

ORDINANCE NO. 2014-07AN ORDINANCE TO CREATE SECTION 9.14  
OF THE TOWN OF DELAFIELD MUNICIPAL CODE  
RELATED TO PUBLIC PEACE AND GOOD ORDER  
WITH REGARD TO MINIMUM PROPERTY STANDARDS

WHEREAS, the Town Board of the Town of Delafield has been authorized to exercise powers related to villages, pursuant to Sections 60.22(3) and 60.10(2)(c) of the Wisconsin Statutes; and

WHEREAS, the Town Board therefore has the management and control of the Town property, finances, highways, streets, navigable waters, and the public service, and the power to act for the government and good order of the Town, for its commercial benefit and for the health, safety, welfare and convenience of the public, and may carry its powers into effect by license, regulations, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary and convenient means, and the powers conferred are in addition to all of the grants and shall be limited only by express language, per Wisconsin Statutes Section 61.34(1), which shall be liberally construed in favor of the rights, powers, and privileges of the Town to promote the general welfare, peace, good order and prosperity of the Town and the inhabitants thereof, per Section 61.34(5), Wisconsin Statutes; and

WHEREAS, zoning laws are a relative newcomer to the regulation of property, with a focus on dividing a municipality into use zones and each such zone being subject to different regulations, but in the words of **McQuillin**, "zoning laws are only one of several types of regulation of property by local government" (**McQuillin Mun. Corp. Section 25.11**); and

WHEREAS, the Wisconsin Supreme Court has long held the position that there may be more than one basis of authority for a municipality to engage in regulation; for example in *Village of Wind Point v. Halverson*, the Wisconsin Supreme Court determined that the Village of Wind Point's setback ordinance was not a valid "zoning ordinance" but still constituted a valid utilization of the Village's more general "police power" authority:

We hold that a setback ordinance may also be adopted by a city or village other than by adopting a zoning ordinance, as a building restriction or part of a building code, pursuant to the general grant of power in sec. 61.34(1) Stats. This Court has liberally construed the power of a city or village to enact building regulations pursuant to the general grant of police power, stating:

'The city's police power with respect to enacting building regulations is not restricted to situations which only affect the public health and safety, but extends to anything which is for the good order of the city or the public welfare. Sec. 62.11(5), Stats. The prohibition of

a condition that tends to depress adjoining property values falls within the scope of promoting the general welfare and does not violate due process.'

The rationale of the decision applies to villages enacting building regulations and setback requirements under the general grants of police power in sec. 61.34(1) Stats.; Village of Wind Point v. Halverson, 155 N.W.2d at 657-658 (1968); quoting Boden v. City of Milwaukee (1959), 8 Wis.2d 318, 99 N.W.2d 156; and

WHEREAS, this rationale applies equally to towns with village powers regulating minimum property standards under the general grants of police power in sec. 61.34(1), Stats; and

WHEREAS, more recently the Wisconsin Supreme Court has described several distinguishing features of zoning powers, in the case of *Zwiefelhofer v. Town of Cooks Valley*, 338 Wis.2d 488 (2012), and none of the features that are distinctive of zoning authority are exercised by this ordinance; specifically:

- the minimum standards described herein apply to the entire Town of Delafield, and are not limited to any particular area or zone; and
- the standards described herein do not establish uses permitted by right or uses that are prohibited; and
- standards described herein are not aimed at directly controlling where a use may take place; and
- this ordinance makes no attempt to classify uses or comprehensively address all possible uses in a geographic area; and
- this ordinance does not attempt to describe what uses will be permitted in any particular area; and
- this ordinance does not create legal nonconforming conditions in the Town; and

WHEREAS, for the government and good order of the Town, for its commercial benefit and for the health, safety, welfare and convenience of the public, in exercise of its statutory and general police power described herein, and for the purposes further described within the ordinance, the Town Board wishes to establish minimum standards for property in within the Town of Delafield.

NOW, THEREFORE, the Town Board of the Town of Delafield, Waukesha County, Wisconsin DOES HEREBY ORDAIN as follows:

SECTION 1: Chapter 9 of the Town of Delafield Municipal Code entitled "Public Peace and Good Order," Section 9.14 entitled "Minimum Property Standards," is hereby created as follows:

9.14 **MINIMUM PROPERTY STANDARDS.** The following minimum property standards shall apply throughout the Town of Delafield. Nothing herein shall be interpreted to abrogate any more restrictive requirements that may apply per this Code or other applicable laws. In the event the standards hereby established conflict or coincide with requirements established in other sections of this Code or other applicable laws, the more restrictive shall apply.

(1) **BUILDING SEPARATION.**

(a) Purpose. The following minimum building separation requirements are hereby created, in order to protect the health, safety and welfare of the Town and its inhabitants, and to preserve property values. More particularly, the Town hereby intends to reduce risks associated with fire passing between and among buildings, to allow sufficient area for access by public safety personnel and equipment, to protect public safety personnel in their response to such incidents of fire, to reduce disturbance from one property to another whether by noise or other cause, and to allow for the passage of light and air between buildings. In addition, the Town intends to establish and preserve uniform development patterns for aesthetic purposes, devoid of an appearance of excessive crowding, and to allow unobstructed views from within buildings, to preserve property values for the commercial benefit of the Town.

(b) Minimum Standards. No building or structure shall be built, converted, relocated, enlarged, structurally altered or moved from one location to another, and no building permit shall be issued for any building or structure within the Town of Delafield unless these minimum standards are met, along with any greater separation requirements that may be imposed by any other applicable law(s), ordinance(s) or regulations:

1. **Separation Between Buildings.** No principal building or structure shall be hereafter erected, converted, relocated, enlarged, structurally altered or moved from one location to another so that the building or structure is closer than 20 feet to any other structure measured from the outward-most points of the two structures. No accessory building or structure shall be hereafter erected, converted, relocated, enlarged, structurally altered or moved from one location to another so that the building or structure is closer than 10 feet

to any other principal or accessory building or structure measured from the outward-most points of the two structures.

2. **Lot Separation: Principal Buildings.** No principal building or structure shall be hereafter erected, converted, relocated, enlarged, structurally altered or moved from one location to another so that the foundation wall is closer than 15 feet to any lot line, subject to the following exception. In the case of a lot of record, which has a lot width of less than 100 feet, the lot separation for the principal structure shall be 15% of the lot width, provided, however, that such separation shall not be less than seven and one-half feet. Where principal buildings or structures have an eave or a building overhang of greater than 18 inches, the required distance shall be increased by the difference between the eave/overhang and 18 inches.
3. **Lot Separation: Accessory Buildings.** No accessory building or structure shall be hereafter erected, converted, relocated, enlarged, structurally altered or moved from one location to another so that the building footprint is closer than 15 feet to any lot line, subject to the following exception. In the case of a lot of record, which has a lot width of less than 100 feet, the lot separation for the accessory building or structure shall not be less than five feet. Where accessory buildings or structures have an eave or a building overhang of greater than 18 inches, the required distance shall be increased by the difference between the eave/overhang and 18 inches.

(2) **FLOODPLAIN SEPARATION.**

- (a) **Purpose.** The following building separation requirements from the 100 year regional flood line are created, to protect against risks of flooding, property damage, and personal injury and to minimize the associated impacts on the protective services of the Town that can arise from close proximity of structures to flood waters, and for the associated protection of property values.
- (b) **Minimum Standards.** No principal building or structure, its accessory building, structure or sewage disposal system, shall be placed closer than 75 feet from the 100 year reoccurrence interval flood, measured in a horizontal plane. The 100 year reoccurrence interval flood for purpose of this requirement shall be as depicted on the Flood Insurance Rate Map as the base flood elevation, or as

determined by studies approved by the Wisconsin Department of Natural Resources.

(3) GREEN AREA.

- (a) Purpose. The following minimum green area requirements are created, to preserve the open, rural character of the Town, without the crowding of buildings, to preserve property values for the commercial benefit of the Town, and also to allow for adequate storm water retention and infiltration, and to avoid the adverse impacts upon the natural waterways and water bodies of the Town that can be caused by stormwater runoff.
- (b) Minimum Standards. No building, structure, driveway or impervious surface shall be hereafter constructed, erected or placed on any lot in the Town of Delafield unless there shall be, thereafter, a minimum of 60 percent of the lot that is a natural area or manmade landscaped area not occupied by any structures, impervious surfaces, gravel drives, or gravel parking areas.

(4) REGULATION OF POLYSTRUCTURES.

- (a) Definition: Polystructure. A building having a frame of steel or other materials which is covered with plastic, polyurethane, vinyl, canvas, or other flexible sheeting material.
- (b) Purpose. The following polystructure regulation is created, to protect against risks of blight or adverse aesthetic impacts on abutting properties and related diminution of property values, that can arise from polystructures, as they are not as substantial as traditional construction methods used in the Town, and they do not have the image of stability and security of traditional construction methods.
- (c) Minimum Standards. Polystructure(s) are prohibited, except as follows. Polystructure(s) may be allowed in conjunction with approved commercial nursery or greenhouse operations for the sole purposes of housing live plants, or farm operations for agricultural purposes, subject to all conditions that may apply to such operations per applicable laws.

(5) REGULATION OF VACATION RENTAL.

- (a) Definition: Vacation Rental Establishment. Any property that is regulated by Wisconsin Statutes Chapter 254, subchapter VII, as a tourist rooming house; and in addition, any real property that is subject to any verbal or written contract, lease, sublease, rental agreement, easement, instrument or other device (the "Agreement"), if all of the following circumstances apply: (i) the Agreement or Agreements create a right to occupy said property during separate periods of time; (ii) such rights of occupancy have an actual duration of less than one month; (iii) the Agreement requires payment or other remuneration or barter, for the benefit of the property owner; and (iv) the separate rights to occupy the property occur two or more times per calendar year. Nothing herein shall be interpreted to include rental of property which does not qualify as a vacation rental pursuant to this definition.
- (b) Purpose. The following vacation rental establishment licensing regulations are created, to ensure that applicable State laws are followed, to protect persons engaged in this practice either as landlord or tenant; to protect against adverse impacts of noise, odor, disturbance, adverse visual impacts, or other nuisances, that this practice could have upon neighboring properties; to preserve property values for the commercial benefit of the Town; and also to control the impacts of such operations on municipal services, including snow plowing, garbage collection, sanitation, law enforcement and fire protection.
- (c) Minimum Standards.
1. License Required. No vacation rental establishment may operate in the Town unless a Vacation Rental Establishment License for such operation is granted by the Town, and only in full compliance with such License.
  2. Procedure. The General Provisions as to Licenses, described in Section 12.02 of this Code, apply to Vacation Rental Establishment licenses.
  3. Conditions Under Which Permitted. A license shall not be granted for a vacation rental establishment unless all of the following conditions are met:
    - a. The Petitioner must provide to the Town Clerk a copy of the State Tourist Rooming House permit for the

Subject Property, prior to the Town's license being effective; and evidence of each renewal of such State permit shall be filed by the Petitioner with the Town Clerk, such that evidence of a current State permit is always on file for the duration of the Town's vacation rental establishment license.

- b. Transfer of a license because of transfer or sale of property is not permissible. Should such property be sold, then the license shall become void.
- c. All vacation rental establishments shall be subject to and comply with Wisconsin Statutes Chapter 254, subchapter VII including maintaining a tourist rooming house annual permit as required by Wisconsin Statutes Section 254.69(2), which sections are incorporated herein by reference.
- d. All vacation rental establishments shall be subject to and comply with Wisconsin Administrative Code HS 195 which is hereby incorporated by reference.
- e. Each vacation rental establishment shall be required to keep a register and require all guests to sign such register using their actual names and address before being assigned quarters. The register shall be available for inspection by the Waukesha County Sheriff's Department, and Town Code Enforcement Officer for a period of not less than one year.
- f. A minimum of one off-street parking stall shall be provided for every guest bedroom with a minimum of three. All parking areas shall meet the size and location requirements of the Town Code and shall be hard-surfaced and maintained in a reasonably dustless condition.
- g. Every vacation rental establishment shall be properly addressed with numbers on the street side of the structure, a minimum of 5" high and of contrasting color so as to be visible from the street.
- h. The Town Board shall consider the potential impact to the surrounding neighborhood and proximity to any existing bed and breakfast establishment or vacation

rental establishment when reviewing a request for a vacation rental establishment license.

- i. Whenever the property changes ownership, an occupancy permit and a new license is required to ensure compliance with all State and local regulations and ordinances.
- j. Every license for a vacation rental establishment shall be placed on a February Town Board meeting agenda for consideration and possible action upon annual review, to ensure compliance with all licensing requirements. Such property may be inspected by the Waukesha County Sheriff's Department, Town Fire Department, Town Code Enforcement Officer, or other authorized personnel of the Town to investigate and determine if any violations exist.
- k. All refuse containers shall be screened from view.
- l. If the Town finds that any statement made on the license application is incorrect, at any time, the Town may immediately and summarily revoke the conditional use permit.
- m. Sleeping quarters related to a vacation rental establishment use shall only be located within the principal structure on the lot. Accessory buildings cannot be used for sleeping quarters.
- n. Property that is used for a vacation rental establishment must have clearly delineated property lines, by approved fences, vegetation or other means to the satisfaction of the Town Board. Such clear delineation must be maintained for the duration of the license, to ensure that all users of the property are clearly aware of the boundaries of the property and confine their use to the applicable parcel.
- o. Unless the property is connected to a municipal sewer system, the Petitioner/Owner must provide to the Town Code Enforcement Officer, proof that is satisfactory to the Town Code Enforcement Officer that the septic system is properly sized for purposes of the proposed use. Such septic system must be



properly maintained at all times for the duration of the conditional use permit.

- p. The vacation rental establishment occupancy limits shall not exceed the number of occupants allows in Wisconsin Administrative Code Section DHS 195.14(2)(b) per bedroom, and also shall not exceed 8 per 1,000 square feet of living area within the principal structure.
- q. The parcel cannot have more people on site than the higher of 20 people or the maximum number of people allowed under Wisconsin Administrative Code Section DHS 195.14(2)(b).
- r. The Petitioner/Owner must provide a copy of this section and a copy of the license, to all parties using the property for vacation rental purposes, prior to commencement of each such use.

(6) NO UNDESIRABLE STRUCTURES.

- (a) Purpose. The following minimum standards are created, to protect against risks of blight or adverse aesthetic impacts on abutting properties and related diminution of property values that can arise from undesirable structures as described below; to protect against adverse impacts of noise, odor, disturbance, adverse visual impacts, or other nuisances, that can be caused by such issues; and to preserve property values for the commercial benefit of the Town.
- (b) Minimum Standards. No building or structure shall be erected, converted, relocated, enlarged, structurally altered, occupied or reoccupied and no lumber, materials, furniture, equipment or excess excavation shall be stacked, piled or stored in a manner which adversely affects the property values or general desirability of the neighborhood.
  - 1. The Code Enforcement Officer shall submit any such case in question respecting undesirable structures to the Plan Commission for its determination.
  - 2. The Plan Commission shall base its determination on the following considerations:
    - a. Design or appearance of such unorthodox or abnormal character as to be considered unsightly or

offensive to the degree that would have an adverse effect on the property values or general desirability of the neighborhood; or

- b. Identical design and appearance with adjoining buildings or structures to the degree that monotony and commonness would have an adverse effect on the property values and general desirability of the neighborhood.

3. The decision of the Plan Commission shall be stated in writing, including the reason for the decision.

(7) SITE MAINTENANCE.

- (a) Purpose. The following minimum standards are created, to protect the health, safety and welfare of the residents of the Town and to maintain the desirability, amenities and property values of the residential, commercial and industrial neighborhoods of the Town.

- (b) Minimum Standards.

1. General Maintenance. The exterior of every structure or accessory structure shall be maintained free of broken glass, loose shingles, excessive paint peeling, crumbling stone or brick, loose boards or other conditions reflective of deterioration or inadequate or deferred maintenance.
2. Litter Control. Construction sites shall be maintained in a manner so as to prevent litter from being blown off the site. Accordingly, all litter from construction activities shall be picked up at the end of each workday and placed in appropriate containers. Litter collection and storage areas shall be maintained in a clean condition to ensure that all litter on the premises is controlled and disposed of properly. Additionally, prime contractors shall also be responsible to abide by this provision.
3. Outside Storage. No unenclosed storage of materials, equipment or supplies including, but not necessarily limited to, unused or junked appliances, furniture, lumber, bricks and cement blocks shall be permitted where such storage is readily visible from any public place or from any surrounding private property. Dumpster and recycling areas for

development occurring subsequent to this chapter shall be adequately screened from view.

(8) PARKING OF VEHICLES.

(a) Purpose. The following minimum standards are created, to protect against risks of blight or adverse impacts on abutting properties and related diminution of property values that can arise from parking of vehicles as described below; and to preserve property values for the commercial benefit of the Town

(b) Minimum Standards.

1. Parking of cars, vans, sport utility vehicles and light duty pick-up trucks accessory to a residential use shall be limited to those actually used by the residents or for temporary parking of guests.
2. No more than one commercial panel truck or pick-up truck is allowed per lot with a residential use. Such truck and any attached extraneous material shall not exceed 20 feet 6 inches in length, 8 feet in height nor 7 feet in width.
3. No bus, truck or other equipment shall be regularly parked on road right-of-ways.
4. Recreational vehicles shall be kept in a garage or shall have a planting screen, landscaped fence, or wall at least four feet in initial height along a side abutting or fronting a residential property, with the exception of boats.
5. Recreational equipment parked or stored shall not have fixed connections to electricity, water, gas or sanitary sewer facilities and at no time shall this equipment be used for living or housekeeping purposes.
6. If camping or recreational equipment is parked or stored outside of a garage, it shall be parked or stored subject to the following: There shall be a minimum setback of 50 feet when parked or stored adjacent to a public street or highway. It shall be parked or stored between the rear lot line and the principle structure, and it shall be parked or stored not closer than 10 feet from a side or rear lot line. Notwithstanding the above, camping or recreational equipment may be parked anywhere on the premises for

loading or unloading purposes for a period of not more than 48 hours.

7. There shall be no parking or storage anywhere on property that is used for residential purposes of any equipment which is no longer capable of the use intended or requiring repair over and above ordinary maintenance. All recreational equipment shall be kept in good condition. The ground area under and immediately surrounding where such recreational equipment is stored shall be maintained free of noxious weeds, debris or overgrowth.

(9) EXCEPTIONS OR MODIFICATIONS.

Where, in the judgment of the Town Board, it would be inappropriate to apply literally the provisions of this Section 9.14 due to exceptional circumstances, the Town Board may waive or modify any requirement to the extent deemed just and proper on a case-by-case basis. An exception or modification granted by this subsection 9.14(6) shall only affect the otherwise applicable requirements of this Section 9.14, and shall have no effect on any other provisions of this Code or other applicable laws.

No exception or modification to the provisions of this Section 9.14 shall be granted unless the Town Board finds that all the following facts and conditions exist and so indicates in the minutes of its proceedings:

- (a) Exceptional Circumstances. There are exceptional, extraordinary, or unusual circumstances or conditions where a literal enforcement of the requirements of this Section 9.14 would result in a severe burden. Such circumstances should not apply generally to other properties or be of such a recurrent nature as to suggest that Section 9.14 should be changed.
- (b) Preservation of Property Rights. That such exception or modification is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same vicinity.
- (c) Absence of Detriment. That the exception or modification will not create substantial detriment to adjacent property, the desirable general development of the Town and its environs, and will not materially impair or be contrary to the purpose and spirit of this Section 9.14.

SECTION 2: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section

or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinance whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 3: EFFECTIVE DATE.

This ordinance shall be effective upon publication or posting as provided by law.

Dated this 11<sup>th</sup> day of November, 2014.

TOWN OF DELAFIELD



Paul L. Kanter, Town Chairman

ATTEST:



Mary Elsner, Town Clerk

This ordinance ~~posted~~ or published November 25, 2014.

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