

CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

DATE: October 14, 2004

MEMORANDUM

TO: Mark A. Olinger, Director, Department of Planning & Development

FROM: Katherine C. Noonan
Assistant City Attorney

RE: **Fire Apparatus Access (Fire Lanes)**

You have asked about the interplay of state statutes, the state administrative codes, and local ordinances as they relate to fire apparatus access (fire lanes), width of city streets, on-street parking, and landscaping between fire lanes and buildings. Questions about the requirements for such access have arisen in the context of recent development projects and have caused some confusion about what the sources of the requirements are and what authority the City has to determine the requirements. Your expressed concern is how to reconcile applicable codes with what you describe as "widely held principles of good city design", particularly in the design and construction of developments modeled on a more traditional neighborhood concept that are seeking to use less overall land as a way to reduce urban sprawl.

I first will give short answers to the specific questions you posed and then discuss more thoroughly the relevant state statutes, codes, and local ordinances that support my answers. The term 'fire lane' is used interchangeably with 'fire apparatus access'. The statutes, codes, and ordinances relevant to your questions are: **Chapter 101 of the Wisconsin Statutes**, titled Department of Commerce - Regulation of Industry, Building and Safety; **Wisconsin Administrative Code Comm Chapters 61-65**, known as the Wisconsin Commercial Building Code; **Wisconsin Administrative Code Comm Chapters 20-25**, known as the Uniform Dwelling Code; and **Chapter 34 of the Madison General Ordinance**, titled the Fire Prevention Code; **Wisconsin Administrative Code Comm Chapter 14**, titled Fire Prevention; and the **International Fire Code (IFC)**.

SHORT ANSWERS

1. **Which, if any, sections of Madison's codes are more restrictive than the states codes?** In the context of codes relating to fire apparatus access, **Sec. 34.19, MGO** contains provisions that are more restrictive than those relating to fire apparatus access provisions in the **International Fire Code (IFC)**. It is my opinion that the more restrictive provisions in **Sec. 34.19, MGO** do not apply in the context of the design and construction of buildings,

including fire lanes, but do apply in the context of the use and operation of some buildings. The City should address the complementary nature of the fire and building codes so that developers do not find themselves in the position of meeting one code for the construction of a building only to find that it may be difficult to meet another code in the context of ongoing use and operation of buildings.

2. What exactly are the requirements regarding fire apparatus access, including any restrictions on landscaping between the fire apparatus access and the structure?

For all public buildings and places of employment, the design and construction of which are regulated by the Wisconsin Commercial Building Code, Comm Chs. 61-65, the minimum unobstructed width of the fire apparatus access is either 20 feet or 26 feet, depending on particular factors I will discuss later. The required unobstructed vertical height of the fire lane is 13.5 feet, and the inside turning radius is 28 feet. There are no specific requirements in either the state codes or City ordinances that address restrictions on landscaping between the fire lane and the structure. For one- and two- family dwellings, the design and construction of which are subject to the Uniform Dwelling Code, Comm Chs. 20-25, there are no requirements for fire lanes and consequently, no requirements for landscaping between fire lanes and buildings. I do not believe the City has the authority to apply, through any ordinance, requirements for fire lanes or landscaping to one- and two- family dwellings, unless it obtains a variance from the Department of Commerce (Department.).

3. How do these requirements affect street width, corner radius requirements, and on-street parking?

Comm Chs. 20-25 and **Comm Chs. 61-65** are building codes and therefore they do not contain requirements that apply to public streets, which are outside of the control of the property owner. **Sec. 34.01(2)(d), MGO**, however, has made Chapter 34 applicable to ‘all public thoroughfares’. This provision, which makes the fire apparatus access requirements in **Sec. 34.19, MGO** applicable to public streets, was adopted under the police power of the City and is not required by any state code.

4. What are the appeals process regarding these requirements and what are the standards for granting variances?

For one- and two- family dwellings regulated by **Comm Chs. 20-25**, a property owner may apply to the Department. for a variance from the code requirements as they apply to a specific property.¹ The Department may grant a variance if the request does not result in a lower level of health, safety, and welfare as established or intended by the rule. **Comm §20.19**. A municipality may apply to the Department for a variance to allow adoption of an ordinance that does not conform to **Comm Chs. 20-25. Comm §20.20**. The Department will grant this type of variance only if the municipality has demonstrated it is necessary to protect the health, safety and welfare because of specific climatic or soil conditions generally existing in the municipality, and if the variance does not impair the statewide uniformity of the code. **Comm §20.20**.

¹ The owner may apply to a municipality with jurisdiction for a variance in the case of an addition or alteration.

Owners of public buildings or places of employment regulated by **Comm Chs. 61-65** also may apply for a variance from the requirements of the code for a specific property. The owner may apply to either the Department or the City for this variance, depending on which body is carrying out the plan review for the project. The general standard to obtain such a variance is that an equivalency exists that meets the intent of the code. **Comm §61.22**. Except as applies to multifamily dwellings, municipalities may adopt ordinances that are more restrictive than the requirements in **Comm Chs. 61-65**, so no variance procedure for such an ordinance is necessary. The variance procedure and standards for a municipality to adopt an ordinance applicable to multifamily dwellings that is more restrictive than the provisions of **Comm Chs. 61-65** are similar to those for obtaining a variance from the provisions of **Comm Chs. 20-25. Comm §61.03(4)**.

Comm §14.08 also provides for an owner to obtain a variance for a public building and place of employment if equivalency can be shown for the intent of the provision being petitioned. A municipality may adopt more restrictive requirement for some public buildings and places of employment. **Comm §14.003(4)(a)**, however, **Comm §14.003(4)(c)** states that ordinances for multifamily dwellings shall be limited as in **Comm Ch. 61**. Therefore, a municipality that wishes to adopt an ordinance more restrictive than **Comm Ch. 14** must meet the same high standard as for variances obtained pursuant to **Comm Ch. 61-65**. **Comm Ch. 14** does not apply to one- and two- family dwellings, and it contains no provision for a municipality to obtain a variance to apply provisions to those buildings.

All orders issued by the department or the City relating to compliance with the relevant requirements are subject to appeal, as are decisions by the department to grant a variance. Because these appeal procedures do not address the issues posed by your questions, I will not discuss them further.

DISCUSSION

The following is a more detailed discussion of my answers to the above questions. Because the requirements for fire apparatus access vary for different types of buildings, I will discuss separately the statutory and state code requirements for the buildings subject to **Comm Chs. 61-65** and those subject to **Comm Chs. 20-25**. I will then discuss how the state fire code, **Comm Ch. 14** and the City's fire prevention code, **Chapter 34 MGO**, impact the regulations for the design and construction of buildings in the City of Madison, and the regulations affecting public streets in the City.

A. Comm Chs. 61-65

The design and construction standards in **Comm Chs. 61-65** apply to fire apparatus access for public buildings and places of employment. **Comm §61.02**. These terms are defined in Chapter 101 of the Wisconsin Statutes as follow:

Sec. 101.01(11), Stats. "Place of employment includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade, or business, is carried on, or where any process or operations, directly or indirectly related to any industry, trade, or business, is carried on, and where any person is directly or

indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which do not involve the use of mechanical power or in farming . . ."

Sec. 101.02(12), Stats. "Public building means any structure, including exterior part of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants . . ." ²

Comm §62.0500 contains the specific fire apparatus access requirements for public buildings and places of employment. The general requirement is that unobstructed fire lanes accessible from a public road be provided. With two exceptions, fire lanes shall have a minimum unobstructed width of 20 feet. **Comm §62.0500(3)(c).** If any part of the building or facility is more than 30 feet above the lowest level of the fire lane, the minimum unobstructed width of the fire lane parallel to one side of the building or facility shall be 26 feet. **Comm §62.0500(3)(d).** The second exception is for fire lanes with a fire hydrant to supply the fire apparatus, in which case, an unobstructed fire lane shall be 26 feet for at least 20 feet on either side of the fire hydrant. **Comm §62.0500(3)(e).**

The fire lane also must be vertically unobstructed for 13.5 feet, and the inside turning radius of the fire lane shall be 28 feet, or some other dimension as determined by the fire code official. **Comm §62.0500(4).** Because **Comm Chs. 61-65** apply to public places and places of employment, there are no provisions in these chapters that would apply to City streets. Consequently, they do not address street width, street corner radii requirements, and on-street parking, all of which are beyond the control of the property owner, who is responsible for compliance with the requirements in **Comm Chs. 61-65**. **Comm §62.0500** does not place the responsibility of providing the fire apparatus access on the City unless the City owns a particular public building or place of employment. There also is no provision in **Comm §62.0500** or elsewhere in **Comm Chs. 61-65** that addresses the location of landscaping between the fire lane and a public building or place of employment.

The requirements in **Comm Chs. 61-65** are minimum standards. With the exception of multifamily dwellings, the City may adopt more restrictive requirements for public buildings and places of employment, as long as they do not conflict with the state code.³ **Comm §61.03(4)(a)1.** As stated in the short answer to Question 4, if a municipality wishes to adopt more restrictive requirements for multifamily dwellings, it must obtain a variance, pursuant to **Comm §61.03(4).**

B. Comm Ch. 14 and the International Fire Code (IFC)

The state fire code, **Comm Ch. 14** also applies to public buildings and places of employment. Like **Comm Chs. 61-65**, it allows a municipality to adopt more restrictive requirements, except

² There are several exceptions to the above definitions that do not lend additional understanding to the issues of this opinion. They can be found in **Sec. 101.01 (11) and (12), Stats.**

³ Regarding multifamily dwellings, **Sec. 101.975** does permit a municipality to regulate the construction and installation of doors and windows for the purpose of preventing illegal entry and permits existing sprinkler systems requirements that are stricter than **Comm Chs. 61-65** to remain.

as applied to multifamily dwellings (unless a variance is obtained). **Comm §14.002(1)** and **Comm §14.003(4)**. Together, **Comm Ch. 14** and **Comm Chs. 61-65** regulate health, safety, and welfare concerns in public buildings and places of employment. Generally, **Comm Chs. 61-65** contain the design and construction standards, while **Comm Ch. 14** applies more broadly to the use and operation of such buildings, as well as the inspection, testing, and maintenance of all fire safety features of such buildings. **Comm §14.003(1)**. Besides its specific provisions, **Comm Ch. 14** also adopts and incorporates the National Fire Prevention Association code (NFPA,1 – Fire Prevention Code). **Comm §14.004(1)**. As an alternative to having the NFPA,1 code apply to a municipality, **Comm §14.004(1)(b)** allows a municipality to request permission from the Department to adopt the **International Fire Code (IFC)** as part of its local fire code. Permission is granted by a special written order from the Department to a municipality allowing it to adopt the **IFC**. The City of Madison received such a special written order in July, 2002 and adopted the **IFC** as part of **Chapter 34, MGO** in 2002.

Comm Ch. 14 and the **IFC** do not take the place of the design and construction standards in **Comm Chs. 61-65**. **Comm §14.003(3)(d)** states that when differences occur between the requirements of **Comm Ch. 14** and **Comm Chs. 61-65**, those in **Comm Chs. 61-65** apply. Furthermore, pursuant to **Comm §61.03(13)(a)1.**, only certain design and construction related requirements in the **IFC** apply in the context of **Comm Chs. 61-65** activities. **Section 503** of the **IFC**, which is titled Fire Apparatus Access Roads is not included. Finally, **Comm 61.03(13)(b)** states that the **IFC** provisions referenced in the special written order are the ones that will apply to the municipality. The City's special written order reiterates the fact that **Comm Chs. 61-65** and not **Comm Ch. 14** or the **IFC** are the applicable design and construction requirements for fire apparatus access for public buildings and places of employment. The order states that:

“Section 1 Application. The design and construction requirements in the **IFC** that apply to public buildings and places of employment are not included as part of this special order.

Note: See chs. Comm 61-65 of the Wisconsin Administrative Code for design and construction requirements for public buildings and places of employment, such as s. Comm 61.03(13), which applies various design and construction requirements in the **IFC**.

The order also states that:

“Section 503 Fire apparatus access. Substitute the following wording and informational note for the requirements in **IFC** section 503: Fire apparatus access may not be obstructed in any manner including the parking of vehicles or the accumulation of snow. The required clearances shall be maintained at all time.

Note: See Chs. Comm 61 to 65 for requirements on providing access for fire apparatus.”

My conclusion from the above discussion is that the state code requirements in **Comm Chs. 61-65** and not those in **Comm Ch. 14** and the **IFC** are the controlling code requirements for the design and construction of fire apparatus access for public buildings and places of employment.

They require fire lanes with a minimum unobstructed width of 20 feet, with the two exceptions set out above; an unobstructed vertical height of 13.5 feet; and an inside turning radius of 28 feet.

There are no requirements for the location of landscaping between the fire lane and buildings, and there are no requirements for public streets, which as stated above, are beyond the control of the property owner who must comply with **Comm Chs. 61-65**.

C. Chapter 34, MGO

Comm §61.03(4) and **Comm § 14.003(4)** allow a municipality to adopt more restrictive requirements for public buildings and places of employment without any variance from the Dept. (with the exception of multifamily dwellings). It is therefore necessary to look to **Chapter 34, MGO** to determine whether there are any design and construction requirements that are more restrictive than those in the state codes. I will address only those that may be relevant to the design and construction requirements for fire apparatus access. **Section 34.19, MGO** is titled Fire Apparatus Access Roads. This section contains requirements that are in addition to several requirements in **Section 503** of the **IFC**. Because both the City's special written order and **Comm §61.03(13)** state that **Section 503** of the **IFC** does not apply in the context of activities regulated under **Comm Chs. 61-65**, I do not believe that **Sec. 34.19, MGO** applies to the design and construction of fire apparatus access roads for public buildings and places of employment. Furthermore, **Sec 34.19, MGO** does not state that its requirements are in addition to the design and construction requirements in **Comm Ch. 61-65**, suggesting that **Sec. 34.19, MGO** applies to the use and operation of public buildings and places of employment; and the inspection, testing, and maintenance of fire safety features, not to the design and construction of buildings.

There is another reason why the provisions of **Sec. 34.19, MGO** should not be read to apply to activities regulated under **Comm Chs. 61-65** that relate to the design and construction of fire apparatus access. **Sec. 34.19, MGO** does not include an exception for multifamily dwellings, and yet the City has not obtained a variance from the Department, as required by **Comm §61.03(4)**, that would allow it to apply **Sec. 34.19, MGO** to the design and construction of multifamily dwellings.⁴ For all these reasons, I believe **Comm Chs. 61-65** to be the source of design and construction requirements fire apparatus access for public buildings and places of employment.

Sec. 34.19(1)(c)2., MGO is one of the provisions that creates a potentially difficult situation for a developer. The fire apparatus access requirements in **Comm §62.0500** do not require more than one fire lane. Although **Sec. 34.19.(1)(c)2., MGO** does not require two fire lanes, it does require two exterior wall to be available for access for the ongoing use and operation of the building. The City agencies responsible for enforcing and administering these codes should work together to make sure that the codes do not work at cross purposes, and the developers are clear what their compliance requires.

Like **Comm Chs. 61-65, Chapter 34, MGO** is silent as to any requirements affecting landscaping between fire lanes and buildings. The Common Council could adopt requirements addressing the location of landscaping between fire lanes and public buildings and places of employment, except for multifamily dwellings, however, none presently exist in **Chapter 34, MGO**.

⁴ The City also has not obtained a variance to apply the more restrictive provisions of Sec 34.19 to the ongoing use and operation of multifamily buildings.

D. Comm Chs. 20-25

I do not believe that the fire apparatus access requirements in either **Comm §62.0500** or **Sec. 34.19, MGO** can be applied to one- and two- family dwellings, the construction and design of which are regulated by **Comm. Chs. 20-25**. **Comm Chs. 20-25** do not contain any requirements for fire apparatus access. Pursuant to **Comm §20.02(2)(a)** and **Comm §20-06(1)(a)3**, a municipality may not adopt an ordinance for additional requirements on any subject falling within the scope of **Comm Chs. 20-25** unless it has received a variance from the Department of Commerce. Fire prevention is within the scope of **Comm Chs. 20-25**, although it is treated in a much more limited fashion than in **Comm Chs. 61-65**.

The fact that fire apparatus access is not mentioned in **Comm Chs. 20-25** does not mean that it is not within the scope of the code. In 1992, the Attorney General opined that a municipality could not waive building permit fees for one- and two- family dwellings if fire sprinkler systems were installed in lieu of smoke detectors, which are required in **Comm Chs. 20-25**. In that case, the fact that fire sprinkler systems were not mentioned in the code did not determine whether they were within the scope of the code. The Attorney General stated that an action to encourage a building standard that was not in the code by providing an incentive for it “defeats the purpose of providing a uniform regulation of the building of one- and two- family dwellings”. Applying the fire apparatus access requirements for public buildings and places of employment likewise would defeat the goal of uniformity in **Comm Chs. 21-25**. The City has not received a variance to apply the more restrictive fire apparatus access regulations in **Comm §62.0500** to one- and two- family dwelling through its local fire prevention code.

Because **Comm Chs. 20-25** do not contain any requirements for fire apparatus access, it is not surprising that there are no provisions addressing the location of landscaping between fire lanes and buildings. **Comm Chs. 20-25** also do not apply to public streets as they are beyond the control of the property owner who must comply with this code.

One of your questions asks about requirements for fire apparatus access for public streets. As stated above, nothing in **Comm Chs. 61-65** or **Comm Chs. 20-25** addresses requirements for fire apparatus access for public streets. **Sec. 34.01(2)(d), MGO**, however, extends the requirements of the chapter, including **Sec. 34.19, MGO**, to “public thoroughfares”. None of the reasons discussed above for why **Sec. 34.19, MGO** does not apply to the design and construction of buildings regulated by **Comm Chs. 20-25** and **Comm Chs. 61-65** are relevant to public streets because none of the state codes consider public streets. Because the application of fire apparatus access provisions to City streets is not required by **Comm Chs. 20-25**, **Comm Chs. 61-65**, or **Comm Ch. 14**, decisions regarding the width of City streets, on-street parking, turning radii of the City streets, location of landscaping, and other issues relating to fire apparatus access are policy decisions for the Common Council. **Chapter 34, MGO** could be amended to change or qualify its application to ‘public thoroughfares’ without being limited by the state codes.

I believe that the “widely held principles of good city design” as they relate to street width, landscaping, parking, etc. can be reconciled with the requirements in the state codes and City ordinances. For public buildings and places of employment, the City must apply minimally the requirements in **Comm Chs. 61-65**, which require the property owner to provide fire lanes with a minimum unobstructed width of 20 feet (with two exceptions), a vertical unobstructed distance

of 13.5 feet, and an inside turning radius of 28 feet. I do not believe that requirements for fire apparatus access for one- and two- family dwellings can be applied through a local ordinance without the City obtaining a variance under **Comm Chs. 20-25**. Finally, the existing application of **Sec. 34.19, MGO** to public streets is a policy decision for the Common Council and is not mandated by any state code.

Although there is a general distinction between the design and construction activities regulated by **Comm Chs. 20-25** and **Comm Chs. 61-64** and the ongoing regulation of the use and operation and fire safety devices regulated by **Comm Ch. 14** and **Chapter 34, MGO**, the issues are not completely unrelated. Care must be taken so that the property owners who must comply with the various codes are not in the position of having to comply with potentially conflicting provisions. Also, some of the design principles that the City espouses must be reconciled with the requirements that property owners must meet. For example, if the desire is to have public streets that do not serve as fire lanes because they do not provide the minimum unobstructed fire lane, the property owners will not be able to use the streets as an equivalent code requirement and must put the fire lanes on site. Alternatively, if the City wishes to have less impervious on-site area taken up with on-site fire lanes, then the public streets may be the only way to meet the fire apparatus access requirements. Agencies and developers must work together to find the appropriate balance for each particular development.

cc: Brad Murphy, Planning Unit Director
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