



Dane County Planning & Development Zoning Division

TO: Town Clerks, Supervisors & Planning Commissioners

FROM: Hans Hilbert, Assistant Zoning Administrator

DATE: November 14, 2022

RE: Ordinance Amendment 2022 OA-044 regarding conditional use permit appeals

Ordinance Amendment 2022 OA-044, regarding conditional use permit appeals has been introduced by the County Board. The Zoning & Land Regulation (ZLR) Committee will hold a public hearing on OA-044 on December 13, 2022 at 6:30 pm. Instructions for attending the hybrid meeting are included on the public notice.

As an amendment to Chapter 10, towns have the option to review and take action on the amendment. While town action is not required, if it is taken, it must be submitted within 30 days of the County public hearing to be counted. Any town action on OA-044 is due by January 12, 2023. Please direct any questions to Hans Hilbert at 608-266-4993, or hilbert.hans@countyofdane.com.

I. Summary

Based on input from the Board of Adjustment, Corporation Counsel, and the Dane County Towns Association, Dane County Planning and Development staff have prepared this ordinance amendment to provide for appeals of approvals or denials of conditional use permits to circuit court rather than the Board of Adjustment, and provide a certain time for commencement of a conditional use and correction of violations of conditions.

- A. Since 2016, the Board of Adjustment is responsible for hearing any appeal of the decision of the Zoning and Land Regulation Committee related to the approval or denial of a conditional use permit. In 2017 the Wisconsin Legislature adopted Act 67 providing that, *“If a county denies a person's conditional use permit application, the person may appeal the decision to the circuit court under the procedures contained in s. 59.694 (10)”*. This amendment allows appeals directly to circuit court as provided for by state law.
- B. Under the current ordinance, the recipient of a CUP is afforded a “reasonable opportunity” to correct violations of any condition of a CUP before the Zoning Committee may revoke the permit. This OA replaces “reasonable opportunity” with a defined 30 days.
- C. Prior to 2018, if a CUP was issued and the use was not instituted within the following year the permit became null and void. The comprehensive rewrite of Chapter 10 omitted this language. This amendment restores the expiration of conditional use permits that fail to be instituted within 1 year.

II. Timeline for town action

Town action on the proposed ordinance amendment must be provided to the County within 30 days of the County public hearing on the amendment. While it is good practice for towns to take action on text amendments to Chapter 10, it is not required.

Town officials, please review the enclosed ordinance amendment text and submit a Town Board action report by January 12, 2023. You may complete the enclosed form and submit it by mail or fax, or you may utilize the online reporting tool available on our website at <https://danecountyplanning.com/Town-Information-Page>.

Enclosures:

2022 OA-044 Public Notice

2022 OA-044 Ordinance Text

Town Board Action form

**NOTICE OF PUBLIC HEARING FOR
ORDINANCE AMENDMENT 2022-OA-044
BY THE DANE COUNTY ZONING AND LAND REGULATION COMMITTEE**

Notice is hereby given that the Dane County Zoning and Land Regulation Committee will hold a public hearing in Room 354 of the City-County Building, 210 Martin Luther King Jr, Blvd, Madison, Wisconsin on the item listed below, on Tuesday, December 13, 2022 at 6:30pm. This will be a hybrid meeting. Members of the public may attend the meeting either in person at the location listed above, OR virtually by phone or computer.

A virtual meeting will be held using the ZOOM meeting app. All persons wishing to speak on an agenda item must pre-register for the meeting at least one hour in advance of the meeting. Please call 608-266-4266 or contact us via email at plandev@countyofdane.com to obtain a registration slip. Any written testimony must be submitted within one week prior to the public hearing (December 6th) by emailing it to plandev@countyofdane.com. To attend the meeting by computer go to: <https://zoom.us/s/91599913650>. To attend the meeting by phone: Dial 1-888-788-0099 and enter Webinar ID: 915 9991 3650. If you would like to obtain more details regarding an agenda item, please call 608-266-4266. You may review the ordinance amendment text at: <https://dane.legistar.com/Legislation.aspx> and entering "2022-OA-044" in the legislative text box. Please contact Hans Hilbert at Hilbert.hans@countyofdane.com or (608)266-4993 with questions about the amendment or if you have difficulty accessing the text

1. 2022 OA-044. AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,
4 REGARDING CONDITIONAL USE PERMIT APPEALS

PUBLISHED: Wisconsin State Journal
November 29 & December 6, 2022
Zoning and Land Regulation Committee

1
2
3 **2022 OA-044**

4 AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,
5 REGARDING CONDITIONAL USE PERMIT APPEALS

6 The County Board of Supervisors of the County of Dane does ordain as follows:
7

8 ARTICLE 1. Unless otherwise expressly stated herein, all references to section
9 and chapter numbers are to those of the Dane County Code of Ordinances.
10

11 ARTICLE 2. Section 10.101(7)(c)4. is amended to read as follows:

12 (7) *Conditional Use Permits.*

13 (c) Approval Process.

14 4. Appeals to ~~Board of Adjustment~~Circuit Court.

15 a. Any person aggrieved by the grant or denial of a conditional use permit
16 may appeal the decision ~~of the town board or zoning committee to the Dane~~
17 County Board of Adjustment to the circuit court as authorized by Wis. Stat. s.
18 59.69(5e)(e) using the procedures contained in Wis. Stat. s. 59.694(10).

19 ~~b. Aggrieved parties must file their appeal with the zoning administrator within~~
20 ~~30 days of the final action.~~

21
22 ARTICLE 3. Section 10.101(7)(d)2.a.xiii. & xiv. are amended to read as follows:

23 (d) Conditions.

24 a. Standard conditions. The town board and zoning committee shall impose,
25 at a minimum, the following conditions on any approved conditional use permit:

26 **xiii.** Failure to comply with any imposed conditions, or to pay reasonable county
27 costs of investigation or enforcement of sustained violations, may be grounds for
28 revocation of the conditional use permit. The holder of a conditional use permit
29 shall be given ~~a reasonable opportunity~~ 30 days from the date of a written notice
30 of violation to correct any violations prior to revocation.

31 **xiv.** If any use allowed by an approved conditional use permit is not
32 commenced within one year of issuance of the permit or is abandoned for one
33 year or more, the associated conditional use permit shall be terminated. Future
34 re-establishment of an abandoned conditional use shall require approval of a
35 new conditional use permit.
36

37 ARTICLE 4. Section 10.200(2)(b)2. is amended to read as follows:

38 (2) Zoning Districts.

39 (b) In each zoning district, land uses are divided into permitted and
40 conditional uses.

41 2. No land use listed as a conditional use in the applicable zoning district may
42 take place until the town board and zoning committee approve a conditional use
43 permit under s. 10.101(7), ~~or the board of adjustment overturns a denial of a~~
44 ~~conditional use permit under s. 10.101(7)(c)4.~~

47

48 ARTICLE 5. Section 10.500(6)(b) is amended to read as follows:

49 **(6)** Board of Adjustment.

50 **(b)** Powers and Duties. The Board of Adjustment has the following specific
51 powers and duties related to this ordinance, and other land use ordinances of
52 Dane County.

53 ~~1. Hearing and deciding appeals of conditional use permit decisions under s.~~
54 ~~10.101(7)(c)4.~~

55 **21.** Hearing and deciding appeals of administrative decisions under s.
56 10.101(9) and Chapters 11, 14 and 17, Dane County Code.

57 **32.** Hearing and deciding variances under s. 10.101(10) and Chapters 11,
58 14 and 17, Dane County Code.

59

60 *[EXPLANATION: This amendment provides for appeals of approvals or denials*
61 *of conditional use permits to circuit court rather than the board of adjustment,*
62 *and provides a certain time for commencement of a conditional use and*
63 *correction of violations of conditions.]*

TOWN BOARD ACTION REPORT
FOR CHAPTER 10 ORDINANCE AMENDMENT

REGARDING ORDINANCE AMENDMENT: #2022 OA-044

DANE COUNTY ZLR PUBLIC HEARING DATE: December 13, 2022

RETURN TO DANE COUNTY ZONING BY: January 12, 2023

PLEASE BE ADVISED: IF THIS ACTION REPORT IS NOT RETURNED TO THE DANE COUNTY ZONING OFFICE WITHIN THIRTY (30) DAYS OF THE ABOVE PUBLIC HEARING DATE YOUR ACTION REPORT WILL NOT BE CONSIDERED.

Whereas, the Town Board of the Town of _____, having considered said Ordinance Amendment, be it therefore resolved that said Ordinance Amendment is hereby (check one):

- APPROVED**
- DENIED**

PLANNING COMMISSION VOTE: _____ In Favor _____ Opposed

TOWN BOARD VOTE: _____ In Favor _____ Opposed

COMMENTS:

I, _____, as Town Clerk of the Town of _____ County of Dane, hereby certify that the above Ordinance Amendment was acted on in a lawful meeting of the Town Board on _____, 20____.

DATE: _____, 20____ _____
Town Clerk