Chapter 4– Overlay Zoning District Regulations

4.1 GENERAL

The overlay zoning districts of this chapter are intended to apply in combination with the underlying base zoning districts to impose regulations and standards in addition to those required by the base districts. The requirements of an overlay district shall apply whenever they are in conflict with and are more stringent than those in the base district. The following overlay districts are hereby created:

4.2 Overlay District Provisions Regulating Adult Oriented Establishments

4.3 Floodplain Overlay District (Deleted on January 19, 2010 See Dodge County Floodplain Ordinance)

4.4 Environmental Protection Overlay District

4.5 Airport Overlay District (Deleted on 10/18/2011, See Dodge County Airport Zoning Ordinance)

4.6 Highway Setback Overlay District

4.7 Planned Unit Development Overlay District

4.8 Land Spreading of Petroleum Contaminated Soil Overlay District

4.9 Mobile Tower Siting and Radio Broadcast Service Facility Overlay District Regulations

4.10 Deleted on April 19, 2011, See Dodge County Sanitary Ordinance

4.11 Wind Energy System Overlay District

4.12 Non-Metallic Mining Reclamation Overlay District

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SECTION 4.2 –OVERLAY DISTRICT PROVISIONS REGULATING ADULT ORIENTED ESTABLISHMENTS

4.2.1 GENERAL

4.2.1.A FINDINGS AND PURPOSE

Several studies have documented the significant adverse secondary effects on surrounding communities caused by adult oriented establishments. The County Board has considered the following studies:

- *Crime-Related Secondary Effects of Sexually-Oriented Businesses* by Richard McCleary finding that criminal activity is higher near adult oriented establishments.

- Report by Beaumont, Texas City Planning Department finding that criminal activity is higher at adult oriented establishments.

- Report by Cleveland, Ohio Police Department showing higher rates of crime in areas near adult oriented establishments.

- Report by Los Angeles, California Department of City Planning concluding that crime rates are higher in areas of concentrated adult oriented establishments.

- Report by City of Toledo, Ohio finding that adult oriented establishments account for a disproportionate amount of crime, particularly adult oriented establishments featuring live entertainment.

- Report by City of Austin, Texas finding that crime rates are higher where adult oriented businesses are concentrated.

- Report by Tucson, Arizona Police Department Investigative Services detailing the widespread presence of bodily fluids present in adult oriented establishment viewing booths.

- *Effects of Adult Entertainment Businesses on Residential Neighborhoods* prepared by the El Paso Department of Planning Research & Development showing increased sexual dangers for children, pornography in the schools, exposure of minors to adult entertainment, declining property values, and public drunkenness associated with adult oriented establishments.

- Letter from Thomas O'Loughlin, Chief of Milford Massachusetts Police, indicating the increased rates of crime when adult oriented establishments locate near businesses serving alcohol.

- *Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence* by Richard McCleary and Alan Weinstein concluding that adult oriented establishments that sell products solely for off-site use cause significant crime- related secondary effects.

- *Study of Calls for Service to Adult Entertainment Establishments which Serve Alcoholic Beverages* by Fulton County Georgia Police Department explaining the increased risk of crime when adult oriented establishments are permitted to serve alcoholic beverages.

- *Rural Hot Spots: The Case of Adult Businesses* by Richard McCleary explaining that although most studies regarding adult oriented establishments are conducted in urban settings, the results can be translated to rural areas.

- *Testimony of* SB3348 by Richard McCleary recommending regulations physically separating employees from patrons and prohibiting touching in order to reduce the risk of patron-employee assault.

The County Board recognizes these negative secondary effects and also recognizes that the presence of alcohol in adult oriented establishments causes further undesirable behavior.

The County Board believes that the experiences and studies of other communities set forth above are relevant in addressing the secondary effects of adult oriented establishments in Dodge County.

The regulations in this Overlay District are not aimed at the content of any speech. Rather, these Overlay District regulations have the purpose and effect of controlling the negative secondary effects of adult oriented establishments while avoiding regulation of content.

These Overlay District regulations are not intended to prohibit adult oriented establishments from operating in Dodge County. These provisions are only intended to regulate their location and manner of operation while providing a reasonable opportunity for such establishments to exist. The Overlay District regulations are also intended to regulate the proximity of adult oriented establishments to certain sensitive land uses.

The County Board concludes:

(a) All adult oriented establishments regulated by this Overlay District have adverse secondary impacts.

(b) The adverse secondary impacts of adult oriented establishments tend to diminish if such establishments are governed by content-neutral regulations.

(c) The consumption of alcoholic beverages on the premises of an adult oriented establishment exacerbates the negative secondary effects of such establishments.

(d) Chapter 59 of the Wisconsin Statutes grants the County authority to adopt an ordinance regulating adult oriented establishments.

4.2.1.B APPLICABILITY

4.2.1.B.1 The jurisdiction of the Overlay District Provisions Regulating Adult Oriented Establishments shall include those areas that are subject to the County Land Use Code regulations contained within this Code.

4.2.2 DEFINITIONS

Adult Oriented Establishment shall include, but is not limited to, "adult bookstores," "adult motion picture theatres," "adult mini-motion picture establishments" or "adult cabarets," and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for profit, direct or indirect. An Adult Oriented Establishment also includes the physical location from which adult entertainment is broadcast.

Adult Bookstore means a retail establishment that has:

(1) As a substantial or significant portion of its business the sale or rental of, or a substantial or significant portion of its stock in trade for sale or rental of:

(a) Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; and/or

(b) Sexually oriented devices, as defined in this section

(2) As used in this definition, publications include, by way of illustration, books, magazines, other periodicals, movies, videotapes, and other products offered in photographic, electronic, magnetic, digital, or other imaging medium.

(3) Any of the following shall be indicia that an establishment has as one of its principal business purposes the sale or rental of: (1) publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, and/or (2) sexually oriented devices, as defined in this section:

(i) The business advertises the sale or rental of adult publications including but not limited to "x-rated" movies and/or sexually oriented devices;

(ii) Access by persons under eighteen (18) years of age to the business establishment or portions of the business establishment is restricted;

(iii) Signs or notices are posted outside and/or inside the business establishment indicating that the material offered for sale or rental might be offensive;

(iv) The building or portion of the building containing the business establishment does not have windows or has windows that are screened or otherwise obstructed or are situated in a manner that restricts visual access from outside the building to materials displayed within for sale or rental;

(v) The above factors shall be considered along with all other factors and available information.

(4) Notwithstanding the foregoing, a general circulation video store that does not offer for sale any sexually oriented devices shall not constitute an "adult bookstore" even though it offers for sale and/or rental videotapes which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified anatomical areas or specified sexual activities, as defined in this section, so long as:

(i) Such described videotapes are stocked and displayed in a room separate from the area of the business establishment where general circulation videotapes are stocked and displayed;

(ii) Access by persons under eighteen (18) years of age to the room where such described videotapes are stocked and displayed is restricted;

(iii) The square footage of the separate room where such described videotapes are stocked and displayed is no more than ten (10) percent of the square footage of the area where general circulation videotapes are stocked and displayed; and

(iv) The general circulation videotapes portion of the business establishment offers a quantity and selection of new release general circulation videotapes that is typical of a general circulation video store and offers a quantity and selection of other general circulation video tapes that are organized and displayed in a manner that is typical of a general circulation video store.

Adult Cabaret means an establishment that regularly features dancers or other entertainers who provide live adult entertainment, including but not limited to floor shows, exotic dancing, male or female impersonators, or similar entertainment and engage in a private performance, act as private models, display or expose any specified anatomical area(s) to a patron or customer, or wear or display to a customer any covering, tape, pastie, or other device which simulates or gives the appearance of the display or exposure of any specified anatomical area.

Adult Entertainment means any exhibition of any motion picture, live performance, display or dance of any type, which is distinguished or characterized by an emphasis on any actual or simulated performance of "specified sexual activities" or exhibition and viewing of "specified anatomical areas," as defined below, appearing unclothed, or the removal of articles of clothing to reveal "specified anatomical areas."

Adult Mini-Motion Picture Theater means a commercial establishment with one or more adult mini motion picture booths where:

(1) A substantial or significant portion of business is the presentation and viewing in viewing booths of still or motion pictures that are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation by patrons therein; or

(2) A substantial or significant portion of the stock of still or motion pictures available for viewing or that are actually viewed in the viewing booths are distinguished or characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," as defined below.

(3) Any of the following shall be indicia that a business establishment has as one of its principal business purposes the presentation and viewing in viewing booths still or motion pictures which

are distinguished or characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," as defined below:

(i) Restricted access to the business establishment or portions thereof where viewing booths are located by persons less than eighteen (18) years of age.

(ii) Posted signs or notices outside and/or inside the business establishment indicating that the material offered for presentation and viewing in the viewing booths might be offensive.

(iii) The above factors shall be considered along with other available information.

Adult Motion Picture Theater means an enclosed building in which a substantial or significant portion of business involves presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein.

Customer means any person who:

(1) is allowed to enter an Adult Oriented Establishment in return for the payment of an admission fee or any other form of consideration or gratuity; or

(2) enters an Adult Oriented Establishment and purchases, rents, or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

(3) is a member of and on the premises of an Adult Oriented Establishment operating as a private club.

Employee means any person who renders any service whatsoever to the customers of an Adult Oriented Establishment or who works in or about an Adult Oriented Establishment and who receives compensation for such service or work from the operator, or owner of the Adult Oriented Establishment or from the customers therein.

Licensee means a person in whose name a license to operate an Adult Oriented Establishment has been issued, as well as any and all individuals listed as applicants, owners or licensees on the application for a license.

Nudity or A State of Nudity means:

(1) The appearance of a human bare buttock, vulva, anus, anal cleft with less than a full opaque covering, male genitals, female genitals or female breast; or

(2) A state of dress which fails to completely and opaquely cover a human buttock, vulva, anus, male genitals, female genitals or any part of the female breast or breasts that is situated below a point immediately above the top of the areola of the female breast.

Operates or Causes to be Operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated an Adult Oriented Establishment whether or not that person is an owner, part owner, licensee, or manager of the establishment.

Operator means an individual who is in control of the premises and operations of an Adult Oriented Establishment.

Patron means a customer.

Person means an individual, proprietorship, partnership, corporation, association or other legal entity.

Premises means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

Sexually Oriented Device means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Specified Anatomical Areas means:

(1) Less than completely and opaquely covered:

(i) Human genitals, pubic region; or

(ii) Showing the areola or nipple of a female breast.

(2) Human male genitals in a discernible turgid state, even if opaquely covered.

Specified Sexual Activities means simulated or actual:

(1) Showing of human genitals in a state of sexual stimulation or arousal;

(2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus;

(3) Fondling or erotic touching of human genitals, pubic region, or areola or nipple of a female breast;

(4) Excretory functions, as part of or in connection with any of the activities set forth in subsections 1 through 3 above.

Transfer of Ownership or Control of an Adult Oriented Establishment means and includes any of the following:

(1) The sale, lease or sublease of the Adult Oriented Establishment;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment or a trust, gift, or other similar legal device which transfers the ownership or control of the establishment, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

4.2.3 ADMINISTRATION

4.2.3.A LICENSE

(1) Except as provided in subsection (5) and (6) below, from and after the effective date of these Overlay District regulations, no adult oriented establishment shall be operated or maintained in any area subject to the Dodge County Land Use Code without first obtaining a license to operate issued by Dodge County. Licenses under this Overlay District may only be granted for adult oriented establishments that comply with all standards in this Overlay District and in the Dodge County Land Use Code.

(2) A license may be issued for only one (1) adult oriented establishment located at a fixed and certain place per application filed. Any person, partnership or corporation which desires to operate more than one adult oriented establishment must have a license for each.

(3) No license or interest in a license may be transferred to any person, partnership, or corporation.

(4) It shall be unlawful for any entertainer, employee or operator to knowingly work in or to knowingly perform any service directly related to the operation of any adult oriented establishment which does not have a valid license pursuant to these regulations.

(5) Nothing in this Overlay District shall be construed as to permit material or performances prohibited by Wis. Stat. § 944.21.

(6) Adult Oriented Establishments lawfully operating prior to the effective date of this Overlay District or amendments thereto shall be exempt from obtaining a license under this Section.

4.2.3.B APPLICATION FOR A LICENSE

(1) Any person, partnership, or corporation desiring to secure a license shall make application to the Department. The application shall be filed with and dated by the Department.

(2) The application for a license shall be upon a form provided by the Department. An applicant for a license, interested directly in the ownership or operation of the business, shall furnish the following information under oath:

(a) The name (including all aliases) and date of birth of the applicant and any partner or limited partner in a partnership applicant; and any shareholder holding more than ten (10%) percent of the stock of a corporate applicant and each corporate officer and director.

(b) Written proof that any person required to be named under paragraph (2)(a) is at least eighteen (18) years of age.

(c) A description of the activities to be conducted on the premises. If any booth, room or cubicle for private viewing of any adult entertainment is intended, a sketch or other adequate description of the premises is required.

(d) The address of the adult oriented establishment to be operated by the applicant.

(e) Whether any person required to be named under paragraph (2) (a) is currently operating, or has previously operated, in this or any other County, City, or State under an adult-oriented

establishment license or similar business license or permit; whether the applicant has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

(f) If the applicant is a corporation, the application shall also specify the name of the corporation, the date and state of incorporation, and the name and address of the registered agent.

(g) The applicant shall submit documentation from a licensed person or firm to show that the structure to be used for the adult-oriented establishment complies with all applicable building, plumbing, electrical, fire, and health codes.

(3) No application will be considered unless it is complete. An application will be considered complete if it is submitted in the required number and form, incudes all mandatory information and is accompanied by the applicable fee. The Land Use Administrator shall make a determination of application completeness within ten (10) days of the application filing. If an application is determined to be incomplete, the Land Use Administrator shall notify the applicant of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within thirty (30) days of receiving notice of the deficiencies, the application shall be considered withdrawn. Within thirty (30) days of receiving a complete application for a license, the Land Resources and Parks Department shall make a decision to approve, withhold, or deny the application for a license unless the time is extended by agreement with the applicant. Failure of the Land Resources and Parks Department to act within thirty (30) days of receiving a complete application or within the time as extended by agreement with the applicant shall constitute an approval.

(4) Whenever an application is withheld or denied, the Land Resources and Parks Department shall advise the applicant in writing of the reasons for such action. The applicant may request a review of the denial pursuant to Chapter 68 of the Wisconsin Statutes, as amended from time to time.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or the applicant's refusal to submit to or cooperate with any investigation required by these Overlay District provisions shall be grounds for denial of the application.

4.2.3.C STANDARDS FOR ISSUANCE OF LICENSE

(1) To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

(a) If the applicant is an individual:

i. The applicant shall be at least eighteen (18) years of age.

ii. The applicant shall not have been found to have previously violated these Overlay District Provisions within five (5) years immediately preceding the date of application.

iii. The applicant shall not have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offence of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person has been duly pardoned.

(b) If the applicant is a corporation:

i. All officers, directors, shareholders, and agents required to be named under these Overlay District Provisions are at least eighteen (18) years of age.

ii. Neither the corporate applicant nor any officer, director, or shareholder required to be named under these Overlay District provisions shall have been found to have previously violated these Overlay District provisions within five years immediately preceding the date of application.

iii. No officer, director, shareholder or agent required to be named under these Overlay District provisions, or the corporate applicant, shall have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person or applicant has been duly pardoned.

(c) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

i. All persons having a financial interest in the partnership, joint venture, or other type of organization shall be at least eighteen (18) years of age.

ii. Neither the applicant nor any person having a financial interest in the organization shall have been found to have violated any provision of these Overlay District provisions within five (5) years immediately preceding the date of application.

iii. No applicant or person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person or applicant has been duly pardoned.

(d) The proposed location for the adult-oriented establishment must be in a zoning district that permits adult-oriented establishments under the Dodge County Land Use Code.

(2) Prior to granting the license, the Department shall determine whether the applicant complies with all applicable restrictions on location and has substantially complied with all applicable provisions of this Overlay District.

4.2.3.D FEES

(1) A license fee shall be submitted with the application for the license in the amount specified in the Dodge County Fee Schedule Ordinance.

4.2.3.E DISPLAY OF LICENSE

(1) The license shall be displayed in a conspicuous, public place in the adult oriented establishment.

4.2.3.F RENEWAL OF LICENSE

(1) Every license issued pursuant to this Overlay District will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Land Resources and Parks Department. The application for renewal shall be filed in duplicate and dated by the Land Resources and Parks Department. A copy of the application for renewal shall be distributed promptly by the Land Resources and Parks Department to the operator. The application for renewal shall be on a form provided by the Land Resources and Parks Department and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(2) A license renewal fee in the amount specified in the Dodge County Fee Schedule Ordinance shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty in an amount specified in the Dodge County Fee Schedule Ordinance shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires.

(3) If any law enforcement agency in Dodge County is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Department.

4.2.4 LOCATION

(1) No adult oriented establishment shall be located:

(a) Within 1,000 feet of an existing residential zoning district as defined in the Dodge County Land Use Code.

(b) Within 500 feet of an existing adult oriented establishment.

(c) Within 1,000 feet of any pre-existing school, church, park, playground, or day care center.

(d) Within 500 feet of any pre-existing establishment licensed to sell or dispense fermented malt beverages or intoxicating liquor.

(2) For purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult oriented establishment, to the nearest property line of another adult oriented establishment, school, place of worship, park, playground, day care center or residential zoning district or establishment selling or dispensing fermented malt beverages or intoxicating liquor.

4.2.5 HOURS OF OPERATION

(1) No adult oriented establishment shall be open between the hours of 2 a.m. and 8 a.m., Monday through Friday, or between the hours of 2:30 a.m. and 8 a.m. on Saturdays and Sundays.

4.2.6 PHYSICAL LAYOUT OF ADULT ORIENTED ESTABLISHMENT

(1) Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult oriented establishment and shall be unobstructed by any door, lock, or other control-type devices. Each booth, room, or cubicle shall be viewable from the public area of the adult oriented establishment.

(2) Every booth, room, or cubicle shall meet the following construction requirements:

(a) Each booth, room, or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.

(b) Each booth, room, or cubicle shall have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room, or cubicle.

(c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured, and easily cleanable.

(d) The floor must be light colored, non-absorbent, smooth textured, and easily cleanable.

(e) The lighting level of each booth, room, or cubicle shall be a minimum of ten (10) foot candles at all times, as measured from the floor.

(3) Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of a booth, room, or cubicle shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth, room, or cubicle. No individual shall damage or deface any portion of the booth, room, or cubicle.

4.2.7 ALCOHOLIC BEVERAGES

(1) The sale, use, or consumption of any alcoholic beverages, fermented malt beverages, or intoxicating liquors on the premises of an adult oriented establishment is prohibited.

4.2.8 RESPONSIBILITIES OF THE OPERATOR

(1) If an employee commits an act or omission constituting a violation of any provisions of this Overlay District, either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission. Any such act shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.

(2) No employee of an adult oriented establishment shall allow any minor to loiter around or to frequent an adult oriented establishment or to allow any minor to view adult entertainment.

(3) The operator shall maintain the premises in a clean and sanitary manner at all times.

(4) The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room, or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.

(5) No operator or employee in an Adult Oriented Establishment shall appear, or knowingly allow another to appear in a state of nudity, unless the person is an employee who, while in a state of nudity, is on a stage (on which no customer is present) and is: (1) at least six (6) feet from any customer (hereinafter called “unenclosed performance stage”) or (2) physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material extending from the floor of the performance stage to at least five (5) feet above the level of the performance stage, but such that would permit physical contact between customers and such employee (hereinafter called “enclosed performance stage”).

(6) No operator or employee in an Adult Oriented Establishment while in a state of nudity in an Adult Oriented Establishment shall receive direct pay or gratuity from any patron or shall knowingly allow another operator or employee, while in a state of nudity in an Adult Oriented Establishment to receive direct pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any operator or employee, while that operator or employee is in a state of nudity in an Adult Oriented Establishment. Such gratuity or pay may be provided to such operator or employee through a tip receptacle, located more than six (6) feet from the nearest point of the performance stage where such operator or employee is in a state of nudity, or may be paid to an operator or employee that is not in a state of nudity, as part of the customer’s bill.

(7) No operator or employee in an Adult Oriented Establishment while in a state of nudity in an Adult Oriented Establishment shall touch a customer or the clothing of a customer and no operator or employee in an Adult Oriented Establishment shall knowingly allow another operator or employee, while in a state of nudity in an Adult Oriented Establishment to touch a customer or the clothing of a customer.

(8) No operator or employee in an Adult Oriented Establishment shall knowingly allow a customer to touch an operator or employee appearing in a state of nudity or to touch the clothing of the employee.

4.2.9 ADMINISTRATIVE PROCEDURE AND REVIEW

(1) The Overlay District regulations shall be administered by the Land Resources and Parks Department.

(2) Chapter 68 of the Wisconsin Statutes, as amended from time to time, shall govern the review regarding the granting, denial, renewal, non-renewal, revocation, or suspension of a license under this Overlay District. If an owner appeals the non-renewal, revocation, or suspension of a license, that owner will be granted a temporary license applicable while the appeal is pending.

4.2.10 EXCLUSIONS

(1) All public and private schools, as defined in Chapter 115 of the Wisconsin Statutes, are exempt from obtaining a license hereunder when instructing pupils in sex education as part of the curriculum.

(2) Licensed medical care facilities are exempt from obtaining a permit when engaged in the providing of medical care or sex education.

4.2.11 PENALTIES AND PROSECUTION

(1) Any person, partnership, or corporation found to have violated this Overlay District shall have any license obtained hereunder revoked.

(2) In addition to the revocation of a permit issued under this Overlay District, any person who shall violate any provision of this Overlay District or who shall fail to obtain a license as required hereunder shall upon conviction of such violation, be subject to a penalty of a civil forfeiture of not less than fifty ($50.00) dollars nor more than five hundred ($500.00) dollars, together with the costs of prosecution. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Overlay District shall preclude the County from maintaining any appropriate action to prevent or remove a violation of any provision of this Overlay District.

4.2.12 SEVERABILITY

(1) If any provision of this Overlay District is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of this Overlay District.

(2) If any provision of this Overlay District is declared an invalid exercise of home rule, such provision shall be incorporated into the Dodge County Land Use Code as if originally enacted therein.

4.2.13 ENFORCEMENT

(1) Personnel of the Dodge County Sheriff's Department or any other law enforcement agency shall have the authority to enter any adult oriented establishment to inspect the premises and enforce this Overlay District. Such inspections shall be limited to public areas and may only be conducted during business hours.

(2) The Dodge County Land Use Administrator or his/her designee shall have the primary responsibility for enforcing all provisions of this Overlay District. The Land Use Administrator or his/her designee are hereby empowered to cause any building, other structure, or tract of land to be inspected and examined for suspect or potential violations of this Overlay District after proper notification. If permission to enter the property is withheld, the Land Use Administrator, or his/her designee may seek a court order to require inspection of the property.

4.2.14 DISCONTINUATION OF OPERATION

(1) Any discontinuation in the operation of an adult oriented establishment for a period of twelve (12) months or more shall cause the license to lapse and become void. A license holder whose license has lapsed in this manner shall thereafter be subject to the procedures applicable to the issuance of new licenses.

4.2.15 REVOCATION, SUSPENSION, AND NON-RENEWAL OF LICENSE

(1) A license issued under this Overlay District may be suspended or revoked for any of the following reasons:

(a) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

(b) The operator, entertainer, or any employee of the operator, violates any provision of this Overlay District or any rule or regulation adopted by the County Board pursuant to this Overlay District; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee or customer, the penalty shall not exceed a suspension of thirty (30) days if the Planning, Development and Parks Committee finds that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(c) The operator becomes ineligible to obtain a license.

(d) Any cost or fee required to be paid by this Overlay District is not paid.

(e) Any intoxicating liquor or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the adult oriented establishment.

(f) Any operator, employee, or entertainer sells, furnishes, gives, or displays, or causes to be sold, furnished, given, or displayed to any minor any adult oriented entertainment or adult oriented material.

(2) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(3) Any operator whose license is revoked and who seeks to obtain a new license under this Overlay District must apply for a license or permit according to the new license application provisions set forth in this Overlay District and must meet the standards for the issuance of a new license as set forth in this Overlay District. No location or premises for which a license has been revoked shall be used as an adult oriented establishment for six (6) months from the date of revocation.

4.2.16 EFFECTIVE DATE

(1) These Overlay District Provisions Regulating Adult Oriented Establishments shall take effect and be in force upon its passage and publication as required by law.

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4.3 FLOODPLAIN OVERLAY DISTRICT

Deleted on January 19, 2010; See Dodge County Floodplain Ordinance for floodplain regulations.

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4.4 ENVIRONMENTAL PROTECTION OVERLAY DISTRICT

4.4.1 General

4.4.1.A Purpose
The primary purpose of the Environmental Protection Overlay District is to promote the public health, safety, and general welfare by providing for uses compatible with protecting, preserving, and enhancing significant natural areas within the County, such as wooded areas of environmental importance, significant archaeological sites, slopes in excess of 12 percent, soil depths less than 60 inches, or other areas in which the public has interest in preserving or protecting.

4.4.1.B Applicability
The provisions of the Environmental Protection Overlay District shall be applicable in those towns which have adopted the County Zoning Ordinance in accordance with the provisions granted by sections 59.97, 59.971, 59.99, 87.30, and 144.26 of the Wisconsin Statutes.

4.4.2 Development Standards

4.4.2.A Off-Street Parking Requirements
Development in the Environmental Protection Overlay District shall comply with the off-street parking requirements of Section 8.2 of this Code.

4.4.2.B Tree-Cutting Regulations
Development in the Environmental Protection Overlay District shall comply with the tree-cutting regulations of Section 8.4.2 of this Code.

4.4.2.C Steep Slope Regulations
Development in the Environmental Protection Overlay District shall comply with the following steep slope regulations:

4.4.2.C.1 On slopes of 12 percent to 20 percent:

4.4.2.C.1.a An erosion control plan shall be submitted and approved before any development is started.

4.4.2.C.1.b A storm water management plan shall be submitted and approved before any development is started.

4.4.2.C.1.c No driveways shall be constructed that are in excess of a 10 percent grade.

4.4.2.C.1.d Density shall be limited to 1 dwelling unit per 2 acres on lots not served by public sewer.

4.4.2.C.2 No development shall occur on slopes in excess of 20 percent:

4.4.2.D Shallow Soil (less than 60 inches to bedrock) Regulations
Development in the Environmental Protection Overlay District shall comply with the following regulations:

4.4.2.D.1 On-site sanitary systems shall comply with Comm 83 sanitary requirements.

4.4.2.D.2 Animal confinement facilities shall be prohibited in these areas.

4.4.2.D.3 Residential density shall be limited to 4 dwelling units per acre in publicly sewered areas.

4.4.2.E Water Bodies and Water Course Regulations
Development in the Environmental Protection Overlay District shall comply with the following regulations:

4.4.2.E.1 Intermittent Streams and Drainageways

4.4.2.E.1.a A minimum setback of 20 feet is recommended on each side of any intermittent drainageway.

4.4.2.E.1.b Fertilizer should not be applied within 20 feet of each side of any intermittent drainageway.

4.4.2.E.1.c Natural vegetation within 20 feet of each side of any intermittent drainageway should not be cultivated or otherwise disturbed.

4.4.2.E.2 Shoreland Areas of Navigable Waterbodies

4.4.2.E.2.a Not more than 30 percent of the natural vegetation shall be cleared within 50 feet of the ordinary highwater mark of any navigable waterbody.

4.4.2.E.2.b A minimum setback of 300 feet is required from the ordinary highwater mark of any currently undeveloped natural lake.

4.4.2.E.2.c Not more than 5 percent of the natural vegetation may be cleared within 300 feet of the ordinary highwater mark of any currently undeveloped natural lake.

4.4.2.F Woodlot Regulations
Development in the Environmental Protection Overlay District shall comply with the following regulations:

4.4.2.F.1 Density shall be limited to 1 dwelling unit per 5 acres on wooded lots not served by public sewer.

4.4.2.F.2 Non-residential development shall be avoided on wooded lots to the maximum extent feasible.

4.4.2.G Archaeological Sites Regulations
Proposed developments that will impact historic or burial sites inside or outside of the Environmental Protection Overlay District shall require the notification of the State Historical Society and their approval of development plans where specific laws protect such areas.

4.4.2.H Proposed Public Lands
Proposed uses on proposed public lands shall be referred to the public agency interested in acquiring that particular parcel of land so that they may decide to offer to purchase the property or sign off on future acquisition.

4.4.3 Intensity and Dimensional Requirements

All development in the Environmental Protection Overlay District shall be subject to the intensity and dimensional standards set forth in Chapter 5 of this Code.

4.4.4 Allowed Uses
The uses allowed within the Environmental Protection Overlay District shall be any use allowed in the underlying zoning district, unless specifically prohibited by this section of this Code.

4.4.5 Conditional Uses

The uses allowed upon issuance of a Conditional Use Permit as provided in Section 2.3.6, and issuance of a Department of Natural Resources permit, where required, within the Environmental Protection Overlay District shall be any use conditionally allowed within the underlying zoning district unless specifically prohibited by this section of this Code.

4.5 AIRPORT OVERLAY DISTRICT

DELETED ON OCTOBER 24, 2011, SEE DODGE COUNTY AIRPORT ZONING ORDINANCE

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4.6 HIGHWAY SETBACK OVERLAY DISTRICT

4.6.1 General

4.6.1.A District Established
The County Board of Supervisors finds that, in order to promote the public safety, general welfare, and convenience, it is necessary that highway setback lines be established in Dodge County outside the limits of incorporated cities and villages, along all public highways, and at the intersections of highways with highways and highways with railways. A Highway Setback Overlay District is thereby established.

4.6.1.B Applicability
The provisions of the Highway Setback Overlay District shall be applicable in those towns that have adopted the Dodge County Highway Setback Ordinance in accordance with the authority granted by Section 59.69 of the Wisconsin Statutes. The provisions of the Highway Setback Overlay District shall not apply to structures that are located beyond 200 feet from the road, street or highway centerline. Where a highway, street or road is located on a city or village boundary, this District is not intended to be effective on the side within the city or village; nor on the side within another county, where the highway is located on a county boundary.

4.6.1.C Center Line Measurement
For purposes of this Section 4.6, the center line shall be the center of the surfacing or pavement or, if there is no surfacing or pavement, the midpoint between the existing fences or other highway markers indicating the boundaries of the opposite sides of the above.

4.6.2 Structures Prohibited Within Setback Lines

4.6.2.A No new structure or part thereof shall be placed, erected or structurally altered within 200 feet of the centerline of any highway without a Land Use Permit and without full compliance with the provisions of this code and all other applicable County regulations. All structures shall be located in accord with the minimum setbacks listed in Section 5.1.2.E and Table 5.1.2-2 of this code except as provided for in Section 4.6.4 B.

4.6.3 Existing Nonconforming Structures

The regulations pertaining to existing nonconforming structures set forth in Chapter 10 of this Code shall apply in the Highway Setback Overlay District.

4.6.4 Required Setback Distances and Modifications

4.6.4.A General Required Setbacks
Except as otherwise provided, the distances from the center line or highway right-of-way line to the setback line applicable to the various classifications of highways as defined in Chapter 12 shall be as provided in Table 5.1.2-2.

4.6.4.B Measurements and Exceptions

4.6.4.B.1 The setback measurements and exceptions provided in Sections 5.2.3.A and 5.2.3.G shall apply within the Highway Setback Overlay District.

4.6.4.B.2 Signs that are located within a Town that has not adopted the County's Land Use Code shall be located not less than 35' from the centerline of a road, street or highway or 2 feet behind the road right-of-way, whichever distance is greater, unless said sign is an official traffic control sign, informational sign or a directional sign erected by the federal, state or local unit of government. Signs that are located within a Town that has adopted the County's Land Use Code shall be subject to the minimum highway setback distances as provided in Section 8.9.2.

4.6.4.B.3 Fences shall not exceed a height of 4 feet within the street yard setback and shall not be located closer than 2 feet to any public right-of-way.

4.6.4.C Other Requirements

4.6.4.C.1 Whenever a highway is improved to a classification requiring a greater setback distance than that required by this Code prior to such improvement, the setback distance shall be that applicable to the latter classification.

4.6.4.C.2 The County Board of Supervisors may, upon recommendation of the Planning, Development and Parks Committee, designate a section of a street or town road "urbanized," thereby qualifying that section for reduced setbacks.

4.7 PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT

4.7.1 General

4.7.1.A Purpose

The Planned Unit Development (PUD) Overlay District is intended to encourage innovative land planning and site design concepts that achieve a high level of environmental sensitivity, energy efficiency, aesthetics, high-quality development and other community goals by:

4.7.1.A.1 Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;

4.7.1.A.2 Allowing greater freedom in selecting the means to provide access, light, open space and design amenities;

4.7.1.A.3 Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses; and

4.7.1.A.4 Requiring compliance with development standards that reflect the high level of public investment in adjoining lands.

4.7.1.B Applicability

The provisions of the Planned Unit Development Overlay District shall be applicable in those towns that have adopted County zoning and in the Shoreland Wetland Overlay District in accordance with the authority granted by sections 59.97, 59.971, 59.99, 87.30, and 144.26 of the Wisconsin Statutes.

4.7.1.C Developer's Statement of Intent

Each application for approval of a PUD Concept Plan shall include a statement by the applicant describing how the proposed development departs from the otherwise applicable standards of this Code and how the proposed development, on balance, is an improvement over what would be required under otherwise applicable development regulations.

4.7.1.D Review and Approval Procedures

The review and approval procedures for PUDs are set forth in Section 2.3.7.

4.7.2 Development Standards

The standards of this Section 4.7.2 shall apply to all PUDs unless otherwise expressly provided.

4.7.2.A Prohibited Zoning Districts

PUDs are permitted in all zoning districts except the A-1 Prime Agricultural, WL Wetland, Environmental Protection Overlay, and Floodplain Overlay Districts.

4.7.2.B Density

The maximum residential density permitted within a PUD shall be that of the zoning district(s) in which the PUD is located.

4.7.2.C Landscaping

Unless otherwise expressly provided in this Code, PUDs shall be subject to the landscaping and buffer regulations of Section 8.6.

4.7.2.D Minimum Common Open Space Requirements

All PUDs that include residential dwelling units shall provide at least 700 square feet of common open space per dwelling unit. No credit shall be granted for private open space.

4.7.2.E Minimum Size
A PUD shall contain a minimum of 40 contiguous acres of land under one ownership or control, unless a smaller size is approved by the County Board of Supervisors as part of the PUD Concept Plan approval process. Additional land area may be added to an existing PUD if it is adjacent or forms a logical addition to an existing PUD. The procedure for an addition shall be the same as if an original application were filed and all of the requirements of this article shall apply except the minimum acreage requirement of 40 acres.

4.7.2.F Parking
Unless otherwise expressly provided in this Code, PUDs shall be subject to the off-street parking and loading standards of Section 8.2.

4.7.2.G Setbacks
Setbacks shall be provided in accordance with the underlying zoning district standards unless another minimum setback is expressly approved as part of the PUD approval.

4.7.2.H Signs
Unless otherwise expressly provided in this Code, PUDs shall be subject to the sign regulations of Section 8.9.

4.7.2.I Subsequent Development and Construction
Unless otherwise specified in the original approval of the PUD, once initial construction is complete, all subsequent development and construction shall be governed by the underlying zoning district regulations.

4.7.2.J Development Standards and Modifications
Unless otherwise expressly allowed by this section and approved by the County Board of Supervisors during the PUD approval process, PUDs shall be subject to all applicable standards of this Code, including those of the underlying base zoning district. In order to approve modifications of otherwise applicable standards, the County Board of Supervisors must find that:

4.7.2.J.1 Deviations from applicable base district or subdivision design standards that otherwise would apply are justified by compensating public benefits of the PUD; and

4.7.2.J.2 The PUD includes adequate provisions for utilities services and emergency vehicle access.

4.8 LAND SPREADING OF PETROLEUM CONTAMINATED SOIL OVERLAY DISTRICT

4.8.1 General

4.8.1.A Purpose and Intent
The purpose of the Land Spreading of Petroleum Contaminated Soil Overlay District is to promote the health, safety, property, value, aesthetics, and general welfare of the County by ensuring the effective regulation and restriction of petroleum contaminated soils in Dodge County. It is the general intent of the County, through this Overlay District to:

4.8.1.A.1 Regulate and restrict the spreading of petroleum contaminated soils on lands and waters of the County;

4.8.1.A.2 Further regulate and restrict area coverage and density, so as to stabilize and protect property values;

4.8.1.A.3 Prevent water pollution or other objectionable influences detrimental to the public health, safety, comfort, or general welfare of the immediate neighborhood or community;

4.8.1.A.4 Protect spawning grounds, fish, and aquatic life, and otherwise further the appropriate use of land and conservation of natural resources;

4.8.1.A.5 Preserve and promote the beauty of the County; and

4.8.1.A.6 Implement the Dodge County Comprehensive Plan and plan components.

4.8.1.B Applicability
The requirements of the Land Spreading of Petroleum Contaminated Soil Overlay District shall apply to all lands and waters within the unincorporated parts of those towns that have adopted the Dodge County Land Spreading of Petroleum Contaminated Soil Ordinance in accordance with the authority granted by Section 59.69 of the Wisconsin Statutes.

4.8.2 Administration

4.8.2.A Conditional Use Permit Required
In addition to complying with the development standards of Section 4.8.3, land spreading of petroleum contaminated soil shall require a Conditional Use Permit issued pursuant to Section 2.3.6.

4.8.2.B Procedure
Applications for Conditional Use Permits for land spreading of petroleum contaminated soil shall be made to the Land Use Administrator. Such applications shall include where applicable:

4.8.2.B.1 Names, addresses, and phone numbers of the landowner and other responsible party.

4.8.2.B.2 Description of the subject site by lot, block, and recorded subdivision or by metes and bounds, parcel identification number, and address of the subject site;

4.8.2.B.3 Volume of contaminated soil to be land spread.

4.8.2.B.4 Results of an analysis showing the concentration of contaminants in the soil to be land spread.

4.8.2.B.5 Start date and period of time over which land spreading will take place.

4.8.2.B.6 Statement that applicant intends to comply with Department of Natural Resources regulations Chapters 518 and 718 and submit written closure report.

4.8.2.B.7 Certification that the site has not been previously used as a land spreading site.

4.8.2.B.8 Soil boring logs that show the separation distance to groundwater and bedrock.

4.8.2.B.9 Notification of all abutting and adjoining property owners, and notification of local governments regarding trucking routes.

4.8.2.B.10 Limitation on seasonal spreading, if any.

4.8.2.B.11 Erosion control methods to be used.

4.8.2.B.12 Financial responsibility declaration.

4.8.2.B.13 Additional information as may be required by the Committee or other boards, commissions or officers of the County.

4.8.2.C Notification
The applicant shall notify the Department at least 2 working days prior to land spreading petroleum contaminated soil. The Land Use Administrator may enter the subject property at any reasonable time to conduct on-site inspections to determine if all conditions applied to the Conditional Use Permit have been met. The Department shall also be notified 2 working days prior to taking closure soil samples and shall be permitted to be present when such samples are taken.

4.8.2.D Review and Approval
In reviewing a Conditional Use Permit for land spreading of petroleum contaminated soil, the Committee shall evaluate the proposed use based upon the General Approval Criteria for Conditional Use Permits in Section 2.3.6(B), and also shall consider whether:

4.8.2.D.1 Safe and healthful conditions will be maintained;

4.8.2.D.2 Water pollution, including sedimentation, will be prevented or controlled;

4.8.2.D.3 The site is suitable for the proposed use based upon existing topographic and drainage features, direction of slope, soil type, and vegetation cover;

4.8.2.D.4 The site is suitable for the proposed use based upon the location of adjacent floodplains and flood ways of rivers or streams;

4.8.2.D.5 The site is suitable for the proposed use based upon existing or future water sources;

4.8.2.D.6 The proposed use will be compatible with neighboring uses in terms of odors, noise, vibration, health hazards, or possibility of accident.

4.8.3 Development Standards
Land spreading sites and land spreading of petroleum contaminated soil shall be subject to the following restrictions:

4.8.3.A No person shall deposit, on lands located in Dodge County, soil which was removed from property located outside of Dodge County which is contaminated by petroleum products. This restriction does not limit landfills located in Dodge County that are properly licensed for the disposal or remediation of petroleum contaminated soils from accepting petroleum contaminated soils from outside of Dodge County.

4.8.3.B There shall be no land spreading of numbers 4 and 6 fuel oil, waste oil and sludges, or hazardous wastes of any kind.

4.8.3.C No land spreading shall be allowed:

4.8.3.C.1 On floodplains.

4.8.3.C.2 On fields with drain tiles.

4.8.3.C.3 Within 100 feet of wetlands.

4.8.3.C.4 Within 300 feet of a ditch, drainageway, or body of water.

4.8.3.C.5 Within 500 feet of a private water supply.

4.8.3.C.6 Within 1,200 feet of a public water supply.

4.8.3.C.7 Within 500 feet of any residence, unless written consent is obtained from the resident and property owner. This distance may be reduced for the residence of the property owner on whose land contaminated soil is spread.

4.8.3.C.8 On slopes exceeding 6 percent.

4.8.3.D Land spreading sites can only receive one application of petroleum contaminated soil, and shall not be eligible for land spreading of other forms of waste.

4.8.3.E Applicant must follow State guidelines on maximum spreading thickness based on contamination concentrations and must follow all requirements of NR718 and NR518 unless County standards are more restrictive.

4.8.3.F Contaminated soil shall be mixed with underlying native soil within 48 hours of application.

4.8.3.G The site shall be planted as soon as practical after land spreading, but shall not be planted with a crop intended for human consumption prior to submittal of a closure report.

4.8.3.H The County reserves the right to require a performance bond prior to the issuance of a conditional use permit.

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4.9 MOBILE TOWER SITING AND RADIO BROADCAST SERVICE FACILITY OVERLAY DISTRICT REGULATIONS

4.9.1 General

4.9.1.A Purpose

The purpose of the Mobile Tower Siting and Radio Broadcast Service Facility Overlay District Regulations is to regulate the following:

4.9.1.A.1 The siting and construction of any new mobile service support structure and facilities;

4.9.1.A.2 The substantial modification of an existing support structure and mobile service structure and mobile service facility (Class 1 Collocation);

4.9.1.A.3 The collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities (Class 2 Collocation).

4.9.1.A.4 The siting, placement, construction or modification of radio broadcast service facilities.

4.9.1.B Intent

The intent of the Mobile Tower Siting and Radio Broadcast Service Facility Overlay District Regulations are:

4.9.1.B.1 To encourage the construction and location of mobile service facilities, mobile service support structures and radio broadcast service facilities in areas where the adverse impact on the environment, the community and the citizens of Dodge County is minimized.

4.9.1.B.2 To maintain and ensure that a non-discriminatory, competitive and broad range of mobile services and high quality mobile service infrastructure consistent with the Federal Telecommunications Act of 1996 are provided to serve the community, as well as the Dodge County's police, fire, and emergency response network quickly, effectively and efficiently.

4.9.1.B.3 To provide a process of obtaining the necessary permits for mobile service facilities, support structures and radio broadcast service facilities while at the same time protecting the legitimate interests of the citizens of Dodge County.

4.9.1.B.4 To encourage the use of alternative support structures, collocation of new antennas on existing support structures, and construction of support structures with the ability to locate three (3) or more providers.

4.9.1.B.5 To promote the public health, safety and general welfare of the Citizens of Dodge County with the minimum practical regulation that is necessary to accomplish this objective.

4.9.1.C Applicability and Exemptions

4.9.1.C.1 The requirements of the Mobile Tower Siting and Radio Broadcast Services Overlay District Regulations shall apply to all towers, antennas, and other communication facilities in unincorporated parts of those towns which have adopted the Dodge County Land Use Code in accordance with the authority granted by Section 59.69 of the Wisconsin Statutes.

4.9.1.C.2 Towers and antennas that are under 70 feet in height and are owned and operated by federally-licensed amateur radio station operators or are receive-only antennas shall be exempt from these regulations.

4.9.1.C.3 Towers and antennas for which a permit has been properly issued by the County or a town with zoning jurisdiction prior to the effective date of this Code shall not be required to meet the requirements of this Code.

4.9.1.C.4 These overlay district regulations are not intended to regulate residential satellite dishes or residential television antennas that are used privately. Additionally, the regulations in this overlay district are not intended to regulate satellite dishes or antennas whose regulation is prohibited by Section 59.69(4d) or its successor sections of the Wisconsin State Statutes or as permitted by Federal Law.

4.9.1.C.5 Mobile services providing public information coverage of news events of a temporary or emergency nature are exempt from these regulations.

4.9.1.D Principal or Accessory Use
Towers and antennas may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with zoning regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed and antennas that are installed in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.

4.9.1.E Definitions
All definitions contained within s. 66.0404(1) and 66.0406(1) Wisconsin Statutes are hereby incorporated in this Overlay District by reference.

4.9.2 Administration

4.9.2.A Permit Requirements

4.9.2.A.1 A conditional use permit shall be required for new support structures and facilities and for a Class 1 Collocation.

4.9.2.A.2 A land use permit shall be required for a Class 2 Collocation.

4.9.2.A.3 A conditional use permit shall be required for the placement, construction, or modification of radio broadcast service facilities.

4.9.2.B Application process for new mobile service support structures and facilities and for Class 1 Collocations.

4.9.2.B.1 All conditional use permit applications for new mobile service support structures and facilities and for Class 1 Collocation projects shall be submitted to the Land Use Administrator upon forms provided by the Department. Applications for a conditional use permit for new mobile service support structures and facilities and for Class 1 Collocation projects shall include the following:

4.9.2.B.1a The name, and business address of, and the contact individual for, the applicant.

4.9.2.B.1b The location of the proposed or affected support structure.

4.9.2.B.1c The location of the proposed mobile service facility.

4.9.2.B.1d If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

4.9.2.B.1e If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

4.9.2.B.1f If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile support structure that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

4.9.2.B.2 Completed Applications
If an applicant submits an application to the Department for a conditional use permit to engage in an activity described in this section of the Code, which contains all of the information required under this section, the Department shall consider the application complete. If the Department does not believe that the application is complete, the Department shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

4.9.2.B.3 County Responsibilities
Within 90 days of receipt of a complete application, the Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Department may agree in writing to an extension of the 90 day period.

4.9.2.B.3a Review the application to determine whether the proposed project complies with all applicable aspects of the Code, subject to the limitations in this section. If the application is determined to be incomplete, the Land Use Administrator shall notify the developer/applicant of the application deficiencies and no further action shall be taken on the application until the required information is submitted and the application is determined to be complete.

4.9.2.B.3b The Land Use Administrator shall review each complete application in light of the approval Criteria of Section 2.3.6.F and shall provide a report to the Committee recommending approval, approval with conditions or denial of the application. Failure of the Land Use Administrator to provide a report to the Committee shall constitute a recommendation for approval of the application.

4.9.2.B.3c Public hearings for conditional use permit applications shall be held within 45 days of receipt by the Department of a complete application and shall receive written and published notice in accord with the applicable Wisconsin State Statutes and the general notice provisions of Section 2.2.6. In addition, the Land Use Administrator shall notify all property owners within 300 feet of the subject property boundary of the time, date and subject matter of the hearing. Furthermore, the Land Use Administrator shall notify the County Highway Department and/or the State Department of Transportation for any development within 500 feet of an existing or proposed right-of-way of freeways, expressways, interstate and controlled access traffic-ways, and within l,000 feet of an existing or proposed interchange or turning lane right-of-way and request a recommendation for proposed projects within their jurisdiction. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application.

The 45 day time limit in which to hold the public hearing may be extended by written agreement with the applicant. The 45 day time limit in which to hold the public hearing may also be extended by the Committee when it has been determined by the Committee that the public hearing notice requirements in Section 2.2.6 for said hearing have not been met. In such instances, the Committee shall reschedule the public hearing for a date that is within 30 days of the date of determination by the Committee that the public hearing notice requirements in Section 2.2.6 were not met or within the time limit as extended by the written agreement with the applicant.

4.9.2.B.3.d Committee Review and Decision
The Committee shall hold a public hearing on the application and following the public hearing shall approve, approve with conditions or deny the conditional use permit application within 15 days after the public hearing based on the general approval criteria listed in 2.3.6.F of the Code subject to the limitations in this overlay district unless the time is extended by written agreement with the applicant. Failure of the Committee to take final action within 90 days of the receipt of a complete application or within the time as extended by agreement with the applicant shall constitute an approval of the conditional use permit as proposed.

4.9.2.B.3.d.1 Compliance with all other provisions of this Code, such as lot width and area, yards, height, parking, loading, traffic, highway access, and performance standards, shall be required of all conditional uses, subject to the limitations in this overlay district.

4.9.2.B.3.d.2 The Committee may disapprove an application if the applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under Subsection 4.9.2.B.1f.

4.9.2.B.3.d.3 The Department shall notify the applicant, in writing, of the Committee's final decision. If the decision is to disapprove the application, the Department shall include with the written notification substantial evidence which supports the decision.

4.9.2.B.3.d.4 A party who is aggrieved by the final decision of the Committee under this subsection, may bring an action in circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

4.9.2.B.4 Factors Considered in Granting a Conditional Use Permits
The Committee shall consider the following factors in determining whether to issue a permit, although the Committee may waive or reduce the burden on the applicant of one or more of these criteria if the Committee concludes that the intent of this Code is better served thereby.

4.9.2.B.4.a Height of the proposed tower;

4.9.2.B.4.b Proximity of the tower to residential structures;

4.9.2.B.4.c Design of the tower, with particular reference to design characteristics that have the effect of accommodating other users.

4.9.2.B.4.e Proposed ingress and egress; and

4.9.2.B.4.f Availability of suitable existing towers and other structures.

4.9.2.B.5 Availability of Suitable Existing Towers or Other Structures
The Committee may disapprove an application if the applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under Subsection 4.9.2.B.1f. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:

4.9.2.B.5.a No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.

4.9.2.B.5.b Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.

4.9.2.B.5.c Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.

4.9.2.B.5.d The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.

4.9.2.B.5e The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are economically burdensome.

4.9.2.B.5.f The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

4.9.2.C Application Process for Class 2 Collocation

4.9.2.C.1 All land use applications for Class 2 Collocation projects shall be submitted to the Land Use Administrator upon forms provided by the Department. Applications for a Class 2 Collocation project shall include the following:

4.9.2.C.1.a The name, and business address of, and the contact individual for, the applicant.

4.9.2.C.1.b The location of the proposed or affected support structure.

4.9.2.C.1.c The location of the proposed mobile service facility.

4.9.2.C.2 Completed Applications
If an applicant submits an application to the Department for a land use permit to engage in a Class 2 collocation, which contains all of the information required under this subsection, the Department shall consider the application complete. If the Department does not believe that the application is complete, the Department shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

4.9.2.C.3 County Responsibilities
Within 45 days of receipt of a complete application, the Land Use Administrator shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Department may agree in writing to an extension of the 45 day period.

4.9.2.C.3a Review the application to determine whether the proposed project complies with all applicable aspects of the Code, subject to the limitations in this section. If the application is determined to be incomplete, the Land Use Administrator shall notify the developer/applicant of the application deficiencies and no further action shall be taken on the application until the required information is submitted and the application is determined to be complete.

4.9.2.C.3.b Make a final decision whether to approve or disapprove the application.

4.9.2.C.3.c Notify the applicant, in writing, of its final decision.

4.9.2.C.3.d If the application is approved, issue the applicant the relevant permit.

4.9.2.C.3.e If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

4.9.2.C.3.f A party who is aggrieved by the final decision of the Land Use Administrator under this subsection, may bring action in the circuit court of the County in which the proposed activity, which is the subject of the application, is to be located.

4.9.2.D. Application process for the placement, construction or modification of a radio broadcast facility

4.9.2.D.1 A conditional use permit application for the placement, construction or modification of a radio broadcast facility shall be submitted to the Land Use Administrator upon forms provided by the Department. The application, review and decision procedures for the conditional use permit shall be in accord with Section 2.3.6 of the Land Use Code.

4.9.3 Development Standards

4.9.3.A General Design Requirements

4.9.3.A.1 Towers shall be painted with alternate bands of aviation orange and white paint in accordance with standards listed in Chapter 3, Marking Guidelines, of the FAA Federal Advisory Circular 70/7460-1, Obstruction, Marking and Lighting and subsequent revisions. The tower owner shall also be responsible for repainting when the color changes noticeably or its effectiveness is reduced by scaling, oxidation, chipping, or layers of contamination.

4.9.3.A.2 At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.

4.9.3.A.3 If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

4.9.3.A.4 Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

4.9.3.A.5 Towers and antennas shall not be used for displaying any advertising.

4.9.3.A.6 No tower shall exceed 500 feet in height.

4.9.3.B Federal Requirements

All towers shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas.

4.9.3.C Accommodations of Other Users (Co-location)

4.9.3.C.1 Any proposed communication tower and tower site shall be designed, structurally, electrically and in all respects, to accommodate co-location of both the applicant's antenna(s) and comparable antenna(s) for at least three additional users. Towers and tower sites shall be designed to allow for future rearrangement of antennas upon the tower, to accept antennas mounted at varying heights, and to accommodate supporting buildings and equipment.

4.9.3.C.2 The holder of a permit for a tower shall allow co-location for at least three additional users and shall not make access to the tower and tower site for the additional users economically unfeasible. If additional user(s) demonstrate (through an independent arbitrator or other pertinent means) that the holder of a tower permit has made access to such tower and tower site economically unfeasible, then the permit shall become null and void.

4.9.3.D Setbacks and Separation

The following setbacks and separation requirements shall apply to all towers and antennas for which a permit is required; provided, however, that the Committee may reduce the standard setbacks and separation requirements if the intent of this section would be better served thereby.

4.9.3.D.1 Communication towers and projecting aerials shall be located a minimum distance equal to the height of the tower from any residential structure.

4.9.3.D.2 Communication towers, including but not limited to radio and television transmission and relay towers, aerials, and observation towers, are exempt from the zoning district height requirements, however, no tower or any projecting aerial attached to the tower shall exceed 500 feet in height.

4.9.3.D.3 Guy wires, and accessory facilities must satisfy all applicable setback requirements of Chapter 5 of this Code.

4.9.3.D.4 Communication towers and projecting aerials shall be located a minimum distance equal to 1/3 the structure height from the side and rear lot line.

4.9.3.D.5 Communication towers and projecting aerials shall be located in accordance with the minimum setback distances required in Section 5.1.2.E for roads.

4.9.3.D.6 Communication towers that are located within the jurisdictional boundaries of the Dodge County Airport Zoning Ordinance shall not exceed the maximum airport height regulations.

4.9.3.D.7 Setback Exception: Application of Set Back Fall Zone.
If an applicant provides the Department with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller fall zone area than the setback required in the Code, the smaller fall zone setback area shall be used as the setback requirement unless the Department provides the applicant with substantial evidence that the engineering certification is flawed.

4.9.3.E Security Fencing
Tower sites shall be enclosed by security fencing and shall be equipped with an appropriate anti-climbing device sufficient to deter the general public from obtaining access to the site.

4.9.3.F Landscaping
Tower facilities shall be landscaped with a buffer of plant material that effectively screens the base of the tower and the supporting facilities from direct view of the tower site from an adjacent property. The standard buffer shall consist of a landscaped strip at least 4 feet wide outside the perimeter of the security fencing. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.

4.9.3.G Removal of Abandoned Antennas and Towers
Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned. In such circumstances, the following shall apply:

4.9.3.G.1 The owner of such antenna or tower or owner(s) of the property where the tower site is located shall remove said antenna and/or tower, including all supporting equipment and building(s), within 90 days of receipt of notice from the Land Use Administrator notifying the owner of such abandonment. If removal to the satisfaction of the Land Use Administrator does not occur within said 90 days, the Land Use Administrator may remove and salvage said antenna or tower and all supporting equipment and building(s) at the property owner's expense. If there are 2 or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

4.9.3.G. 2 The applicant for a permit under this section shall submit a copy of a signed agreement between the property owner and the owner of the tower, antenna(s), and supporting equipment and building(s), detailing requirements for abandonment and subsequent removal based on the provisions of Section 4.9.3(G)(1). This agreement shall contain provisions binding said agreement on future property owner(s) and future owner(s) of a tower, antenna, and all supporting equipment and building(s).

4.9.3.H Limitations
With regard to an activity described in this Overlay District, the County may not do any of the following:

4.9.3.H.1 Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.

4.9.3.H.2 Enact an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities.

4.9.3.H.3 Enact an ordinance prohibiting the placement of a mobile service structure in particular locations within the County.

4.9.3.H.4 Charge a mobile radio service provider any recurring fee for an activity described in Section 4.9.2.B or 4.9.2.C.

4.9.3.H.5 Permit 3rd party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

4.9.3.H.6 Disapprove an application to conduct an activity described under Section 4.9.2.B based solely on aesthetic concerns.

4.9.3.H.7 Disapprove an application to conduct a Class 2 collocation on aesthetic concerns.

4.9.3.H.8 Enact an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.

4.9.3.H.9 Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the County which fall into disuse. There is a rebuttable presumption that a surety requirement of $20,000.00 or less complies with this paragraph.

4.9.3.H.10 Prohibit the placement of emergency power systems**.**

4.9.3.H.11 Require the mobile service support structure be placed on property owned by the County.

4.9.3.H.12 Disapprove an application based solely on the height of the mobile service structure or on whether the structure requires lighting.

4.9.3.H.13 Condition approval of such activities on the agreement of the structure or mobile service facility to provide space on or near the structure for the use of or by the County at less than the market rate, or to provide the County with other services via the structure or facilities at less than the market rate.

4.9.3.H.14 Limit the duration of any permit that is granted under this Overlay District.

4.9.3.H.15 Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.

4.9.3.H.16 Disapprove an application based on an assessment by the County of the suitability of other locations for conduction the activity.

4.9.3.H.17 Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.

4.9.3.H.18 Consider an activity a substantial modification if a greater height is necessary to avoid interference with an existing antenna.

4.9.3.H.19 Consider an activity a substantial modification if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by Cable.

4.9.3.H.20 Limit the height of a mobile service support structure to under 200 feet.

4.9.3.H.21 Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the County in connection with the County's exercise of its authority to approve the application.

4.9.3.H.22 Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the County to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, a County or an entity in which a County has governance, competitive, economic, financial or other interest.

4.9.4 Effective Date of the Permit

4.9.2.A Conditional use permits and land use permits granted for mobile service support structures and facilities, class 1 collocation projects and class 2 collocation projects under Section 4.2.9.A.1 and 4.9.2.A.2 of this overlay district shall not expire.

4.9.2.B Conditional use permits granted for radio broadcast facilities under Section 4.2.9.A.3 shall expire one year after its effective date or at such alternative time specified in the approval process unless construction has been diligently pursued, a Certificate of Zoning Compliance has been issued, the use established or the conditional use permit is renewed for a period not to exceed one year. A conditional use permit shall also expire upon termination of the project or if the rights granted by the permit are discontinued for 180 consecutive days.

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4.11 WIND ENERGY SYSTEM OVERLAY DISTRICT

4.11.1 General

4.11.1.A Statutory Authority
These overlay district regulations are adopted pursuant to Wisconsin State Statutes Section 59.69, 66.0401 and 66.0403 and Wisconsin Administrative Code PSC 128.

4.11.1.A.1 Whenever any provision of the overlay district regulations refer to or cites a section of the Wisconsin State Statutes or Administrative Code and that section is later amended or superseded, the overlay district regulations shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

4.11.1.B Purpose and Intent
The purpose and intent of this Overlay District is to promote and protect the health, safety and general welfare of the people and Communities within Dodge County by providing for the effective regulation of wind energy system facilities in Dodge County under the authority granted by the Wisconsin Statutes.

4.11.1.C Applicability
The jurisdiction of this Wind Energy System Overlay District shall include those areas that are subject to the Dodge County Land Use Code regulations contained within this Code.

4.11.1.D Principal or Accessory Use
A WES may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of a WES on such lot. For purposes of determining whether the installation of a WES complies with setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the WES may be located on leased parcels or easements within such lots. Wind energy systems that are constructed and installed in accordance with the provisions of this Code shall not be deemed to constitute the expansion of a nonconforming use or structure.

4.11.1.E Indemnification
The operator of a wind energy system facility shall defend, indemnify and hold harmless the County and Town and their officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever including attorney fees arising out of the acts or omissions of the operator concerning the operation of the wind energy system facility without limitation, whether said liability is premised on contract or on tort.

4.11.2 Administration

4.11.2.A Wind Energy Systems
All applicable rules, regulations, and laws as set forth in the Wisconsin State Statutes, Sections 66.0401 and 66.403, and the Wisconsin Administrative Code, Chapter PSC 128, are hereby adopted by reference and made a part of this section as if fully set forth herein.

4.11.2.B Permits
No WES shall be constructed, located, installed, reconstructed, enlarged, or relocated, including the placement of additional buildings or other supporting equipment used in connection with said WES, without first obtaining a Land Use Permit and a Conditional Use Permit, except as allowed under Subsection 4.11.2.B.1, and without full compliance with the provisions of this Code and all other applicable County and State requirements. The Committee may authorize the Land Use Administrator to issue a Land Use Permit for a WES after a Conditional Use Permit is issued pursuant to the procedures set forth in Subsection 2.3.6 of this Code and this subsection.

4.11.2.B.1 Exception:
A single "Personal Wind Energy System" (PWES) that is for use by the individual land owner on which the PWES is to be located, that is 75 feet or under in total height, and that has a nameplate capacity of less than 5 kilowatts may be located on a lot with a County Land Use Permit. No Conditional Use Permit will be required for a single PWES meeting these requirements. The location of two or more PWESs on a lot, the location of a PWES that exceeds 75 feet in total height or that has a nameplate capacity greater than 5 kilowatts and/or the location of any other wind energy system on a lot shall require a land use permit and conditional use permit in accordance with Subsection 4.11.2.B

4.11.2.B.2 Conditional Use Permit Applications
Applications for Conditional Use permits under this section shall be submitted to the Department in accordance with Subsection 2.3.6. The contents of the application shall include all applicable information required under PSC 128.30 Wis. Adm. Code. The exemptions listed under PSC 128.60 shall apply to an application that is submitted for a small wind energy system.

4.11.2.B.3 Land Use Permit Applications
Applications for Land Use permits under this section shall be submitted to the Department in accordance with Subsection 2.3.5. The contents of the application shall include all applicable information required under PSC 128.30 Wis. Adm. Code. The exemptions listed under PSC 128.60 shall apply to an application that is submitted for a small wind energy system.

4.11.2.C Effective Date of Permits
Land Use Permits and Conditional use permits shall be effective beginning on the date of approval and shall remain effective for the period indicated on the permit.

4.11.2.D Preservation of Rights
The transfer of title to any property shall not change the rights and duties under this Code.

4.11.3. Requirements
4.11.3.A All wind energy systems shall meet or exceed the applicable rules, regulations and laws as set forth in the Wisconsin State Statutes, Sections 66.0401 and 66.0403, the Wisconsin Administrative Code, Chapter PSC 128, the Federal Aviation Administration (FAA) regulations and any other applicable Federal, State and County regulations.

4.11.3.B In accord with the authority granted under Section 66.0401(4)(f)(2), Wisconsin Statutes, the County may deny an application for a wind energy system, that has a nominal capacity of at least one megawatt, if the proposed site of the wind energy system is located in an area primarily designated for future residential or commercial development as shown on the County's Future Land Use Map which was adopted as part of the County's comprehensive plan.

4.12 NON-METALLIC MINING RECLAMATION OVERLAY DISTRICT

4.12.1 General

4.12.1.A Purpose
The purpose of this overlay district is to establish a local program to ensure the effective reclamation of non-metallic mining sites on which non-metallic mining takes place in Dodge County after the effective date of this overlay district.

4.12.1.B Interpretation
In their interpretation and application, the provisions of this overlay district shall be held to be the applicable requirements for non-metallic mining reclamation and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes outside the reclamation requirements for non-metallic mining sites required by subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code. Where any terms or requirements of this overlay district may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply. Where a provision of this overlay district is required by Wisconsin Statutes, or by a standard in Chapter NR 135, Wisconsin Administrative Code, and where the provision is unclear, the provision shall be interpreted to be consistent with the Wisconsin Statutes and the provisions of Chapter NR 135, Wisconsin Administrative Code.

4.12.1.C Applicability and Exemptions

4.12.1.C.1 The requirements of this overlay district apply to all operators of non-metallic mining sites within Dodge County operating on or commencing to operate after August 1st, 2001 and as provided in Sections NR 135.02(1) and (2), Wisconsin Administrative Code except where exempted in 4.12.1(C)(2) and except for non-metallic mining sites located in a city, village or town within Dodge County that has adopted an ordinance pursuant to Section 295.14, Wisconsin Statutes, and Section NR 135.32(2), Wisconsin Administrative Code.

4.12.1.C.2 This overlay district does not apply to the exempt activities listed in Section NR 135.02(3), Wisconsin Administrative Code.

4.12.1.D Definitions
All definitions for the purposes of this overlay district are those contained in Section NR 135.03, Wisconsin Administrative Code.

4.12.1.E Standards
All non-metallic mining sites subject to this overlay district shall be reclaimed in conformance with the standards contained in Subchapter II of Chapter NR 135, Wisconsin Administrative Code.

4.12.2 Administration

4.12.2.A Permit Application

4.12.2.A.1 Required Submittal
The operator of all non-metallic mining sites that operate on or after August 1st, 2001 shall apply for a reclamation permit from Dodge County. All reclamation permit applications under this section shall be accompanied by the information required by Section NR 135.18, Wisconsin Administrative Code.

4.12.2.A.2 Deleted – See Appendix

4.12.2.A.3 New Mines
The operator of any non-metallic mine site that engages in or plans to engage in non-metallic mining that will begin operations after August 1st, 2001 shall submit an application that meets the requirements of Sections NR 135.18, Wisconsin Administrative Code to the Department prior to beginning operations. This application shall be accompanied by a plan review fee as specified in 4.12.7.

4.12.2.B Public Notice and Right of Hearing

4.12.2.B.1 New Mines
Dodge County shall provide public notice and the opportunity for a public informational hearing as set forth in Sections NR 135.20(1) and (2), Wisconsin Administrative Code for any non-metallic mining site for which a complete reclamation permit application that satisfies 4.12.2(A)(3) is received.

4.12.2.B.2 Deleted – See Appendix

4.12.2.B.3 Local Transportation-Related Mines
No public notice or informational hearing is required for a non-metallic mining reclamation permit issued to a local transportation-related mine pursuant to 4.12.2(C)(5).

4.12.2.C Issuance of Permit

4.12.2.C.1 Permit Required
Every operator of a non-metallic mining site in Dodge County who engages in or plans to engage in non-metallic mining after September 1st, 2001 shall obtain a reclamation permit issued under this section, except non-metallic mining sites exempt from this overlay district as provided in 4.12.1(C)(2). No person may engage in non-metallic mining or non-metallic mining reclamation after September 1st, 2001 without a reclamation permit issued pursuant to this overlay district.

4.12.2.C.2 Deleted – See Appendix

4.12.2.C.3 Deleted – See Appendix

4.12.2.C.4 Permit Issuance for New Mines
Applications for reclamation permits for non-metallic mining sites that satisfy 4.12.2(A)(3) shall be issued a reclamation permit or otherwise acted on as provided in Section NR 135.21, Wisconsin Administrative Code. The permit shall require compliance with a reclamation plan submitted by the applicant that conforms with 4.12.4(C), and provision by the applicant of financial assurance that conforms with 4.12.5(C) payable to Dodge County prior to beginning mining.

4.12.2.C.5 Automatic Permit for Local Transportation-Related Mines
Dodge County shall issue an automatic permit under this subsection for any borrow site operated to provide material for a locally-administered transportation project that meets the criteria in Section NR 135.23(1)(a), Wisconsin Administrative Code. This automatic permit shall be issued according to the provisions of Sections NR 135.23(1)(b) through (j), Wisconsin Administrative Code.

4.12.2.C.6 Expedited Review
Any operator of a non-metallic mining site may obtain an expedited review of a reclamation permit application by paying the expedited review fee specified in 4.12.7(B). The expedited review shall be carried out according to the provisions of Section NR 135.23(2), Wisconsin Administrative Code. Such expedited review shall not waive, shorten or otherwise affect the public notice and right of hearing pursuant to 4.12.2.

4.12.2.C.7 Permit Conditions
Permits issued under this section may include conditions as provided in Section NR 135.21, Wisconsin Administrative Code. One required condition shall be that new mines shall obtain financial assurance prior to beginning mining pursuant to Section NR 135.40, Wisconsin Administrative Code.

4.12.2.C.8 Permit Denial
An application for a non-metallic mining reclamation permit shall be denied if any of the factors specified in Section NR 135.22, Wisconsin Administrative Code exist.

4.12.2.D Alternative Requirements

4.12.2.D.1 Scope of Alternative Requirements Approvable
An operator of a non-metallic mining site may request an alternative requirement to any reclamation standard. Such a request may be made only on the basis of the criteria set forth in Section NR 135.26(1), Wisconsin Administrative Code.

4.12.2.D.2 Procedures
The operator of a non-metallic mining site requesting an alternate requirement shall demonstrate all the criteria in Section NR 135.26, Wisconsin Administrative Code. This shall be submitted in writing to the Department. Alternative requirements shall be approved by the Dodge County Planning, Development and Parks Committee.

4.12.2.D.3 Transmittal of Decision on Request for Alternate Requirements
The decision on a request for alternative reclamation requirements shall be in writing to the applicant and shall include documentation of why the alternative requirement was or was not approved.

4.12.2.D.4 Notice to Wisconsin Department of Natural Resources
Dodge County shall provide notice to the Wisconsin Department of Natural Resources as provided in Section NR 135.26(3), Wisconsin Administrative Code.

4.12.2.E Permit Duration
A non-metallic mining reclamation permit issued under this overlay district shall last through operation and reclamation of the non-metallic mining site, unless suspended or revoked pursuant to 4.12.12(B)(2), or as limited under Section NR 135.27, Wisconsin Administrative Code where the mine operator is not the landowner.

4.12.2.F Permit Transfer
A non-metallic mining reclamation permit issued under this overlay district shall be transferred to a new owner or operator upon satisfaction of the conditions in Section NR 135.28, Wisconsin Administrative Code.

4.12.2.G Previously Permitted Sites
For any non-metallic mining site which had a reclamation permit previously issued pursuant to Chapter NR 135, Wisconsin Administrative Code that becomes subject to reclamation permitting authority of Dodge County the previously-issued municipal reclamation permit's terms and conditions shall remain in force until they can be modified by Dodge County pursuant to 4.12.2(I)(1).

4.12.2.H Review
Any permitting decision or action made by Dodge County under this overlay district may be reviewed as set forth in Section NR 135.30, Wisconsin Administrative Code.

4.12.2.I Permit Modification

4.12.2.I.1 By Dodge County
A non-metallic mining reclamation permit issued under this overlay district may be modified by Dodge County if it finds that, due to changing conditions, the non-metallic mining site is no longer in compliance with this overlay district. Such modification shall be by an order conforming with the procedures in 4.12.12(B) and as provided in Section NR 135.24(1), Wisconsin Administrative Code.

4.12.2.I.2 At the Operator's Option
If operator of any non-metallic mine that holds a reclamation permit issued under this overlay district desires to modify such permit or reclamation plan approved under this overlay district, it may request such modification by submitting a written application for such modification to the Department. The application for permit or plan modification shall be acted on using the standards and procedures of this overlay district.

4.12.2.I.3 Required by the Operator

The operator of any non-metallic mine that holds a reclamation permit issued under this overlay district shall request a modification of such permit if required under the circumstances set out in Section NR 135.27, Wisconsin Administrative Code. Such application for permit modification shall be acted on using the standards and procedures of this overlay district.

4.12.2.I.4 Review
All actions on permit modifications requested or initiated under this section are subject to review under 4.12.2(H).

4.12.3 Permit Suspension or Revocation

4.12.3.A Grounds
Dodge County may suspend or revoke a non-metallic mining reclamation permit issued pursuant to this overlay district if it finds any of the grounds listed in Section NR 135.25(1), Wisconsin Administrative Code.

4.12.3.B Procedures
If Dodge County finds grounds for suspending or revoking a non-metallic mining reclamation permit, it may issue a special order suspending or revoking such permit as set forth in 4.12.12(B)(2).

4.12.3.C Consequences
The consequences of a reclamation permit suspension or revocation order under 4.12.3(B) shall be as set forth in Sections NR 135.25(2) and (3), Wisconsin Administrative Code.

4.12.4 Reclamation Plan

4.12.4.A Requirements
All operators of non-metallic mining sites subject to this overlay district shall prepare and submit a reclamation plan that meets the requirements of Section NR 135.19, Wisconsin Administrative Code.

4.12.4.B Deleted – See Appendix

4.12.4.C New Mines
The operator of any non-metallic mining site that applies for a permit in conformance with 4.12.2(A)(3) shall submit the reclamation plan required by 4.12.4(A) with its application for a reclamation permit.

4.12.4.D Deleted – See Appendix

4.12.4.E Approval of Reclamation Plan
Dodge County shall approve, conditionally approve or deny the reclamation plan submitted under this section in writing as part of permit issuance pursuant to 4.12.2(C)(4) for new mines. Conditional approvals of reclamation plans shall be made according to 4.12.2(C)(7), and denials of reclamation plans made according to 4.12.2(C)(8). The operator shall keep a copy of the reclamation plan required by this section, once approved by Dodge County under this overlay district, at the mine site or, if not practicable, at the operator's nearest office or place of business.

4.12.5 Financial Assurance

4.12.5.A Requirements
All operators of non-metallic mining sites in Dodge County shall prepare and submit a proof of financial assurance of successful reclamation that meets the requirements of Section 135.40, Wisconsin Administrative Code.

4.12.5.B Deleted – See Appendix

4.12.5.C New Mines
The operator of any non-metallic mining site that applies for a reclamation permit in conformance with 4.12.2(A)(3) shall submit the proof of financial assurance required by 4.12.5(A) as specified in the reclamation permit issued to it under this overlay district.

4.12.5.D Public Non-Metallic Mining
The financial assurance requirements of this section do not apply to non-metallic mining conducted by the State of Wisconsin, a state agency, board, commission or department, or a municipality.

4.12.6 Annual Operator Reporting

4.12.6.A Contents and Deadline
Annual reports shall be submitted by the operators of non-metallic mining sites that satisfy the requirements of Section 135.36, Wisconsin Administrative Code. The annual report shall cover activities on unreclaimed acreage for the previous calendar year and be submitted by January 31st. Annual reports shall be submitted until reclamation at each non-metallic mining site is certified as complete under 4.12.10(C). Annual reports shall be submitted using the Dodge County Non-Metallic Reclamation Annual Report Form.

4.12.6.B Inspection in Lieu of Report
Dodge County may, at its discretion, obtain the information required in 4.12.6(A) by written documentation of an inspection it completes during a calendar year, as set forth in Section NR 135.36(4), Wisconsin Administrative Code.

4.12.6.C Retention of Annual Reports
Annual reports submitted under this section or inspection records that replace them shall be retained by Dodge County for at least 10 years after the calendar year to which they apply to the Department. These records, or accurate copies of them, shall be made available to the Wisconsin Department of Natural Resources upon written request or during its inspection or audit activities carried out pursuant to Chapter NR 135, Wisconsin Administrative Code.

4.12.7 Plan Review Fees

4.12.7.A Amount and Applicability
A person who intends to operate a non-metallic mining site for which a permit application has been submitted under 4.12.2(A)(3) shall submit a non-refundable plan review fee as specified in the Dodge County Fee Schedule. No plan review fee may be assessed under this section for any local transportation-related mine issued an automatic permit under 4.12.2(C)(5). A separate plan review fee shall be paid under this section for any modification to an existing reclamation plan submitted pursuant to 4.12.2(I).

4.12.7.B Expedited Plan Review Fee
A person who intends to operate a non-metallic mining site for which a permit application has been submitted under 4.12.2(A)(3) may obtain expedited reclamation plan review by paying a fee as specified in the Dodge County Fee Schedule Ordinance. Such fee shall be in addition to that required in 4.12.7(A). The expedited plan review shall be completed within five business days.

4.12.7.C Relation to Annual Fee
Any reclamation plan review fee or expedited reclamation plan review fee collected under this section shall be added to and collected as part of the first annual fee collected under 4.12.8.

4.12.8 Annual Fees

4.12.8.A Areas Subject to Fees, Procedures and Deadline
Operators of all non-metallic mining sites subject to reclamation permits issued under this overlay district shall submit an annual fee to Dodge County. Fees paid under this section shall include both a share for the Wisconsin Department of Natural Resources under 4.12.8(B) and a share for Dodge County under 4.12.8(C) that equals as closely as possible the costs of examination and approval on non-metallic mining reclamation plans and the

inspection of non-metallic mining reclamation sites. These fees shall be calculated based on the amount of unreclaimed acres of each site, as defined in Section NR 135.39(1), Wisconsin Administrative Code and according to its provisions. Such fees apply to a calendar year or any part of a year in which non-metallic mining takes place, until final reclamation is certified as complete under 4.12.10. Fees shall be paid to Dodge County on or before January 31st for the previous calendar year.

4.12.8.B Wisconsin Department of Natural Resources Share of Fee
Fees paid under this section shall include a share for the Wisconsin Department of Natural Resources equal to the amount specified in Section NR 135.39(3), Wisconsin Administrative Code. For sites on which no non-metallic mining has taken place during a calendar year, fees to be paid under this section for the following year shall be as specified in NR 135.39(6)(b).

4.12.8.C Dodge County's Share of Fee
Fees paid under this section shall also include an annual fee due to Dodge County which shall be as specified in the Dodge County Fee Schedule Ordinance.

4.12.8.D Reduced Fee for Inactive Mines
Any site on which no non-metallic mining activity has taken place in a calendar year shall be assessed a fee as specified in the Dodge County Fee Schedule Ordinance.

4.12.9 Regulatory Reporting and Documentation

4.12.9.A Reporting
Dodge County shall send an annual report to the Wisconsin Department of Natural Resources including the information required by Section NR 135.37, Wisconsin Administrative Code.

4.12.9.B Documentation
Dodge County shall, to the best of its ability, maintain the information set forth in Section NR 135.47, Wisconsin Administrative Code, and make it available to the Wisconsin Department of Natural Resources for that agency's audit of Dodge County's reclamation program pursuant to Section NR 135.47, Wisconsin Administrative Code.

4.12.10 Completed Reclamation - Reporting, Certification and Effect

4.12.10.A Reporting
The operator of a non-metallic mining site may certify completion of reclamation for a portion or all of the non-metallic mining site pursuant to a reclamation plan prepared and approved pursuant to this overlay district and Chapter NR 135, Wisconsin Administrative Code.

4.12.10.B Reporting of Interim Reclamation
The operator of a non-metallic mining site may report completion of interim reclamation as specified in the reclamation plan for the site prepared and approved pursuant to this overlay district and Chapter NR 135, Wisconsin Administrative Code. Reporting of interim reclamation shall be done according to the procedures in 4.12.10(A).

4.12.10.C Certification of Completed Reclamation
Dodge County shall inspect a non-metallic mining site for which reporting of reclamation or interim reclamation has been submitted pursuant to this subsection within 60 days of receipt, and make a determination in writing in accordance with Section NR 135.40(7)(c), Wisconsin Administrative Code. If it is determined that interim or final reclamation is complete, including revegetation as specified in a plan that conforms with 4.12.4, Dodge County shall issue the mine operator a written certificate of completion.

4.12.10.D Effect of Completed Reclamation
If reclamation is certified by Dodge County as complete under 4.12.10(C) for part or all of a non-metallic mining site, then:

4.12.10.D.1 No fee shall be assessed under 4.12.8 for the area so certified.

4.12.10.D.2 The financial assurance required by 4.12.5 shall be released.

4.12.10.E Effect of Inaction Following Report of Completed Reclamation
If no written response as required by 4.12.10(C) for an area of the mine site reported as reclaimed or interim reclaimed is given within 60 days of receiving such request, any annual fee paid to Dodge County for it under 4.12.8 shall be refunded.

4.12.11 Permit Termination

4.12.11.A Termination
When all final reclamation required by a reclamation plan conforming to 4.12.4 and required by this overlay district is certified as complete pursuant to 4.12.9, Dodge County shall issue a written statement to the operator of the non-metallic mining site, thereby terminating the reclamation permit.

4.12.12 Enforcement

4.12.12.A Right of Entry and Inspection
For the purpose of ascertaining compliance with the provisions of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, or this overlay district, any authorized officer, agent, employee or representative of Dodge County may inspect any nonmetallic mining site subject to this overlay district as provided in Section 295.17(1), Wisconsin Statutes and Section NR 135.42, Wisconsin Administrative Code.

4.12.12.B Orders

4.12.12.B.1 Enforcement Orders
Dodge County may issue orders as set forth in Section 295.19(1)(a), Wisconsin Statutes to enforce Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this overlay district, a permit issued pursuant to this overlay district, or a reclamation plan required by 4.12.4 and a permit issued under this overlay district. A violation of this overlay district, an order or permit issued pursuant to this overlay district, or a reclamation plan required by 4.12.4 and a permit issued under this overlay district shall be considered a violation of Subchapter I of Chapter 295, Wisconsin Statutes and Chapter NR 135, Wisconsin Administrative Code.

4.12.12.B.2 Special Orders
Dodge County may issue a special order as set forth in Sections 295.19(1)(b) and (c), Wisconsin Statutes suspending or revoking a nonmetallic mining reclamation permit pursuant to 4.12.3, or directing an operator to immediately cease an activity regulated under Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code or this overlay district until the necessary plan approval is obtained.

4.12.12.B.3 Review Orders
An order issued under 4.12.12(B)(1) or 4.12.12(B)(2) may be reviewed as provided in Section NR 135.43(2), Wisconsin Administrative Code.

4.12.12.B.4 Enforcement
Dodge County may submit any order issued under 4.12.12(B) to the district attorney, the corporation counsel, the municipal attorney or the attorney general for enforcement as provided in Section 295.19(1)(d), Wisconsin Statutes.

4.12.12.C Penalties
Any violation of Subchapter I of Chapter 295, Wisconsin Statutes, Chapter NR 135, Wisconsin Administrative Code, this overlay district, a permit issued pursuant to this overlay district or a reclamation plan required by 4.12.4 and a permit issued under this overlay district may result in forfeitures as provided in Section 295.19(3), Wisconsin Statutes.