replacement dump body, slide in salt spreader, brine distribution system and related equipment to replace a badly rusted and worn unit on a Tri-Axle Dump Truck.



STAFF COMMENTS: The Motor Vehicle Division has determined that while the dump body to be replaced is in poor condition due to severe rust and general wear and tear, the chassis can be expected to provide several more years use. Monroe Truck Equipment of DePere is a contract holder with the National Joint Powers Alliance (NJPA) and the city is able to access national contract pricing without competitive bidding. Both the dump body and the slide in salt spreader to be purchased will be constructed of stainless steel and therefore will not rust. The purchase also includes brine distribution equipment as well as traffic warning lighting. Once complete, the old worn out body is slated to be scrapped.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 28-18-19 (4.7) A RESOLUTION authorizing the Purchasing Agent to enter into contract

for the purchase of a replacement dump truck body for an existing 2007 Model dump truck, including a slide in spreader and brine distribution system and related accessories for the Motor Vehicle Division of the Department of Public Works.

ATTACHMENTS:

- I. Res. No. 28-18-19

III

4.8

Res. No. 28 - 18 - 19. By Alderperson Wolf. May 21, 2018.

A RESOLUTION authorizing the Purchasing Agent to enter into contract for the purchase of a replacement dump truck body for an existing 2007 Model dump truck, including a slide in spreader and brine distribution system and related accessories for the Motor Vehicle Division of the Department of Public Works.

WHEREAS; The Department of Public Works has determined that in lieu of replacement of a 2007 model Tri-Axle dump truck with a badly worn and rusted dump body it is in the best interest of the city to instead replace the body only and add a slide -in spreader and liquid brine application system and;

WHEREAS; The replacement dump body and the slide in salt spreader will both be constructed of stainless steel to assure a long life expectancy and resistance to salt related corrosion and;

WHEREAS; The purchase of the dump body and related equipment will utilize the contracts available through the National Joint Powers Alliance (NJPA) which results in the lowest costs available to the city as well as eliminating the need for competitive bidding. As a member in good standing with NJPA, the city is entitled to access this national contract pricing from Monroe Truck Equipment of DePere WI. Following replacement, the old body, which is in poor condition, will be scrapped.

RESOLVED: That the Purchasing Agent is authorized to enter into contract with Monroe Truck Equipment of DePere WI for the purchase of a replacement Stainless Steel Dump Body, Stainless Spreader, Brine distribution system and related equipment in the amount of \$ 64,951.00.

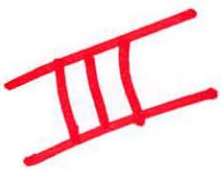
BE IT FURTHER RESOLVED: That the Purchasing Agent is hereby authorized to draw orders on 70136100-641200 2018 Motor Vehicle Capital Improvements Fund in the amount of \$64,951.00 and the need for competitive bidding is hereby waived.

Public Works



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



DIRECT REFERRAL TO PUBLIC WORKS

Res. No. 31 - 18 - 19. By Alderperson Wolf and Sorenson. May 29, 2018.

A RESOLUTION authorizing executing a lease for the former County Highway Department building on North 23rd Street for use by certain City Hall departments during construction at City Hall.

RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to execute the attached Lease Agreement with Aurora Medical Group, Inc., in form substantially similar to the attached, for the use of the former County Highway Department building.

Public Works

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

LEASE AGREEMENT

This Lease Agreement is entered into this _____ day of May, 2018, by and between **AURORA MEDICAL GROUP, INC.** d/b/a Aurora Health Care Medical Group, a Wisconsin non-stock corporation ("Landlord"), and the **CITY OF SHEBOYGAN**, a Wisconsin municipal corporation ("Tenant").

WHEREAS, Tenant desires to lease the premises described in Section 1 (the "Premises") and Landlord is willing to lease the Premises on the terms and conditions hereinafter set forth; and

WHEREAS, Landlord and Tenant desire to enter into a Lease Agreement for the Premises for the operation of governmental offices.

AGREEMENT

NOW, THEREFORE, in consideration of the rents, agreements, and conditions herein contained, the parties agree as follows:

1. **PREMISES.** Landlord hereby leases to Tenant and Tenant leases from Landlord the approximately 12,800 square foot building (the "Building") located at 1211 North 23rd Street, Sheboygan, Wisconsin 53081, and that portion of the adjacent land shown on attached Exhibit A (the Building and the land being referred to collectively herein as the "Premises").

2. **TERM.** Subject to the provisions herein, the term of this Lease shall be for one year, nine days, commencing May 22, 2018, and month-to-month thereafter; provided, however, that in no event shall the term extend beyond May 31, 2020. If the Tenant desires to terminate the lease on May 31, 2019 or at the end of any given month prior to May 31, 2020, the Tenant shall provide notice in writing to the Landlord of said termination no fewer than 30 days in advance of the date of termination.

3. **USE AND COMPLIANCE WITH LAWS.** Tenant shall use the Premises exclusively for government use (the "Use"), and for no other purpose without the prior written consent of Landlord, subject to and in compliance with all other provisions of this Lease. Tenant shall at all times conduct its business in a first-class, professional, and businesslike manner. Tenant shall comply with all federal, state, county, city or other governmental agency laws, regulations, rules, ordinances, or codes, relating to the Premises and Tenant's use thereof including, without limitation, health, safety, and building codes, the Americans With Disabilities Act and the Wisconsin Barrier-Free Design Act, and any permit or license requirements.

4. **RENTAL.**

A. **Base Rent.** Tenant hereby covenants and agrees to pay Landlord Base Rent for the Premises in the sum of \$5,333.33 per month. Base Rent shall be payable on the first day of each month during the term of this Lease. If the term commences other than the first day of a month a partial rents month shall be due and payable on the date of commencement.

B. **Real Estate Taxes.** Tenant shall be responsible for Tenant's proportionate and prorated share of all taxes, assessments and levies assessed against the Premises, whether general or special, ordinary or extraordinary, of every nature or kind whatsoever, that are due and payable during each calendar year containing any portion of the Term (collectively, the "Taxes"). All Taxes shall be paid by Tenant in the manner set forth below.

(i) Taxes shall be paid in advance on the first (1st) day of each calendar month in estimated monthly installments of the amount projected by Landlord to be equal to 1/12th of Tenant's annual obligation for Taxes. Within ninety (90) days after the end of each calendar year during the Term, Landlord shall furnish Tenant with a statement of the actual amount of Taxes for the year in question. Within fifteen (15) days after the delivery of each such statement to Tenant by Landlord, Tenant shall pay to Landlord, or

Landlord shall credit to Tenant, as the case may be, the difference between the estimated payments actually made by Tenant for the year in question and the correct amount of Taxes for such year, as shown on such statement. For the calendar years in which this Lease commences and terminates, the provisions of this section shall apply, and Tenant's liability for Taxes for such years shall be subject to a pro rata adjustment based on the number of days of such calendar years during which the Term is in effect. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of Taxes to which such bill relates. From time to time, Landlord shall notify Tenant in writing of the amount of Tenant's monthly installments due hereunder and adjustments thereto, and thereafter Tenant shall make its installment payments accordingly without notice or demand. Tenant's obligations under this Section shall survive the expiration of the term of this Lease.

(ii) If any tax shall be levied, assessed or imposed upon the income arising from the rents payable hereunder, partially or totally in lieu of or as a substitute for any Taxes, Tenant and not Landlord shall pay the same.

(iii) Tenant shall also pay all Taxes levied against any personal property owned by Tenant and situated at the Property prior to the due date for such taxes.

D. Tenant's Proportionate Share. The Parties anticipate that the warehouse portion of the Building will be leased to one or more third parties. For purposes of this Section 4, Tenant shall pay only a proportionate share of real estate taxes and utilities, excluding all uses by third parties. Tenants shall have no obligation to modify the utilities for use by third parties; however Tenant would permit Landlord to make such a modification.

E. Other Expenses, Net Lease. Tenant shall pay directly all other expenses incurred by Tenant related to its use of the Premises, including without limitation utilities, as set forth in Section 11 below. This Lease is what is commonly called a "net lease," it being understood that Landlord shall receive the Base Rent set forth in Section 4.A. free and clear of any and all other impositions, taxes, assessments, liens, charges or expenses of any nature whatsoever in connection with the ownership, maintenance, repair and operation of the Premises. All of charges in addition to Base Rent and payable by Tenant hereunder (including Tenant's liability for Taxes, insurance, and utilities) shall constitute additional rent ("Additional Rent"), and upon the failure of Tenant to pay any of such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Base Rent. Base Rent, Additional Rent and all other sums payable under this Lease by Tenant (collectively "Rent") shall be paid without notice or demand and without setoff, counterclaim, abatement, suspension, deduction or defense.

5. SECURITY DEPOSIT. At the signing of this Lease, Tenant shall pay Landlord a security deposit in the amount of Zero Dollars (\$0.00).

6. INSURANCE. During the term of this Lease and any renewal thereof, the Parties shall provide and maintain a policy of property and general liability coverage insurance on the Building and pay all premiums thereon. All insurance requirements herein shall be obtained through responsible insurance companies licensed to do business in the State of Wisconsin. Landlord's insurance shall not cover Tenant's personal property. The Tenant shall be responsible for providing personal property, general commercial liability, and worker's compensation insurance with respect to the Premises and persons of the respective City departments that are utilizing the Premises.

7. MUTUAL WAIVER OF SUBROGATION. Landlord and Tenant hereby waive any rights each may have against the other arising out of any loss or damage connected in any way to or arising in any way out of any occurrence related to the Premises or in the Building to the extent that such damage or loss is insured under the insurance policies maintained by either party. Landlord and Tenant, on behalf

of their respective insurance companies, waive any right of subrogation they may have against each other where such waiver of subrogation is not invalidated by applicable state law or the insurance policies.

8. INDEMNIFICATION. Tenant will protect, indemnify, save harmless, and defend Landlord from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Landlord by reason of: (a) any failure on the part of Tenant to perform or comply with any of the terms of this Lease caused by the negligence of Tenant; or (b) any negligent act or omission of Tenant or its employees, agents, licensees, or invitees. Landlord, at Landlord's option and at Tenant's expense, may contest, resist, and defend any such claim, action, or proceedings asserted or instituted against Landlord and may compromise or otherwise dispose of the same as it sees fit. If Landlord does not defend any such claim, action, or proceedings as herein provided, Tenant shall at Tenant's expense contest, resist, and defend any such claim, action, or proceeding asserted or instituted against Landlord. Tenant agrees to give Landlord immediate written notice of any liability, obligation, claim, damage, penalty, or cause of action.

Landlord will protect, indemnify, save harmless, and defend Tenant from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including without limitation reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Tenant by reason of: (a) any failure on the part of Landlord to perform or comply with any of the terms of this Lease; or (b) any negligent act or omission of Landlord or its employees, agents, licensees, or invitees at the Premises. Tenant, at Tenant's option and at Landlord's expense, may contest, resist, and defend any such claim, action, or proceedings asserted or instituted against Tenant and may compromise or otherwise dispose of the same as it sees fit. If Tenant does not defend any such claim, action, or proceedings as herein provided, Landlord shall, at Landlord's expense, contest, resist, and defend any such claim, action, or proceeding asserted or instituted against Tenant. Landlord agrees to give Tenant immediate written notice of any liability, obligation, claim, damage, penalty, or cause of action.

9. DAMAGE AND DESTRUCTION. The Parties acknowledge that Landlord's current plans are to demolish to Building at the end of this lease. Landlord shall have no obligation to repair any damage or destruction to the Premises. In the event the Premises or the Building is damaged by any peril and, after written inquiry by Tenant, Landlord elects not to repair the damage or destruction to the Premises, then, Tenant may, at Tenant's election, proceed to repair such damage or destruction. In the event that Landlord elects not to repair any damage or destruction to the Premises and such election not to repair would adversely affect Tenant's ability to operate its business in the Premises, Tenant may terminate this Lease by written notice to Landlord given within thirty (30) days after the date of the damage or destruction. If Landlord does elect to repair such damage or destruction, Base Rent shall abate proportionately to the loss of use by Tenant during the period of repair. In no event will Landlord be required to spend on any restoration of the Premises any amount in excess of the insurance proceeds actually received by Landlord in regard to such damage or destruction. Landlord shall not be responsible for repairing or restoring any of Tenant's fixtures, equipment or other property, and Tenant may repair or restore the same, if at all, at its expense.

10. MAINTENANCE AND REPAIR.

A. Tenant has inspected the Premises and accepts the same "AS IS" in their current condition without any express or implied warranties by Landlord. Subject to 10.B below, Tenant shall make all repairs and replacements to the Premises, including the parking lot and structural and roof repairs required due to the negligence of Tenant, its employees or agents as the need to make such repairs and replacements arises, and shall maintain the Premises in good order and repair, and in a safe and sanitary condition. If Tenant refuses or neglects to commence any repairs or replacements within ten (10) days after receipt of written demand by Landlord, or does not adequately complete the same within a reasonable time thereafter, Landlord may, but shall not be obligated to, make such repairs without incurring liability to Tenant for any loss or damage that may accrue to Tenant or Tenant's business by reason thereof.

B. Neither Landlord nor Tenant shall be required to make any structural or roof repairs to the Premises, provided, however, if such a repair or replacement is needed and Landlord refuses to perform the same, Tenant may terminate this Lease on thirty (30) days' notice to Landlord if Tenant's use of the Premises is materially adversely affected by the failure of Landlord to make such repair or replacement. In no event shall Landlord have any obligation to make any repairs to the Premises.

11. **UTILITIES.** Tenant shall pay, as they become due and payable and before they become delinquent, all charges for electricity, heat, air conditioning, water, gas, fuel, snow removal, telephone, sewage usage or rental, garbage disposal, refuse removal and any other utility service furnished to the Property (the "Utilities"). All Utilities shall be placed in the name of Tenant. In no event will Landlord be liable for any interruption or failure in the supply of any of the Utilities, regardless of the cause. Additionally, in no event shall the Tenant be responsible for the cost of utility services incurred by a third party pursuant to Paragraph 4.E.

12. **ALTERATIONS.** Tenant shall not demolish improvements upon the Leased Premises without the prior written consent of Landlord, which may be subject to such conditions as Landlord may require in its sole discretion.

13. **DEFAULT.** Should Tenant (i) fail to make any payment of Rent when due or (ii) violate or fail to perform any of the other terms or conditions herein contained and such failure or default is not cured within thirty (30) days after Landlord gives notice of such default to Tenant, or (iii) abandon the Premises, then at Landlord's option: (x) this Lease shall be immediately terminated upon written notice to Tenant with the same effect as if the Lease provided for expiration on that day, (y) Tenant's right to possession shall be immediately terminated upon written notice to Tenant and Tenant shall continue to be liable for all rent due for the remainder of the term, or (z) Landlord shall have the right to exercise any other remedy provided by Wisconsin law.

14. **MISCELLANEOUS.**

A. **Discharge of Liens.** Tenant will not permit any mechanics' or similar liens for labor or materials furnished to the Premises during the term of this Lease to be filed against the Premises or any part thereof; and if any such lien shall be filed, Tenant will either pay the same or procure the discharge thereof by giving security or in such other manner as may be required or permitted by law within thirty (30) days after such filing. Tenant shall indemnify Landlord against and save Landlord harmless from any and all loss, damage, claims, liabilities, judgments, costs, and expenses arising out of the filing of any such lien. Nothing contained herein shall constitute any consent or request by Landlord, express or implied, to or for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises, nor as giving Tenant any right, power, or authority to contract for or permit the performance of any labor or services or the furnishings of any materials or other property in such fashion as would permit the making of any claim against Landlord in respect thereof.

B. **As-is Condition.** The Premises will be turned over to the Tenant in "as-is" condition.

C. **Notices.** Any notice or demands to be given hereunder shall be in writing and shall be given by mailing the notice by certified or registered mail, return receipt requested, postage prepaid, and any such notice shall be deemed to have been given when deposited in the mail. If intended for Landlord, the notice shall be mailed to:

To Landlord: c/o Aurora Health Care, Inc.
750 West Virginia Street
Milwaukee, Wisconsin 53204
Attn: Corporate Real Estate

or such other address as Landlord may designate by notice to Tenant; and if intended for Tenant, the notice shall be mailed to:

To Tenant: City Clerk
CITY OF SHEBOYGAN
828 Center Avenue
Sheboygan, WI 53081

or such other address as Tenant may designate by notice to Landlord.

D. Commission. The Landlord is responsible for payment of all real estate commissions due to Cushman & Wakefield | Boerke as a result of this transaction.

E. Quiet Enjoyment. So long as Tenant shall perform its obligations under this Lease, it shall be entitled to peaceful and quiet enjoyment of the Premises subject to the applicable terms of this Lease.

F. Signage. The Tenant has the right to install and place signage associated with its Use.

G. Surrender of Premises. Tenant agrees that upon the expiration or prior termination of the Lease, Tenant will vacate and surrender the Premises to Landlord in good order and repair, ordinary wear and tear excepted. Should Tenant remain in possession of the Premises after expiration or termination of this Lease without Landlord's approval, no tenancy or interest in the Premises shall result therefrom and Landlord shall have the right to reenter and possess the Premises and remove all property and persons therefrom and shall have all other remedies available at law or in equity. Except as otherwise provided by law, if Tenant fails to remove any fixtures or personal property belonging to it within ten (10) days after the termination of this Lease, the same shall be deemed abandoned by Tenant and shall, at Landlord's option, become the property of Landlord, or may be removed from the Premises by Landlord at the expense of Tenant.

H. Successors and Assigns. This Lease and all of the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns, respectively of the parties hereto provided, however, that no assignment in violation of the provisions hereof shall vest in the assigns any right, title, or interest whatever.

I. Entire Agreement. This Lease sets forth all of the covenants, promises, agreements, conditions, and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than as herein set forth. No alteration, amendment, change, or addition to this Lease shall be binding upon the parties unless in writing and signed by them.

J. Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Wisconsin.

K. Severability. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable under applicable law, the remainder of this Lease or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, or condition of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

L. Subject to Common Council Approval. This agreement shall not be effective until a resolution approving this lease is approved by the City of Sheboygan Common Council.

M. Entry by Landlord. Landlord and its representatives shall have the right, at all reasonable times, to enter upon the Premises for the purposes of examining and inspecting the same, however such entry shall not unreasonably interfere with the business of Tenant. This section shall not be construed as imposing any obligation upon Landlord to inspect the Premises.

IN WITNESS WHEREOF, Tenant and Landlord have hereunto set their hands and seals on the date first written above.

TENANT:

CITY OF SHEBOYGAN

By: _____
Michael J. Vandersteen, Mayor

By: _____
Meredith DeBruin, City Clerk

LANDLORD:

AURORA MEDICAL GROUP, INC.

By: _____
Name: _____
Title: _____

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing executing a lease for the former County Highway Department building on North 23rd Street for use by certain City Hall Departments during construction at City Hall.

REPORT PREPARED BY: David H. Biebel, Director of Public Works

REPORT DATE: May 24, 2018

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: The Common Council approved entering into contract with Quasius Construction Inc. for city hall renovations, as well as a contract for removal and disposal of all asbestos containing materials from City Hall and the City Hall garage in preparation for the City Hall renovation project. The Common Council approved the purchase of the former Social Security Administration property on North 9th Street, which the Department of City Development, Department of Finance (one Finance Clerk only) and the Office of the City Clerk will occupy. The space is inadequate for the remaining City Hall departments.

STAFF COMMENTS: The future owner of the property located at 1211 N 23rd Street is Acquisitions Group, LLC. The following departments will occupy the building: Offices of the City Attorney, Mayor and City Administrator, Human Resources Department, IT Department and Finance Department.

The proposed lease is for one year commencing June 1, 2018 and month-to-month thereafter, extending no later than May 31, 2020. The landlord base rent for the premise is \$5,333,33 per month. Additional rent of real estate taxes on a pro-rated basis for the premise will commence on January 1, 2019 as well as operating expenses for the premises in monthly installments.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 31-18-19 A RESOLUTION authorizing executing a lease for the former County Highway Department building on North 23rd Street for use by certain City Hall Departments during construction at City Hall.

ATTACHMENTS:

- I. Res. No. 31-18-19
- II. Lease Agreement

Gen. Ord. No. - 17 - 18 . By Alderperson Wolf May 21, 2018.

AN ORDINANCE creating parking limits so as to add a 2 hour parking limit 8:00 am to 6:00 pm except Sunday and holidays on the east side of North 8th Street between Huron Avenue and Michigan Avenue.

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

Section 1. Pursuant to Section 118-126 of the Municipal Code entitled, "Prohibitions and Restrictions Authorized", parking on the east side of North 8th Street from 90 feet south of the south curb line of Huron Avenue to 126 feet south of the south curb line of Huron Avenue shall be limited to 2 hour parking limit 8:00 am to 6:00 pm except Sunday and holidays.

Section 2. The Department of Public Works and the Police Department are hereby authorized and directed to install the signs to give notification of the aforementioned parking restriction.

Section 3. 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

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: An ORDINANCE creating parking limits so as to add a two hour parking limit between 8:00 a.m. to 6:00 p.m. except on Sundays and holidays on the east side of North 8th Street between Huron Avenue and Michigan Avenue.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: May 25, 2018

MEETING DATE: May 29, 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: This parking ordinance will be placed in front of the commercial property located at 1325 and 1327 North 8th Street. These parking restrictions are currently in front of the commercial property located at 1317 North 8th Street which is located directly to the south of 1325/1327 North 8th Street property. The commercial properties on this section of North 8th Street between Michigan Avenue and Huron Avenue on the east side of the road want a consistent commercial parking standard. This ordinance will extend the two hour parking limit 36 feet to the north on the east side of North 8th Street between Michigan Avenue and Huron Avenue.

STAFF COMMENTS: The extension of this two hour parking zone will better serve the two businesses located on this section of North 8th Street. One of the businesses is a barbershop and the other business is a spa. Businesses such as this in the central commercial district of the City rely on the rotation of parking on the street for their customer.

ACTION REQUESTED: Motion to recommend the Common Council approve G.O. No. 4-18-19 (6.1) An ORDINANCE creating parking limits so as to add a two hour parking limit between 8:00 a.m. to 6:00 p.m. except on Sundays and holidays on the east side of North 8th Street between Huron Avenue and Michigan Avenue.

ATTACHMENTS:

- I. G.O. No. 4-18-19

III

DIRECT REFERRAL TO PUBLIC WORKS

Res. No. 3 - 18 - 19. By Alderpersons Wolf and Sorenson. May 1, 2018.

A RESOLUTION authorizing executing an Operating Agreement between the City of Sheboygan and Power Pubs, LLC regarding an authentic German Beer Garden concession in a specific area of Kiwanis Park.

RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to execute the Operating Agreement between the City of Sheboygan and Power Pubs, LLC, in form substantially similar to the attached.

*Public Works
Hold 5-1-18*

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

**OPERATING AGREEMENT BETWEEN:
CITY OF SHEBOYGAN
and
POWER PUBS, LLC**

This Operating Agreement ("Agreement") is made and entered into effective this ___ day of _____, 2018 (the "Effective Date"), by and between the CITY OF SHEBOYGAN ("the City"), a municipal corporation, and Power Pubs, LLC ("Vendor"), a Wisconsin Limited Liability Company. Referenced together, the City and the Vendor are the parties ("Parties") to this Agreement.

WITNESSETH:

WHEREAS, the City is the owner of Kiwanis Park, located on Kiwanis Park Road in the City of Sheboygan, Sheboygan County, State of Wisconsin; and

WHEREAS, the City desires to contract with Vendor to establish and operate an authentic German biergarten concession in a specific area of Kiwanis Park in an effort to honor the strong German heritage in the city, provide a new and somewhat unique venue for its citizens, and increase traffic in an under-utilized portion of the park; and,

WHEREAS, biergartens are defined for the purposes of this Agreement as vendor locations selling alcoholic beverages in glassware; and,

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WHEREAS, the City was approached by a third party expressing an interest to establish such a concession and in response publically issued a Request For Proposals for same in an effort to make sure that all parties having an interest are given an opportunity to submit a proposal and;

WHEREAS, Vendor has submitted a formal response to the City's request for proposals, and following review of said response, the City has determined that Vendor's proposal is in the best interest of the general public and the city of Sheboygan and,

WHEREAS, Vendor's proposal, was accepted by the City, and confirmed by the Public Works Committee, subject to the execution of this Operating Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow Vendor to use Area #8 of Sheboygan Kiwanis Park (the "Premises") to establish and operate an authentic German biergarten concession.
2. **Grant and Description of Premises.** City does hereby grant to Vendor permission and the exclusive right to establish and operate the concession in and occupy Area 8 of Kiwanis Park (including the main shelter and restroom, the Jaycee Pavilion, and the concession stand building) upon the terms and conditions set forth in this Agreement. Included in said permission is a grant to the Vendor of the exclusive right to operate a biergarten for retail sale to the public in Kiwanis Park.
3. **Scope of Services.** In entering into this Agreement, Vendor agrees to the following terms and conditions regarding the services being offered by Vendor at the Premises:
 - A. **Services to be provided.** Vendor shall provide, establish, and provide complete operations for a seasonal authentic German biergarten concession, including (but

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not limited to) the availability of (i) at least one authentic German beer at all times, (ii) at least one domestic beer, and (iii) soft drinks.

- B. Additional offerings. Vendor shall provide and offer for sale a light food menu. This menu shall include pretzels and snacks, and may also, but is not obligated to, include authentic bratwurst and other meat and sausage products, with a preference for those made in Sheboygan.
- C. Season. Except as specifically provided in this Agreement, Vendor shall provide these services at least six hours per day between 10:00 a.m. and 10:00 p.m. (weather permitting) and five days per week beginning no later than June 1 and ending no later than October 15, subject to the provisions of subparagraph 3.P. The precise hours are to be determined by Vendor in Vendor's sole discretion, but shall in no case include hours between 10:00 p.m. and 10:00 a.m. During October, the services need only be provided on the weekend. Vendor is not required to provide these services on Independence Day.
- D. Limitations. Vendor shall not engage in any other service or activity at the Premises without the prior written agreement of the City, (including, i.e., leasing out the Premises to third parties), and any such unauthorized service or activity will be considered a breach of the terms of this Agreement subject to the Default provisions of Section 27 of this Agreement. This paragraph shall not prevent the Vendor from leasing all or a portion of the Premises to organizations who have rented the remainder of Kiwanis Park for City-recognized Festivals, so long as in so doing the Vendor complies with all legal requirements related to its liquor licenses.
- E. Permits and Licenses. Vendor agrees, at its own expense, to obtain and keep current all licenses and permits necessary for the operation of Vendor's business, and comply with all Federal, State and City statutes, ordinances, rules and regulations applicable to Vendor's business, including provide proper notification pursuant to §10-177(c), Sheboygan Municipal Code, to the Police Department at the beginning and end of each season and all other times when the premises are to be open or closed to underage persons. Vendor agrees to obtain all inspections and permits by the Sheboygan County Health Department, Fire Department or any other governmental agency that are required to allow Vendor to operate the biergarten and provide the services authorized under this Agreement. Vendor shall provide the City with proof of such compliance upon written request from the City. Failure to comply with this provision shall be a default under this Agreement.
- F. Equipment. The City shall provide a lockable maintenance storage area in the main shelter, rest rooms and other features associated with the main shelter, including access to water and electrical service. Vendor shall provide all other equipment necessary to operate the facility, including, but not limited to, all furnishings, safety equipment, food preparation and serving equipment concessions, refrigerators, freezers, microwaves, cash registers, dishes, glassware, cleaning supplies, soap, and toilet paper and hand towels. Vendor may place an additional means of storage on the property in a location approved by the Parks Superintendent, or his/her designee. Vendor may, solely at Vendor's expense, install a security system in the Shelter or other structures on the Premises. Vendor may install or use other equipment with the written permission of the Parks Superintendent, or his/her designee. Vendor shall provide the Parks Superintendent, or designee, with a current list of all of the Vendor's equipment at the Premises. All personal property, fixtures and equipment installed by Vendor shall remain the property of Vendor.
- G. Utilities. The City shall supply water, electricity, sewer and trash removal/recycling services in the same manner as currently provided at the premises, and will not

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~~reduce the scope of said services, in amounts sufficient for Vendor to operate the biergarten and provide the services as called for in this Agreement. Vendor shall pay the sum of \$600 per month to the City for all such utilities and trash/recycling haul away. This amount shall be due to the City of Sheboygan, on a monthly basis and prorated as necessary, by the 5th of each month. Failure to pay this amount by the due date will result in a late penalty of \$50. Failure to pay this amount in full, plus any accrued penalties, by the 15th of each month will constitute a default under Section 27 of this Agreement. Vendor shall only be responsible for utilities during the months that services are being offered by Vendor at the Premises. Vendor agrees that it shall collect trash and recycling from separate garbage and recycling bins and take it to City dumpsters within Kiwanis Park. Vendor shall at no time commingle trash and recycling. The City shall haul trash and recycling from City dumpsters.~~

- H. Product. All items offered for sale by Vendor, including, but not limited to, food, alcoholic beverages, non-alcoholic beverages, snacks, and confections, shall be approved by the Parks Superintendent, or his/her designee whose consent shall not be unreasonably withheld, conditioned or delayed. Failure to grant or deny approval of such items within five (5) business days after Vendor's submission of such items, such items shall be deemed approved. All items for sale shall be individually listed on an inventory, a copy of which shall be filed with the City of Sheboygan.
- I. Equipment Safety. Vendor shall maintain all equipment, including safety equipment (fire extinguishers, first aid kits etc.), in a safe working order at all times and store said equipment in a safe manner to prevent any unauthorized use or operation thereof.
- J. Storage. Vendor may store equipment necessary to provide the services set forth in Subsection A above as indicated on Attachment A and consistent with Subsection E above. Vendor shall not store any items, on the Premises from November 1 through May 15 of each year except with express permission from the City, and in any event, may only do so consistent with Subsection E above.
- K. Maintenance, by Vendor. Except for the City's obligation to maintain and repair the Premises as set forth in subparagraph 3.T., below, Vendor shall be responsible for maintaining the Premises in a clean, safe and attractive condition at all times, including keeping the grounds immediately adjacent to the Premises picked up of all paper and debris. Vendor shall keep the river frontage area free of debris. Every day during Vendor's operations, the Vendor shall also be responsible for opening, closing and cleaning the restrooms at the Premises, including providing, installing, and refilling paper products, and soap, and other restroom supplies, and maintaining the restrooms in a clean and sanitary condition. Vendor agrees that should the City's Parks Division determine that the maintenance requirements of this Subsection are not being met, the Parks Division shall provide written notice to Vendor of such failure and allow Vendor five (5) days within which to cure such deficiency, and failing same, the Parks Division may perform or have performed additional cleaning or maintenance, and charge the actual costs of such work to Vendor, payable within thirty (30) days of the issuance of the invoice, or as a deduction from the Vendor's security deposit.
- L. Alterations to Premises. Except as otherwise provided in this Agreement, no modifications of any kind, or fixtures, additions or removals shall be made to the Premises without the written permission of the Parks Superintendent, or his/her designee which approval shall not be unreasonably withheld, conditioned or delayed. Any and all alterations shall comply with local building codes and ordinances.

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Comment [AC1]: Rejected change proposed by Powers and reverted to original language.

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- M. Signage. All signs and banners, including menu boards, shall be approved by the Parks Superintendent or designee and the City of Sheboygan Building Inspection Dept. Vendor shall post a readily observable sign at the Premises stating Vendor's name, and contact information as set forth below in Section 11, and a notice that Vendor and Vendor's activities are not affiliated with, nor in any way endorsed by the City.
- N. Fencing. The Parties agree that fencing shall be installed separating the biergarten from the road and the other portions of Kiwanis Park, sufficient to clearly delineate the licensed premises, and to deter people from entering the biergarten at locations other than the delineated entrances. As soon as practicable, 100 linear feet of permanent wooden post fencing shall be installed by the City separating the biergarten from the road. Vendor shall pay a percentage of the cost of said installation to be calculated as equivalent to the percentage of the anticipated life of the fence represented by the remaining length of this Agreement. For example, if the remaining length of the Agreement is 5 years and the anticipated fence life is 50 years, the Vendor would fund 5/50 or 10% of the fence cost. Fencing shall match existing fencing at the site. It is anticipated that any additional fencing installed during any extensions or renewal of the contract shall reflect the same percentage of cost. Temporary fencing shall be installed by the City at its cost - in any areas not yet reached by permanent fencing.
- O. Blackout dates: Vendor shall not operate on the following dates ("Blackout Dates"), so as to avoid conflict/competition with long standing festivals in the park:

The third weekend (Saturday & Sunday) in July (Hmong Festival)
The first weekend (Friday-Saturday) in August (Jaycee Bratwurst Days)

Notwithstanding the above, Vendor may enter into an agreement with the organizers of the above festivals granting permission for Vendor to operate on the Blackout Dates. Said agreement shall be in writing, and a copy of same shall be placed on file with the City no less than 14 days prior to the Blackout Dates. Under no circumstance shall Vendor operate on these dates without a written agreement allowing for same between the concessionaire and the organizers of the affected festivals. The City is responsible for all trash collection and restroom cleaning and maintenance within Area 8 during the Blackout Dates, but only if Vendor conducts no operations during said Blackout Dates.

- P. Closing Date. Vendor may continue to operate at the Premises after October 15, but no later than permitted by the Park Division's building winterization schedule.
- Q. Surrender of Premises. Upon the expiration or earlier termination of this Agreement under Section 27, but no later than permitted by the Park Division's building winterization schedule. Vendor agrees to (i) vacate and surrender the portions of the Premises allocated to it by this Agreement, (ii) remove all personal property therefrom, and (iii) deliver possession of the same to City in as good condition as the Premises was in at the commencement of the Agreement, with the exception of normal wear and tear through careful use and with the exception of damage by fire or other casualty beyond the control of Vendor. Any damages to the Premises caused by Vendor beyond normal and expected wear and tear shall be the responsibility of Vendor. If these damages are not repaired by Vendor before surrender of the Premises to the City, the City shall cause the repairs to be made and deduct the cost thereof from the security deposit. -Any balance still owing by Vendor after deduction from the security deposit shall be due within thirty (30) days of the City's invoice to Vendor. All improvements, equipment and other property of

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the City on the Premises shall remain the property of the City after the expiration or earlier termination of this Agreement. No fixtures, whether or not purchased by Vendor, shall be removed without the permission of the City. An inventory of City property and equipment will be performed within one week after the Effective Date and prior to May 1 of each year during the term of this Agreement prior to Vendor's opening for the season of that year.. Any property of Vendor remaining on the Premises thirty (30) days after surrender of the building will become the property of the City.

Comment [AC2]: The removal of this sentence proposed by Powers was rejected.

R. Security Deposit. Vendor shall pay to the City a security deposit in the amount of \$3,000 prior to occupying the Premises. Upon the surrender of the Premises, and after inspection by the City, which shall be conducted within ten (10) days after the expiration of this Agreement or earlier as may be agreed upon by the parties, the security deposit will promptly be refunded to Vendor, less any deductions for damage and other assessable costs under this Agreement. In cases where the damage and other assessable costs are greater than \$3,000, the City shall keep the entire security deposit and Vendor shall pay to the City the remaining balance within 30 days of the invoice from the City.

S. Payment. For the use of the Premises and the right to provide the services set forth above therein, and utility costs imposed under Subsection G above, as well as the security deposit under subsection Q above, Vendor agrees to pay the City 12.5% of its Net Revenues (defined as Gross Revenues minus Sales Tax.) (the "City Fee"). Vendor shall make estimated payments in fourths due no later than July 1, August 15, and October 1 of each year, with estimated payments based on Net Revenue from the prior year. A final payment based on actual net revenue, and taking into account the estimated payments made, shall be made no later than December 1 of each year.

Comment [AC3]: The additional language proposed by Powers was rejected as being inconsistent with the remainder of the document and not taking into account revenue from such items as rentals and revenues from agreements with food trucks, for example.

T. City Responsibilities. In addition to the City's other services to be provided and obligations to be performed under this Agreement, the City, at its sole cost and expense, shall provide and be responsible for the following:

1. Lawn Maintenance. The City shall be responsible for weeding, pruning, tree maintenance, and mulching all areas of Kiwanis Park, including Area 8, and is also responsible for grass cutting via riding mower as close as possible to fencing. Vendor shall edge around the fencing.
2. River Bank Maintenance. The City shall clear weeds, invasive species, and downed tree branches in the area of the river bank. Natural vegetation shall remain.
3. Maintenance. The City shall be responsible for repairs to and maintenance of the Premises and the improvements thereon that are not the obligation of Vendor or those repairs made necessary due to damage caused by Vendor or Vendor's customer(s), in which case the City shall perform the repairs and bill Vendor. The City's obligations shall include, but are not limited to, repairs to the electrical, plumbing and sewer systems, plumbing and electrical fixtures, the exterior and interior doors, and roofs and walls of structures on the Premises.
4. The City shall allow music on the Premises provided such music complies with the City ordinances.

Comment [AC4]: Rejected paragraph re: pets and service animals because we cannot bind the common council to an ordinance change by contract.

U. Shelter Rental.- The Vendor shall act as the agent for the City for rental of the park shelter within Area 8, and shall rent the shelter, collect revenue from said rents, and

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provide daily maintenance and upkeep of the shelter, pursuant to the City's park regulations and shelter fee schedule. All revenues collected shall be part of Vendor's gross revenue for the purposes of Subsection S above.

4. Term and Effective Date. This Agreement shall commence on the Effective Date (but no earlier than the date of publication of the common council resolution authorizing this agreement) and shall expire on December 31, 2023. Notwithstanding the foregoing expiration date, beginning in November 2021, the Parties agree to jointly evaluate the success of the biergarten. If the Parties each agree, in their sole discretion, that the biergarten has been a success and a benefit to the Parties and the community, the Parties agree to immediately begin good faith negotiations on a replacement contract, to be completed by March 31, 2022. ~~Said replacement contract would include provisions providing for a longer term, automatic renewals, and shared investment in long-term improvements.~~ If the Parties cannot agree on terms to a replacement contract, then this Agreement shall remain in full force and effect until December 31, 2023.
5. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
6. Status of Vendor. It is agreed that Vendor is an independent contractor and not an employee or representative (except as set forth in subparagraph 3.U. above in regard to Shelter Rental) of the City and that any persons who Vendor utilizes and provides for services under this Agreement are employees or agents of Vendor and are not employees of the City.
7. Assignability and Subcontracting. Vendor shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder shall be performed by Vendor and employees of Vendor. If Vendor is a corporation, partnership, limited partnership, limited liability company, limited liability partnership or other entity that is not an individual person, then an assignment prohibited within the meaning of this provision shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or ownership interests, by which an aggregate of 50% or more of Vendor's stock or ownership interests shall be vested in a party or parties who are not stockholders, partners, members or others who possess ownership interests in Vendor as of the date hereof.
8. No Real Estate. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to Vendor the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public.
9. Access to Premises. City, by its representatives, shall have access to Premises at any reasonable time provided such entry shall not interfere with Vendor's conduct of business. In case of emergency, the circumstances of which to be solely determined by City, City shall enter the Premises with or without force, as necessary, without assuming any liability for such entry and without affecting Vendor's obligations under this Agreement.
10. Designated Representative. Vendor designates John Powers as Contract Agent with primary responsibility for the performance of this Agreement. In case the Contract Agent is replaced for any reason, or in the event of the death, disability, removal or resignation of the Contract Agent, Vendor will designate another Contract Agent within seven (7) calendar days by notifying the City as set forth below in Section 22, Notices. The City may accept another person as the Contract Agent, or may terminate this agreement under Section 27, at its option. The Contract Agent is not necessarily the person who serves as Agent with regard to the Liquor License; naming and replacement of the Agent with regard to Liquor License shall proceed pursuant to Chapter 125 of the Wisconsin Statutes.
11. Operating Agent. Vendor shall designate an Operating Agent of Vendor's activities at the

Comment [ACS]: We cannot bind future councils to contract terms to be negotiated. The original language did not do so; we deleted this sentence in conjunction with accepting the other changes in this paragraph so as to avoid binding a future council. (Comment applies to remainder of paragraph as well.)

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Premises, who will be the person primarily responsible for the day-to-day operation of the Vendor's activities at the Premises. Vendor shall provide the name and contact information of this person to the Parks Superintendent, or his/her designee, within forty-eight (48) hours of commencing activities at the Premises under this Agreement, or within twenty-four (24) hours of any changes to the Operating Agent or the Operating Agent's contact information. The Operating Agent is not necessarily the person who serves as Agent with regard to the Liquor License; naming and replacement of the Agent with regard to Liquor License shall proceed pursuant to Chapter 125 of the Wisconsin Statutes.

12. **Advertising.** It is understood that in the operation and conduct of this Agreement, the City does not grant Vendor the right to sell or distribute any goods or services provided by the City, nor does the City grant Vendor the express right to use a City trade name, trademark, logotype, advertising, or other commercial symbol, except as otherwise provided in this Agreement. In any commercial advertisement or announcement, Vendor may use the name of Kiwanis Park but any such advertisement or announcement must also indicate that Vendor's activities are not associated with or affiliated with the City.
13. **Marketing.** Vendor agrees to include and/or prominently display the City of Sheboygan logo in the premises and on any marketing materials. Marketing materials will be approved by the City, and Vendor shall use only City logos that are provided by an officially authorized representative of the City. The City agrees to display and promote marketing materials of Vendor on the Parks Website and other appropriate venues with the prior approval of the Vendor, the Parks Superintendent and City Attorney.
14. **Special Provisions for 2018 only.** The Parties recognize that the time frame needed to ramp up operations in 2018 require some modifications to this Agreement and additional provisions. The following provisions shall apply only during the calendar year of 2018, and where there is a conflict with the other provisions in this Agreement, those provisions in this section shall govern during 2018. All said provisions expire as of January 1, 2019, and the Agreement shall continue as if these provisions were not a part of this Agreement.
 - A. **Opening.** While Vendor may begin operating as soon as this Agreement is approved, and a resolution of the Common Council authorizing this Agreement is published, Vendor shall not be required to begin operations until Friday, August 10, 2018. However, failure to begin operations as otherwise provided in this agreement by the required foregoing date, subject to events of force majeure, shall constitute a Default as provided in paragraph 27.
 - B. **Payment:** No estimated payments shall be due in 2018. Payment in full of the amount set forth in Paragraph 3(R) shall be made no later than November 15, 2018.
 - C. **City-owned tables:** The Vendor shall be permitted to use the City-owned tables in the Jaycee Pavilion for its operations, free of charge. The number of tables will be determined by availability on a weekly basis. The Vendor shall be responsible for any damage and repair beyond normal wear and tear.
15. **Amendments.** This Agreement shall be binding on the Parties, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the Parties. Any change in any provision of this Agreement may only be made by a written amendment, approved by the Common Council and signed by the duly authorized agent or agents of the Vendor and the Parks Superintendent or his/her designee.
16. **No Waiver.** No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Vendor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise

Comment [AC6]: Rejected additional language re: city logo due to current city policy on trademarks

Comment [AC7]: Rejected proposed changes

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thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Vendor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

17. Indemnification. -Vendor shall be liable to and hereby agrees to indemnify, defend –and hold harmless the City, and its officers, officials, agents, and employees (from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from Vendor's acts or omissions and/or acts or omissions of Vendor's Subcontractors in their performance of this Agreement, except to the extent such claims, suit, liability, damage, loss, costs or expenses are caused by the negligence of the City, its officers, officials, agents, or its employees or the person seeking indemnification.

Comment [AC9]: Rejected additional phrase proposed by Powers

18. Insurance.

- A. Required Insurance. Vendor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Vendor shall not commence work under this Agreement, nor shall Vendor allow any subcontractor to commence work on its subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Purchasing Agent and City Attorney.

- 1) Commercial General Liability. During the life of this Agreement, Vendor shall procure and maintain Commercial General Liability Insurance, including, but not limited to, bodily injury, property damage, personal injury, products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Vendor's coverage shall be primary and list the City, its officers, officials, agents and employees as additional insureds. Vendor shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City, its officers, officials, agents and employees as additional insureds.
- 2) Automobile Liability. During the life of this Agreement, Vendor shall procure and maintain Business Automobile Liability Insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Vendor shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
- 3) Worker's Compensation. During the life of this Agreement, Vendor shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. Vendor shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
- 4) Umbrella Liability. During the term of this Agreement, Vendor shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability (if required), Business

Comment [AC9]: Rejected deletion proposed by Powers in this subsection.

Comment [AC10]: See comment immediately above.

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Automobile Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.

- 5) Liquor Legal Liability. During the life of this agreement, Vendor shall procure and maintain Liquor Legal Liability coverage with a minimum limit of \$1,000,000
- B. Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- C. Proof of Insurance, Approval. Vendor shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Vendor shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Purchasing Agent whose approval consent shall not be unreasonably withheld, conditioned or delayed. Vendor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Purchasing Agent.
- D. Notice of Change in Policy. The Vendor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- E. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, Vendor shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Purchasing Agent consistent with the requirements of this Section.
19. Non-Discrimination. In the performance of the services under this Agreement the Vendor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. Vendor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.
20. Taxes and Assessments. Vendor agrees to timely pay all taxes, assessments, or other public charges levied or assessed by lawful authority (but reasonably preserving Vendor's right of appeal) against the personal property and services of Vendor on the Premises during the term of this Agreement.
21. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
22. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

City: City Clerk's Office
City of Sheboygan
828 Center Avenue

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Sheboygan, WI 53081

Vendor: Power Pubs, LLC
Attn. John L. Powers
4792 N. Cramer St.
Whitefish Bay, WI 53211

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23. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

24. Audit and Retaining of Documents. Vendor agrees to provide those financial reports relating to Vendor's sales gross revenues in the Premises and improvements made to the Premises or costs incurred by Vendor for which Vendor seeks reimbursement from the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service. Such reports shall be provided within five (5) business days after Vendor receives the City's written request therefor, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by Vendor for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee. Any such audit shall be at the City's sole cost and expense, except that in the event that an Audit discovers a material understatement of Net Revenue payable to the City, Vendor shall pay audit costs incurred by the City, even if such audit is performed by City employees. A material understatement of Net Revenue payable to the City is 1% In other words, if Vendor remits \$1,000 to the City, but the audit discovers Vendor should have remitted \$1,010 to the City, Vendor has materially understated the Net Revenue payable to the City, and shall be responsible for the audit costs described above.

Comment [AC11]: Rejected deletion of this language.

Comment [AC12]: Rejected proposed changes proposed by Powers

25. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be Sheboygan County Circuit Court, and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

26. Compliance with Applicable Laws. Vendor shall become familiar with, and shall at all times comply with and observe, all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of Vendor and its agents and employees. Vendor's failure to comply with any such laws, ordinances or regulations shall be a default subject to Section 27 of this Agreement.

27. Default/Termination.

A. In the event Vendor shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue un-remedied for a period of ten (10) days after written notice thereof to Vendor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Vendor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Vendor under this Agreement.

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B. ~~[OPTION 1: Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason, terminate this Agreement at any time by furnishing the Vendor with ten (10) days' prior written notice of termination. In the event of termination under this subsection, no the City shall not permit any biergarten to locate in Area 8 for a period of at least 365 days after termination, and the City will the City shall reimburse Vendor for all capital expenses it undertook pursuant to this Agreement, and which were accepted by the City, along with an early termination fee paid to Vendor equal to most recent 12 month period of City Fees divided by 365 multiplied by the days remaining until the contract expiration date (December 31, 2023). The City shall also be responsible for the payment of any termination fees or payments to third parties for which Vendor may be liable arising out of or relating to the early termination of such agreements by and between Vendor and such third party due to the City's early termination of this Agreement.]~~

28. ~~Authority. Vendor represents that it has the authority to enter into this Agreement. If Vendor is not an individual, the person signing on behalf of Vendor represents and warrants that he or she has been duly authorized to bind Vendor and sign this Agreement on Vendor's behalf.~~

~~[OPTION 2: Notwithstanding paragraph A. above, the City may in its sole discretion and without any reason, terminate this Agreement at any time by furnishing the Vendor with ten (10) days' prior written notice of termination. In the event of termination under this subsection, the City shall not permit any beer to be sold biergartens in Area 8 until after the contract expiration date (December 31, 2023) for one year, and the City shall reimburse Vendor for all capital expenses Vendor paid and incurred pursuant to this Agreement. The City shall also be responsible for the payment of any termination fees or payments to third parties for which Vendor may be liable arising out of or relating to the early termination of such agreements by and between Vendor and such third party due to the City's early termination of this Agreement.]~~

~~[OPTION 3: Eliminate this termination without cause clause altogether.]~~

C. ~~In the event the City shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of Vendor, and any such default shall continue un-remedied for a period of ten (10) days after written notice thereof to the City, Vendor, in addition to all other rights and remedies at law or in equity, shall have the right, but not the obligation, at any time after any applicable default by the City in the performance of the City's obligations pursuant this Agreement, to make any payment or perform any act otherwise required of the City, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorney fees. The exercise of this right shall not constitute a satisfaction of any of the City's obligations or a waiver of any default. All payments made and all costs and expenses incurred in connection with any exercise of such right shall be immediately reimbursed by the City to Vendor. If the City fails to reimburse Vendor such costs within thirty (30) days after Vendor's demand therefor, Vendor may deduct such amount from the City's Fee and any other amounts due the City from Vendor until Vendor has been reimbursed in full.~~

28. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive federal or state governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Agreement, the period for the performance of any such act shall be extended for a period equivalent to the period of such

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Comment [AC13]: We deleted this language. We might consider considerably narrowed and better tailored language here.

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delay. Notwithstanding the foregoing, the provisions of this Section shall at no time operate to excuse Vendor from any obligations for payment of any payments required by the terms of this Agreement when the same are due, and all such accounts shall be paid when due.

29. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party that such person, that the execution and delivery of this Agreement has been duly authorized and the persons executing this Agreement have the full power, authority and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
30. Alcoholic Beverage License Contingency. Vendor's obligations under this Agreement are contingent upon the City issuing to Vendor such alcoholic beverage licenses allowing Vendor to serve malt beverages on the Premises. If the City fails to issue such licenses to Vendor by June 15, 2018, Vendor may terminate this Agreement and be fully reimbursed for any Security Deposit payments made. Upon such termination by Vendor, this Agreement shall be of no further force or effect.
31. Other Biergartens: During the term of this Agreement and any renewal or replacement thereof, the City shall not permit, directly or indirectly, any other Biergartens ~~biergartens~~ to open or operate within any public parks in the City of Sheboygan. ~~Biergartens are defined as vendor locations selling alcoholic beverages in glassware.~~

[signature page to follow]

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Comment [AC14]: Defined earlier since we use the term elsewhere. No objection to the actual definition.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

CITY OF SHEBOYGAN, WISCONSIN

POWER PUBS, LLC

BY: _____
Michael J. Vandersteen, Mayor

BY: _____
John L. Powers, Sole Member

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

ACKNOWLEDGMENTS

STATE OF WISCONSIN)
) ss
SHEBOYGAN COUNTY)

Personally came before me this _____ day of _____, 2018, the above-named Michael J. Vandersteen, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission expires: _____

STATE OF WISCONSIN)
) ss
MILWAUKEE COUNTY)

Personally came before me this ___ day of _____, 2018, the above-named John L. Powers, sole member of Power Pubs, LLC, a Wisconsin limited liability company to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My Commission expires: _____

This instrument drafted by:
City Attorney Charles Adams
828 Center Ave., Suite 304
Sheboygan, WI 53081-4442
WI State Bar No. 1021454

This document authorized by and in accordance with Res. No. ___-18-19

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CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A request to authorize executing an Operating Agreement between the City of Sheboygan and Power Pubs, LLC regarding an authentic German Beer Garden concession in a specific area of Kiwanis Park.

REPORT PREPARED BY: Joseph L. Kerlin, Superintendent of Parks and Forestry

REPORT DATE: April 26, 2018

MEETING DATE: May 29, 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 2017, City staff and officials met with two different organizations proposing to offer services for the establishment of a beer garden in a City of Sheboygan Park. After several discussions and researching other communities that already have a beer garden in a park, it was determined that the City would advertise a request for proposal (RFP) for the operation of a German Beer Garden.

In February of 2018, the City of Sheboygan released an RFP for a vendor to establish and operate an authentic German Beer Garden concession in Area #8 of Sheboygan Kiwanis Park. The Beer Garden is an effort to honor the strong German heritage in the city, provide a new and somewhat unique venue for citizens, and increase traffic in an under-utilized portion of Kiwanis Park.

The RFP stipulated that the vendor:

- Provide at least one authentic German beer at all times, assorted domestic beers and soft drinks.
- Provide and offer for sale a light food menu that shall include pretzels and snacks, and may also include authentic bratwurst and other meat and sausage products, with a preference for those made in Sheboygan.
- Provide these services at least six hours per day between 10:00 a.m. and 10:00 p.m. (weather permitting) and five days per week beginning no later than June 1 and ending no later than October 15. During October, the services only need to be provided on the weekend.

The initial agreement will be for six years and will end on December 31, 2023. The vendor and the City at their sole discretion can begin negotiating a new contract in November of 2021.

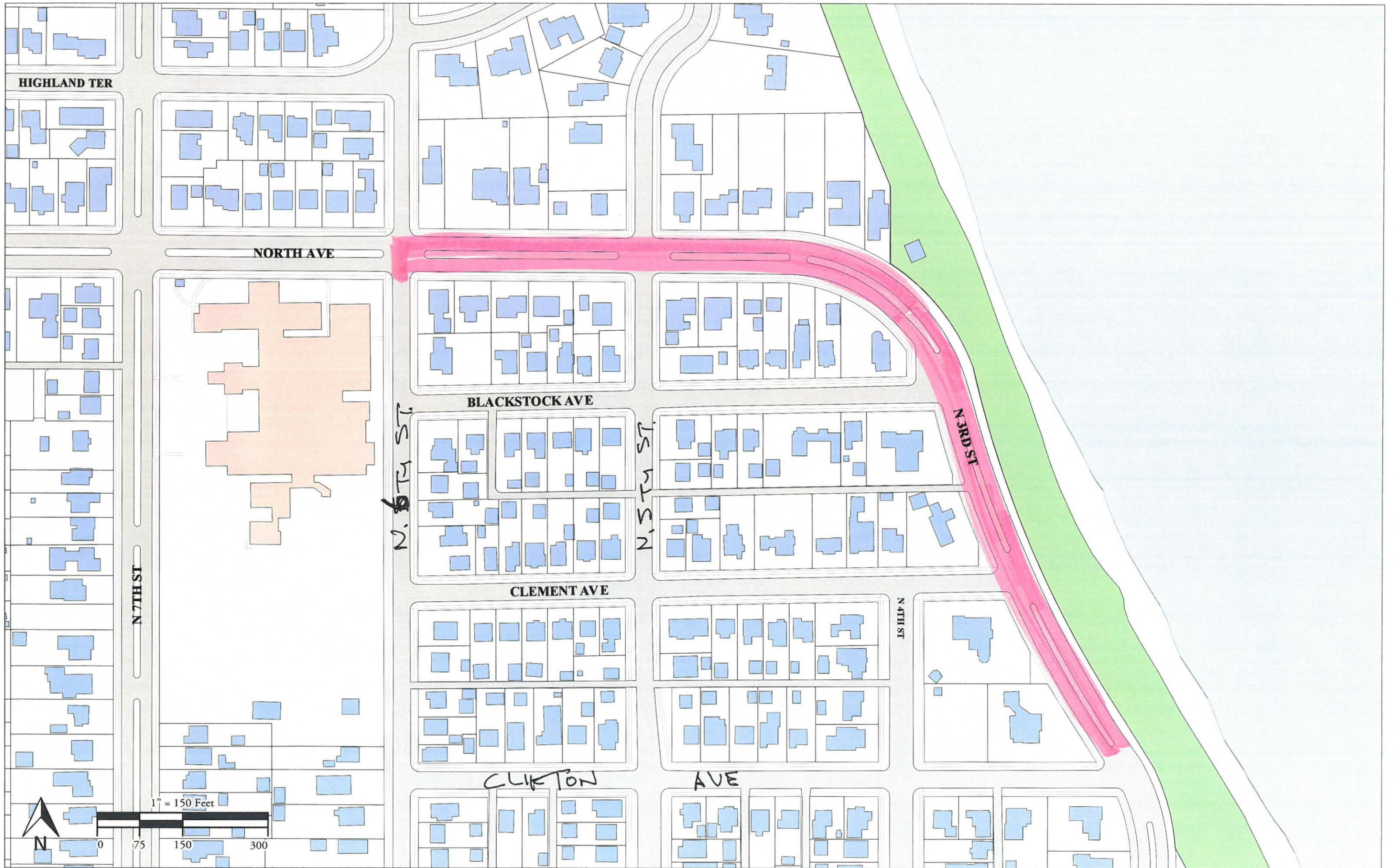
STAFF COMMENTS:

A review of the submitted RFPs determined that Power Pubs, LLC proposal is in the best interest of the general public and the City of Sheboygan.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 3-18-19 authorizing executing an Operating Agreement between the City of Sheboygan and Power Pubs, LLC regarding an authentic German Beer Garden concession in a specific area of Kiwanis Park.

ATTACHMENTS:

- I. Res. No. 3 -18-19
- II. Operating Agreement
- III. Business Plan



CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Your Committee to whom was referred Com. No. 6-17-18 presented to the Common Council by Alderperson Belanger submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve; recommends referring to Public Works Committee of the new council.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: May 25, 2018

MEETING DATE: May 29, 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: This section of North Avenue and North 3rd Street is a divided roadway with a boulevard cross-section and with sidewalks on both sides of the street. The boulevard section was used with vehicular and pedestrian safety as a concern. By having a boulevard vehicles traveling in opposite direction have a physical barrier which provides vehicular safety. This boulevard design was also used for visual enhancement. This boulevard section is an area which can support trees, landscaping and ornamental street lighting. This road design was used to enhance the entrance to the City's lakefront.

STAFF COMMENTS: The Sheboygan Police Department along with the Department of Public Works have monitored this section of North 3rd Street. It has been determined there is not a speeding problem in this area. The issue of random speeding throughout the City is common on all City streets.

ACTION REQUESTED: Motion to recommend the Common Council file R. C. No. 332-17-18 (6.15) Your Committee to whom was referred Com. No. 6-17-18 presented to the Common Council by Alderperson Belanger submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve; recommends referring to Public Works Committee of the new council.

ATTACHMENTS:

- I. R.C. No. 332-17-18
- II. Com. No. 6-17-18
- III. IFC Com. No. 6-17-18
- IV. Location Map

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: March 22, 2018

MEETING DATE: May 15, 2018

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: This section of North Avenue and North 3rd Street is a divided roadway with a boulevard cross section and sidewalks on both sides of the street. The boulevard design was utilized with vehicular and pedestrian safety in mind. By having a boulevard, vehicles traveling in opposite directions have a physical barrier which provides vehicular safety. This boulevard design was also used for visual enhancement. This boulevard section is an area which can support trees, landscaping and ornamental street lighting. This road design was used to enhance the entrance to the City's lakefront.

STAFF COMMENTS: The Department of Public Works will have a speed study completed by using speed data equipment. The Department of Public Works will bring a report back to the Public Works committee for review and discussion. This report will tell the department the amount traffic during various times of the day as well as the speeds of vehicles during this time. This study should be completed this Spring/Summer of 2018.

ACTION REQUESTED: Motion to file Com. No. 6-17-18 Submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve.

ATTACHMENTS:

- I. R.C. No. 332-17-18
- II. Com. No. 6-17-18
- III. Map

V

6.15

R. C. No. 332- 17 - 18. By PUBLIC WORKS COMMITTEE. April 16, 2018.

Your Committee to whom was referred Com. No. 6-17-18 presented to the Common Council by Alderperson Belanger submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve; recommends referring to Public Works Committee of the new council.

*Public Works
2018-2019*



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

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Com. No. 6 - 17 - 18. March 19, 2018.

Submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve.

Presented to the Common Council by Alderperson John Belanger.
Belanger

Public Works
3.27.18 Hold.
refer to Public Works
2018.2019.

From: Jessica Jumes [jessicajumes@gmail.com]
Sent: Monday, March 12, 2018 2:33 PM
To: Alderperson Todd Wolf; Alderperson John Belanger
Subject: North Avenue / Lake Area

Hi Todd and John!

I'm reaching out to see if there is any way you guys can help advocate for an adjustment on North Avenue. I live at 431 North Avenue and the major driving force for that specific home purchase was due to the amazing proximity to our beautiful lake! I walk and jog daily to take advantage of the beautiful location, but on a regular basis I need to dodge vehicles that are racing east around the North Avenue curve.

My neighbors to the East won't let their little girl bike around the block because of how dangerous that corner is, and the rest of us who walk or jog try to avoid it at all costs. Today was the final straw for me after 5 ½ years of consistently almost being hit by a car on that curve, so I decided to reach out :) It seems that the option of finding a way to get vehicles to slow down is a better choice than all of us avoiding a walking route that we purposely bought property near.

I've attached a map of the area I'm referring to – the pink circle is the general area/side of the street, and the green highlighting is the part of the street where cars seem to be going the fastest. While these cars are zooming around the curve and blindspot, they are also often times looking at the lake instead of the road which just doubles the danger. (Can't say I blame them for wanting to look at the lake though..;)

If you guys are able to look back into records of accidents, it seems that there is consistently someone who whips around the corner and gets into an accident (most recently with a tree). And remember, those actual accidents don't count the continuous near-misses that those of us who live here witness taking place.

Both sides of the street get significant pedestrian use from walkers, bikers, joggers, etc.. and I'm concerned that it is only a matter of time until the object being struck by a vehicle is a human instead of a tree. Given that we all know this is a concern and an issue, I thought I'd reach out to try to get ahead of anything ominous happening.

Kind regards,
Jessica Jumes

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Com. No. 6 - 17 - 18. March 19, 2018.

Submitting a communication from Jessica Jumes regarding vehicles that are racing east around the North Avenue curve.

Presented to the Common Council by Alderperson John Belanger.
Belanger

Public Works

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To: Alderperson Todd Wolf; Alderperson John Belanger
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Hi Todd and John!

I'm reaching out to see if there is any way you guys can help advocate for an adjustment on North Avenue. I live at 431 North Avenue and the major driving force for that specific home purchase was due to the amazing proximity to our beautiful lake! I walk and jog daily to take advantage of the beautiful location, but on a regular basis I need to dodge vehicles that are racing east around the North Avenue curve.

My neighbors to the East won't let their little girl bike around the block because of how dangerous that corner is, and the rest of us who walk or jog try to avoid it at all costs. Today was the final straw for me after 5 ½ years of consistently almost being hit by a car on that curve, so I decided to reach out :) It seems that the option of finding a way to get vehicles to slow down is a better choice than all of us avoiding a walking route that we purposely bought property near.

I've attached a map of the area I'm referring to – the pink circle is the general area/side of the street, and the green highlighting is the part of the street where cars seem to be going the fastest. While these cars are zooming around the curve and blindspot, they are also often times looking at the lake instead of the road which just doubles the danger. (Can't say I blame them for wanting to look at the lake though..;)

If you guys are able to look back into records of accidents, it seems that there is consistently someone who whips around the corner and gets into an accident (most recently with a tree). And remember, those actual accidents don't count the continuous near-misses that those of us who live here witness taking place.

Both sides of the street get significant pedestrian use from walkers, bikers, joggers, etc.. and I'm concerned that it is only a matter of time until the object being struck by a vehicle is a human instead of a tree. Given that we all know this is a concern and an issue, I thought I'd reach out to try to get ahead of anything ominous happening.

Kind regards,
Jessica Jumes

~~X~~

B.B

Gen. Ord. No. 25 - 17 - 18. By Alderperson Wolf. November 6, 2017.

AN ORDINANCE amending the City's Snow Emergency and Winter Parking rules to provide for improved clearing of snow during snow emergencies and to improve efficiency in clearing streets all winter, given reductions in personnel and changes in procedures.

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

Section 1. Section 42-104 of the Municipal Code entitled "Emergency powers; parking restrictions during snow emergency" is hereby repealed and recreated in subsection (b) thereof so as to read as follows:

"Sec. 42-104. *Emergency powers; parking restrictions during snow emergency.*

. . .

(b) Whenever the powers conferred in this article are exercised because of a heavy snowstorm or blizzard, parking of vehicles on all city streets is completely prohibited during the period of the snow emergency."

Section 2. Section 118-242 of the Municipal Code entitled "No parking areas; exceptions for snow emergencies" is hereby repealed and recreated in subsection (a) thereof so as to read as follows:

"Sec. 118-242. *No parking areas; exceptions for snow emergencies.*

(a) During the winter season, between the hours of 12:00 midnight and 6:00 a.m., no owner or operator of any vehicle shall park or permit the vehicle to be parked:

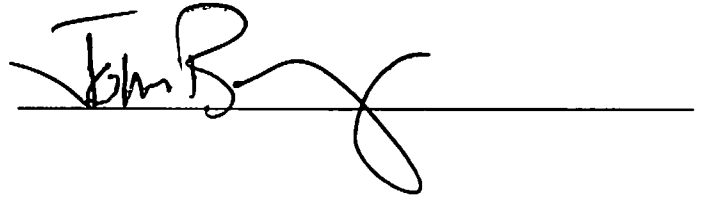
(1) On the even-numbered sides of the street (west and north sides) on odd-numbered days of the month, except that parking shall be permitted on the even-numbered side when the odd-numbered side is posted no parking.

(2) On the odd-numbered sides of the street (east and south sides) on even-numbered days of the month, except that parking shall be permitted on the odd-numbered side when the even-numbered is posted no parking.

. . ."

Public Works

Section 3. 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

Snow Emergency Task Force Report

Community	Population	Year Round Parking	Winter Parking	Snow Emergency
Manitowoc	33736	Non restricted	No parking on State or Federal Highways, County Trunk Highways, City bus routes or designated streets during the months of December, January, February and March	Yes
Menomonee Falls	35626	Alternate overnight parking all year with permit	Year round rules apply	Yes
Greenfield	36720	Alternate side parking enforced all year with permit	Year round rules apply	Yes
Beloit	36757	Alternate parking enforced all year 12:01 am to 7:00am	Year round rules apply	Yes
Brookfield	37920	No overnight parking all year. Some except with written consent from Police	Year round rules apply	Yes
Community	Population	Year Round Parking	Winter Parking	Snow Emergency
Wausau	39106	Alternate parking enforced all year 2:30 am to 6:00am	Year round rules apply	Yes
New Berlin	39220	Overnight parking allowed with permit	Year round rules apply	Yes

Snow Emergency Task Force Report

Fond Du Lac	43021	Non restricted	Alternate parking enforced Nov. 15th- Mar. 15th	Yes
Wauwatosa	47945	No overnight parking year round. Exceptions granted for guest, stalled vehicles and construction projects. Limit to 15 nights per vehicle, per year	Year round rules apply	Yes

Snow Emergency Task Force Report

Community	Population	Year Round Parking	Winter Parking	Snow Emergency
La Crosse	52109	Non restricted	Alternate parking enforced Nov.1s t-Apr.1st from 12:01 am to 7:00 am	Yes
West Allis	60471	Alternate side parking enforced all year with permit	Year round rules apply	Yes
Janesville	64159	24 hour limit parking	Year round rules apply	Yes

Snow Emergency Task Force Report

Community	Population	Year Round Parking	Winter Parking	Snow Emergency
Oshkosh	66579	No parking enforced all year from 2:30 am to 5:00am. Exceptions granted for overnight guests and temporary construction limited to 3 nights	Year round rules apply	Yes
Eau Claire	68339	Non restricted	Non restricted	Yes
Waukesha	70718	Alternate parking enforced all year, night parking with permit. Vehicles must be parked with 100 feet of residence	Year round rules apply	Yes
Appleton	74370	No overnight parking. Temporary exceptions are limited to 7 times per month	Year round rules apply	Yes
Racine	78860	Alternate side parking enforced Monday - Friday from April 1 to November 30.	Alternate parking enforced Monday - Sunday Dec.1st - Apr.1st	Yes
Community	Population	Year Round Parking	Winter Parking	Snow Emergency
Kenosha	99218	Non restricted	Alternate parking enforced Dec. 15st - Mar. 31st from 1:00 am to 6:00 am	Yes
Green Bay	105139	No overnight parking year round	Year round rules apply	Yes

Snow Emergency Task Force Report

Madison	233209	Non restricted	Alternate parking enforced Nov. 15th- Mar. 15th from 12:01 am to 7:00 am	Yes
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Snow Emergency Task Force Report

Snow Emergency Parking	Authorizing Official	Violations	Exceptions
No parking on city streets during a snow emergency	Mayor	Yes/ towing	
No parking on city streets during a snow emergency	City Officials	Yes/ towing	
No parking on designated thoroughfares during a snow emergency. Alternate side parking is extended until noon during snow emergency.	City Officials	Yes/ towing	
No parking on city streets during a snow emergency	Public Works Director	Yes/towing	City provides a list of parking locations during a snow emergency
No parking on city streets during a snow emergency	City Officials	Yes/towing	
Snow Emergency Parking	Authorizing Official	Violations	Exceptions
No parking on city streets during a snow emergency	Public Works Director/Police Chief	Yes/towing	
No parking on city streets during a snow emergency	City Officials	Yes/towing	

Snow Emergency Task Force Report

No parking on city streets during a snow emergency	Public Works Director or Police Chief	Yes/towing	
No overnight Parking permission, all existing overnight parking permissions are null and void during a snow emergency	City Officials	Yes/ towing	

Snow Emergency Task Force Report

Snow Emergency Parking	Authorizing Official	Violations	Exceptions
<p>The Director of Public Works may designate a snow disposal period for the duration of 48 hours. Alternate side parking violations increase during the 48 hour snow disposal period</p>	<p>Public Works Director</p>	<p>Yes/ towing</p>	<p>Yes/ listed in ordinance</p>
<p>During a snow emergency all parking is prohibited on all major emergency thoroughfares</p>	<p>Mayor</p>	<p>Yes/ towing</p>	
<p>No parking on city streets during a snow emergency</p>	<p>City Officials</p>	<p>Yes/ towing</p>	<p>City provides parking stalls located in downtown area available during snow emergency</p>

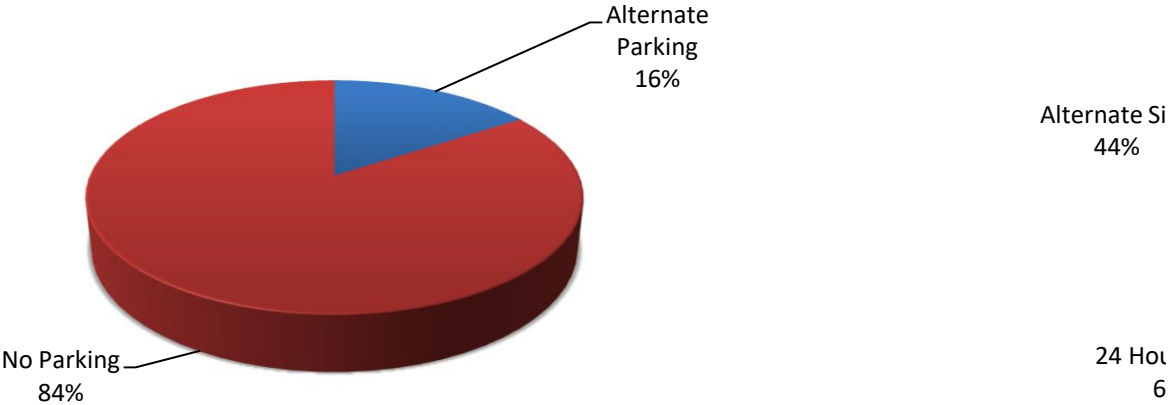
Snow Emergency Task Force Report

Snow Emergency Parking	Authorizing Official	Violations	Exceptions
Alternate side parking is enforced from Noon to Noon for 48 hours after a snow emergency is declared	City Officials	Yes/ towing	Yes/ Alternate parking only after snow emergency is declared
Alternate side parking is required for 72 hours after a snow emergency is called	City Officials	Yes/ towing	
No parking on city streets during a snow emergency	City Officials	Yes/ towing	
No parking on city streets during a snow emergency	City Officials	Yes/ towing	Temporary expectations to night parking will not be granted during annual leaf collection and weather events
No parking on arterial and collector streets during a snow emergency	Public Works Commissioner	Yes/ towing	Yes/ No alternate parking enforced on Thanksgiving Day and Dec.25th to Jan. 1st.
Snow Emergency Parking	Authorizing Official	Violations	Exceptions
No parking on city streets during a snow emergency	City Officials	Yes/ towing	
No parking on city streets during a snow emergency	City Officials	Yes/ towing	

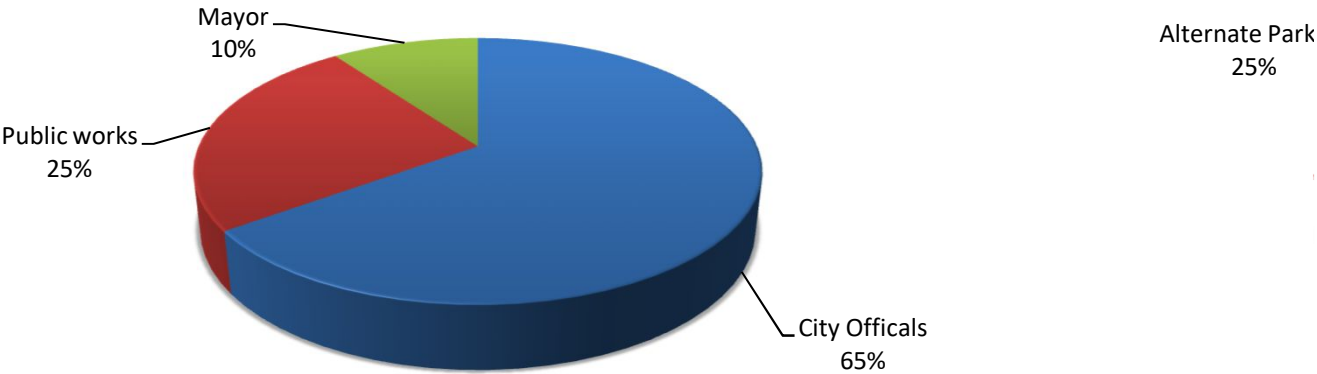
Snow Emergency Task Force Report

Alternate Side parking is in effect for 48 hours in areas that are normally exempt	City Officials	Yes/ \$60 ticket, \$65 towing	Yes/ 48 hr. parking in designated areas during snow emergency
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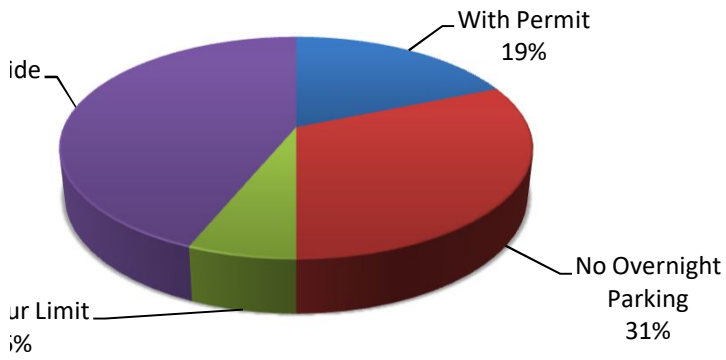
Snow Emergency Parking



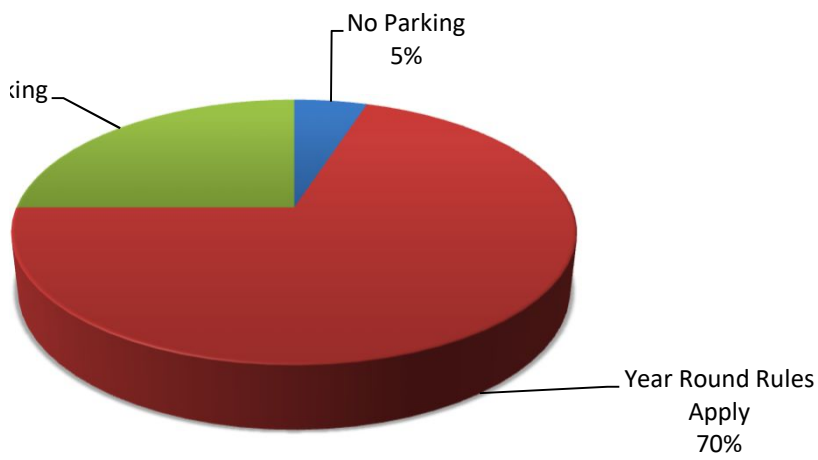
Snow Emergency Declared By:



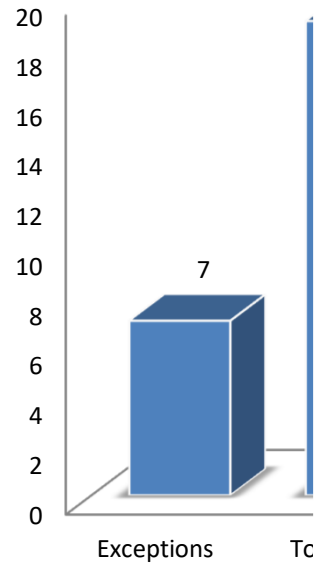
Year Round Parking



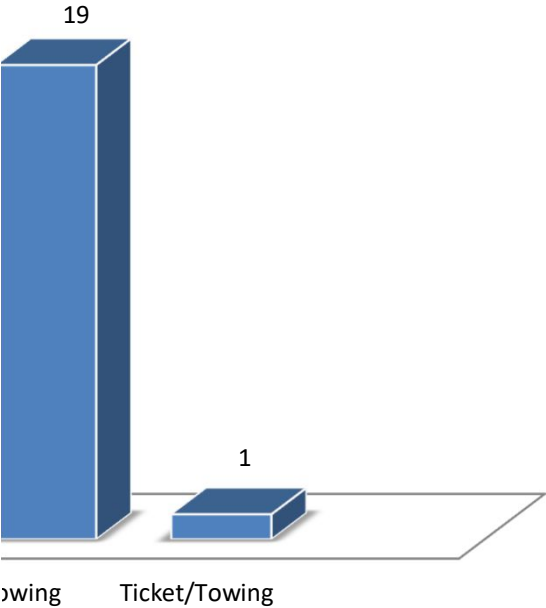
Winter Parking



Except



ctions and Violations



City of Sheboygan Snow Emergency Summary and Analysis

Overview

Due to the lack of declaring snow emergencies, Mayor Vandersteen has asked the Department of Public Works to consider the formation of a Sheboygan Snow Emergency Ordinance Review Task Group. The Mayor believes that if the current ordinance is not needed then it should be eliminated. The current alternate side of the street parking ordinance lacks the ability to tow improperly parked vehicles to enforce. In addition, the alternate side of the street parking ordinance does not allow an option to suspend winter parking restrictions when a period of unseasonably warm weather is experienced in Sheboygan, as was the case in 2016.

Mayor Vandersteen further suggests that the Snow Emergency Ordinance Review Task Group consider establishing two zones in Sheboygan for winter parking restrictions. One zone located to the North, West, and South of the central City core where properties have garages and driveways to accommodate off-street overnight parking. In this zone, a No Overnight Parking restriction would be in effect during the winter season. The zone in the central City would continue to use the alternate side of the street parking. This structure would allow more flexibility for the plowing crews to stage their snow plowing operations during winter snow storms.

The mission of the task group will be to:

- Study current snow plowing operations
- Investigate the practices of other municipalities
- Formulate a report with the recommendations on the necessary changes to the City's Snow Emergency Ordinance

Current Snow Plowing Operations

The City of Sheboygan has the ability to declare a snow emergency when weather conditions warrant. The Department of Public Works (DPW) has not called a snow emergency since December of 2008. A variety of factors that have influenced the DPW's decision not to utilize the current snow emergency rules include:

- Reductions in personnel
- Decrease in equipment
- Efficiencies made with existing equipment
- Improved snow emergency routing
- Resistance to ticketing and towing
- The introduction of winter parking rules
- Winter weather conditions

As defined by Merriam-Webster an Emergency is:

1. An unforeseen combination of circumstances or the resulting state that calls for immediate action

2. An urgent need for assistance or relief

The current rules of the snow emergency ordinance do not support the need for immediate action as defined. This is especially true by not requiring residents to move their vehicles during the hours of 12:00 midnight and 7:00 a.m. The current City of Sheboygan Snow Emergency Ordinance is written as a convenience for the residents and not for the benefit of the Department of Public Works or the entire needs of the community.

Snow emergencies are declared by the Office of the Mayor in conjunction with the Director of Public Works and coordinated with the Sheboygan Police Department. Public Notice is given via local radio, DPW phones and is posted through Charter Communications on the “local on the 8’s” portion of the Weather Channel’s broadcasts.

Typically, snow emergencies have been declared when snowfall totals reach eight inches or during long protracted snow events.

The current City ordinance prohibits parking of vehicles on designated snow emergency routes, boulevards, cul-de-sacs and dead-end streets until the snow emergency has been canceled. On all other City streets, parking is permitted on the even sides of the street, (North & West sides), when the snow emergency is declared to start on an even-numbered day. When a snow emergency is declared on an odd-numbered day, parking shall be permitted on the odd sides of the street (South & East sides).

After one side of the street has been plowed, vehicles shall be moved within one-hour after such plowing so that the other side may be properly plowed.

No vehicles that are legally parked in accordance with this ordinance shall have to be moved between the hours 12:00 midnight and 7:00 a.m.



The City also has winter parking rules that are in effect from December 1 through April 1 between the hours of 2:00 a.m. and 6:00 a.m. Vehicles must alternate sides for overnight parking. On odd-numbered days, between the hours of 2:00 a.m. and 6:00 a.m. vehicles shall only be parked on that side of the street having odd-numbered street addresses (East and South sides). On even-numbered days, between the hours of 2:00 a.m. and 6:00 a.m. vehicles shall only be parked on that side of the street having even-numbered street addresses (North and West sides). Streets posted with ‘No Parking’ restrictions shall remain in effect and therefore are NOT under alternate side parking rules.

Existing Snow Emergency Operations

Whenever a snow emergency is declared the DPW will dispatch two plow trucks to each of the 16 emergency zones for a total of 32 plow trucks. These zones consist of main thoroughfares and roads that service local hospitals, fire stations, and the police station. (See Attachment 1)

After the 16 emergency routes are plowed, the trucks are dispatched to the 26 neighborhood zones. In addition, there are four end loader tractor routes or “dead-ends” and two one-ton plow trucks that are dispatched to plow the dead ends and cul-de-sacs. The neighborhood zones are then plowed continually, alternating sides in accordance with the snow emergency rules until such time as the event was cleaned up. (See Attachment 2)

Challenges and Limitations Implementing a Snow Emergency Operation

Equipment Summary Comparison		
	2008	2017
Number of Drivers	60	36
Number of Tractor Operators	6	4
Number of Plow Salt Trucks	17	16
Number of Plow Trucks	13	0
Number of Tractors	7	4
Number of Pickup/One-Ton Trucks	8	8

The DPW’s current call list has 36 viable drivers, compared to the 2008-2009 call lists which had 60 viable drivers. In order to staff the snow emergency there are 32 employees required to which means all of the department’s available drivers would be working the same shift. As a result, the department would then need all the drivers to work the entire duration of the snow emergency. Often times these events last between 24 and 36 hours. For safety reasons, the DPW limits drivers to a 16-hour shift. The combination of these factors would make it difficult to staff a snow emergency.

Salt and plow trucks have been installed with additional plows to help make up for the reduction in equipment. Four tri-axle trucks have been outfitted with double wing plows. This allows for one truck to cover the same amount of ground as two trucks with one wing plow. Wing plow trucks do have some limitations. Double wings are harder to maneuver in traffic and around parked cars. On narrow streets, the wing is often lifted so that the truck can safely make its way through the road.



In order to complete the department's mission of clearing the roadways of snow, the DPW currently uses 12 routes to plow the entire city. The current routes are also divided into priority routes and neighborhood routes. (See Attachment 4 and 5) The 16 emergency routes and 26 neighborhood routes were combined to establish the current 12 truck plow routes. The current routes are three times larger than the routes used for snow emergencies.

For example, there is a seven and a half mile difference between the snow emergency neighborhood route 11A (See Attachment 6) with the current snow plow route seven's neighborhood streets. (See Attachment 7) The increase in mileage along with the current snow emergency rules would make it difficult for the citizens of Sheboygan and the DPW. Current rules require citizens to park on the odd or even side of the road based on the day. Citizens are then given an hour to move their vehicle. In the past, a plow truck driver could return relatively soon to clear the opposite side of the street. With the increased sizing of the routes, it could be hours before the driver returned to clear the other side of the street. Timing would also be very important when calling a snow emergency using the current rules.

Route Comparison

	2008 Neighborhood Route 11A	2017 Plow & Salt Route 7 Neighborhood Route
Number of Miles	4.08	11.57

Current snow emergency rules do not require citizens to move their vehicles that are legally parked during the hours of 12:00 midnight and 7:00 a.m. This rule would make it difficult to declare a snow emergency anytime after 4:00 p.m. When the department had access to more personal and equipment trucks would be able to operate continuously through the neighborhoods.

At current staffing levels, the department would have to wait until the end of the storm and clean up the neighborhoods once. It is the department's belief that the citizens and elected officials would not be satisfied waiting for their neighborhood street to be cleared of snow. Again, the current writing of this ordinance does not convey the true need of an emergency.

Another unpleasant reality of declaring a snow emergency is a requirement to ticket and tow vehicles that are illegally parked. The DPW would request the Sheboygan Police Department to dedicate personnel to ticket and tow illegally parked vehicles. Clearing the emergency routes, dead ends and cul-de-sacs of illegally parked cars would not be too difficult. Ticketing and towing cars in the neighborhoods that have not moved within the time frame between the hours between 7:00 a.m. and 12:00 midnight would require coordination and dedicated police personnel to work with the DPW. Ticketing and towing illegally parked cars will require the support of elected officials.



Previous Declared Snow Emergencies and the Introduction of Winter Parking Rules

The last snow emergency that was declared by the City of Sheboygan was in December of 2008. Listed below is the number of declared snow events dating back to the 1996 -1997 snow season.

Declared Snow Events			
Snow Season	Number of Snow Emergencies	Salting Operations	Total Snowfall Inches
96-97	8	23	68.0
97-98	5	19	39.0
98-99	3	18	55.0
99-00	4	21	36.5
00-01	5	24	66.5
01-02	2	14	37.5
02-03	0	29	29.8
03-04	2	19	46.5
04-05	2	19	51.0
05-06	1	21	37.8
06-07	2	16	46.0
07-08	3	30	91.0
08-09	2	27	82.0

In 2000, the City of Sheboygan introduced winter parking rules. Citizens were required to abide by alternate side parking. The DPW cited the following advantages to implementing winter parking rules:

- Alternate side parking prevents hard pack snow that eventually turns to ice versus one side parking.
- Winter parking rules allow for both sides of the street to be cleared of snow without calling a snow emergency.
- Assists in identifying abandoned cars.

As evident from the chart above the number of declared snow emergencies has decreased since the winter parking rules were introduced in 2000. The winter parking rules have met its original goal of reducing the number of declared snow emergencies. For example, in the 1996 – 1997 snow season there were eight declared snow emergencies for a total of 68 inches of snow. In comparison to the 2007 – 2008 season had three declared snow emergencies for a total of 91 inches of snow. It is also important to note that cars that are park in accordance with alternate side parking may have snow plowed towards their car.

In 2004, the DPW proposed two changes to the winter parking rules. The first proposed rule change requested that the start time for winter parking begin at 12:00 midnight instead of 2:00 a.m. The second rule change proposed that beginning November 1 through May 1 that there shall be no parking permitted on any city street during the hours of 12:00 midnight and 6:00 a.m. Both proposed rule changes were rejected by the Common Council.

The DPW again would request that the winter parking begin at 12:00 midnight. This change will allow for an additional two hours for departmental drives remove snow from one side of the street. During a typical snow operation there is a scheduled shift change at 11:30 pm. This would allow for the drives to head to their routes and to clean the streets. Currently, drivers often have to double back to the beginning of their route to clean up areas that they previously plowed prior to 2:00 am.

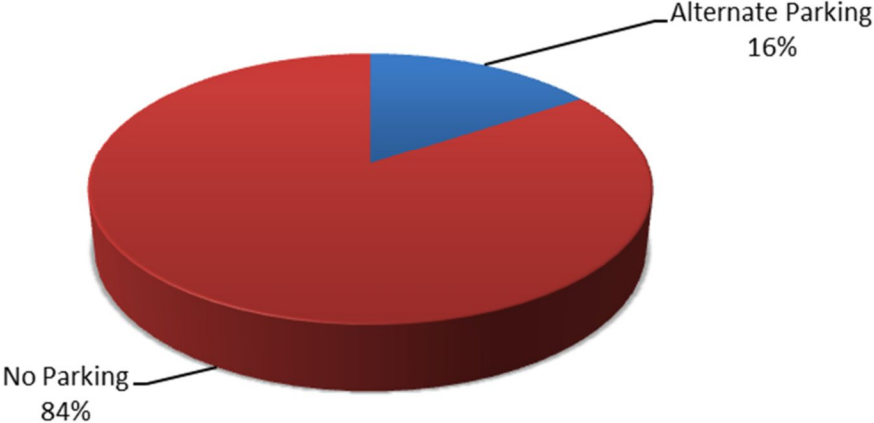
Comparable Municipalities Winter Parking and Snow Emergency Rules

The DPW staff researched the winter parking and snow emergency rules for the 20 most populated cities within the state of Wisconsin, excluding the City of Milwaukee. Staff found that 84 percent of the surveyed communities prohibited parking on city streets and 16 percent required alternate side parking during a snow emergency. The majority of the surveyed municipalities have some type of year-round parking regulations.

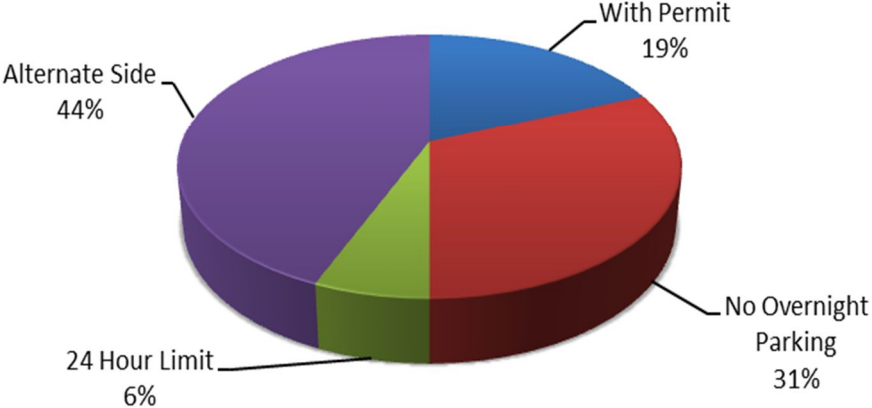
- During a declared snow emergency 84 percent of surveyed communities prohibit parking and 16 percent require alternate side parking
- 30 percent of surveyed communities have winter parking restrictions: alternate side parking (25 percent) and no parking (5 percent)
- 70 percent of surveyed communities have yearlong parking restrictions: alternate side parking (44 percent), no overnight parking (31 percent), permit required parking (19 percent) and 24 hour limit parking (6 percent).



Snow Emergency Parking



Year Round Parking



As evident from the data listed above, most peer municipalities prohibit parking on city streets during a snow emergency. The most common rationale cited for the parking restriction is to enable the Department of Public Works to safely and effectively remove snow from the roadways.

Department of Public Works Findings and Recommendations

The DPW believes that current rules governing a declared snow emergency are outdated based on current staffing and equipment. The DPW recommends these alternatives to the current snow emergency ordinance:

1. The Director Public Works is authorized to declare a Snow Emergency prohibiting parking on any City street during a snow emergency.
2. The Director of Public Works is authorized to declare a Snow Emergency prohibiting parking of vehicles on designated snow emergency routes, boulevards, cul-de-sacs and dead-end streets until the snow emergency has been canceled. Residents living within an established no parking zone (located to the North, West, and South of the Central City) shall be prohibited to parking on city streets during the duration of the called snow emergency. All other residents shall abide the winter parking rules. Failure to follow the alternate side parking rules can result in ticketing and towing of illegally parked vehicles.
3. The Director of Public Works is authorized to declare a Snow Emergency prohibiting parking of vehicles on designated snow emergency routes, boulevards, cul-de-sacs and dead-end streets until the snow emergency has been canceled. All other residents shall abide the winter parking rules. Failure to follow the alternate side parking rules can result in ticketing and towing of illegally parked vehicles.



Summary

The DPW agrees with Mayor Vandersteen and there does need to be a change to the snow emergency ordinance. It is DPW's opinion the current version of the ordinance does not meet the definition of an emergency. In a true emergency situation, there will be some inconveniences for the citizens. It is evident in the research, that City of Sheboygan's peer municipalities put an emphasis on public safety versus resident convenience by prohibiting parking on city streets during a snow emergency. Therefore, it is the Department of Public Works belief that our snow emergency ordinance should be consistent with top 20 cities within the State of Wisconsin and prohibit parking on all city streets during a declared snow emergency.

The Department of Public Works also believes that establishing a no parking zone located to the North, West, and South of the Central City along with prohibiting parking on designated snow emergency routes, boulevards, cul-de-sacs and dead-end streets is an improvement over the current snow emergency ordinance. However, it is the department's belief that the zoned parking restrictions would be ineffective if ticketing and towing is not added to the alternate side parking rules.

Lastly, at a minimum, the current snow emergency ordinance should eliminate the provision requiring citizens to move their vehicle within an hour of the plow clearing the opposite of the street and should be replaced with the winter parking rules. The DPW does see a benefit of keeping the restricted parking on designated snow emergency routes, boulevards, cul-de-sacs and dead-end streets as it is currently written in the ordinance.



VII

6.14

R. C. No. 331 - 17 - 18. By PUBLIC WORKS COMMITTEE. April 16, 2018.

Your Committee to whom was referred Gen. Ord. No. 25-17-18 by Alderperson Wolf amending the City's Snow Emergency and Winter Parking rules to provide for improved clearing of snow during snow emergencies and to improve efficiency in clearing streets all winter, given reductions in personnel and changes in procedures; recommends to refer to Public Works Committee of the new council.

*Public Works
2018-2019*

[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

X

8.3

Gen. Ord. No. 25 - 17 - 18. By Alderperson Wolf. November 6, 2017.

AN ORDINANCE amending the City's Snow Emergency and Winter Parking rules to provide for improved clearing of snow during snow emergencies and to improve efficiency in clearing streets all winter, given reductions in personnel and changes in procedures.

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

Section 1. Section 42-104 of the Municipal Code entitled "Emergency powers; parking restrictions during snow emergency" is hereby repealed and recreated in subsection (b) thereof so as to read as follows:

"Sec. 42-104. *Emergency powers; parking restrictions during snow emergency.*

. . .

(b) Whenever the powers conferred in this article are exercised because of a heavy snowstorm or blizzard, parking of vehicles on all city streets is completely prohibited during the period of the snow emergency."

Section 2. Section 118-242 of the Municipal Code entitled "No parking areas; exceptions for snow emergencies" is hereby repealed and recreated in subsection (a) thereof so as to read as follows:

"Sec. 118-242. *No parking areas; exceptions for snow emergencies.*

(a) During the winter season, between the hours of 12:00 midnight and 6:00 a.m., no owner or operator of any vehicle shall park or permit the vehicle to be parked:

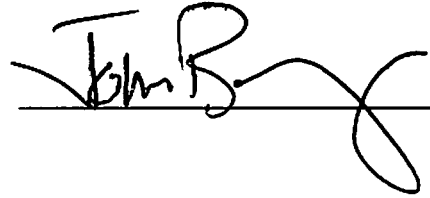
(1) On the even-numbered sides of the street (west and north sides) on odd-numbered days of the month, except that parking shall be permitted on the even-numbered side when the odd-numbered side is posted no parking.

(2) On the odd-numbered sides of the street (east and south sides) on even-numbered days of the month, except that parking shall be permitted on the odd-numbered side when the even-numbered is posted no parking.

. . ."

*Public Works
refer to Public Works
2018-2019.*

Section 3. 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

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Amend the City’s Snow Emergency and Winter Parking rules to provide for improved clearing of snow during snow emergencies and improve efficiency in clearing streets all winter, given a reduction in personnel and changes in procedures.

REPORT PREPARED BY: Jason Blasiola, Superintendent of Streets and Sanitation

REPORT DATE: November 8, 2017

MEETING DATE: May 29, 2018

FISCAL SUMMARY:

STATUTORY REFERENCE:

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

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

BACKGROUND / ANALYSIS: Due to the lack of declaring snow emergencies, Mayor Vandersteen has asked the Department of Public Works to review the current Snow Emergency Ordinance. The Mayor believes that if the current ordinance is not needed then it should be updated or eliminated. The Department of Public Works completed an analysis of the current Snow Emergency Ordinance that examined the current snow plowing operations, past snow plowing operations, and practices of peer municipalities.

STAFF COMMENTS: The Department of Public Works agrees with Mayor Vandersteen and there does need to be a change to the Snow Emergency Ordinance. It is Department of Public Works’ opinion the current version of the ordinance does not meet the definition of an emergency. In a true emergency situation, there will be some inconveniences for the citizens.

It is evident in the research, that City of Sheboygan’s peer municipalities put an emphasis on public safety versus resident convenience by prohibiting parking on city streets during a snow emergency. Therefore, it is the Department of Public Works belief that our Snow Emergency Ordinance should be consistent with the top 20 cities within the State of Wisconsin and prohibit parking on all city streets during a declared snow emergency.

ACTION REQUESTED: Motion to recommend the Common Council hold G.O. No. 25-17-18 AN ORDINANCE amending the City’s Snow Emergency and Winter Parking rules to provide for improved clearing of snow during snow emergencies and to improve efficiency in clearing streets all winter, given reductions in personnel and changes in procedures, in efforts to conduct Public Forums to citizens to provide information regarding the proposed ordinance changes.

ATTACHMENTS:

- I. R.C. No. 331-17-18
- II. G.O. No. 25-17-18
- III. Snow Emergency Analysis Booklet