



PREPARED FOR THE PLAN COMMISSION

Proposal: Zoning Text Amendments

Legistar File ID #: [44260](#), [44739](#), [44740](#)

Prepared By: Planning and Zoning Staff

The following is a summary of the proposed zoning text amendments for Plan Commission consideration.

[44260](#) – (Substitute) Restricting when roof decks, porches, and balconies may be counted as usable open space

This amendment also adds restrictions to the ability to count roof decks, porches, ground-level patios and balconies towards UOS requirements, to ensure there is UOS available for all occupants of a building. This amendment also adds the word “porches” to the list of areas that may qualify as Useable Open Space (UOS). Any porches counted toward the UOS requirement must have a minimum width of fifteen (15) feet and minimum depth of six (6) feet and be available for use by all residents as the main source of ingress and egress from the building. Finally, this amendment changes the minimum dimension requirement for common-area (non-private) balconies from 4½ to 6 feet.

This substitute was necessary to carve out limited circumstances under which private balconies and ground-level patios, not accessible by all residents, may be used to meet the open space requirement. Under this amendment, private balconies and ground-level patios may be used to meet the open space requirement as long as at least 75% of the required open space is met with common areas accessible to all occupants, provided that the private balcony or ground-level patio has a minimum dimension of 4½ feet.

Staff supports this amendment.

[44739](#) – Pertaining to the establishment of the Nonmetallic Mineral Extraction District (ME)

The 2013 Zoning Code does not allow nonmetallic mineral extraction (i.e. quarrying, mining) as either a permitted or conditional use within the City limits. Previously, dredging, excavating, filling and quarrying of land were allowed as a conditional use in the A–Agricultural and C–Conservancy zoning districts under the 1966 Zoning Code. However, there are currently four quarries that operate at least partially within the City limits as legal nonconforming uses because they were operating legally when they were annexed into the City. These quarries may continue operating as nonconforming uses subject to the zoning approval they had prior to annexation until the resources are exhausted or the operator decides to transition the facility to a different use. Many operators surveyed by City staff estimated that their quarries had enough materials to extract for another 20-30 years.

Additionally, most quarry operators own additional property, often adjacent to the nonconforming quarry, which they cannot materials from because it is not part of the legal nonconforming use. Some of these operators have approached the City about the ability to quarry these additional properties. There are also instances of mineral extraction sites located outside the City in areas that will attach to the City as a condition of City-Town cooperative plans or occurring as part of the grading and site preparation for approved developments within the City limits that are not fully regulated by zoning, further requiring that regulations be included in the 2013 Zoning Code.

Wis. Stat. § 62.23(7)(am) grants cities the power to regulate mining through zoning. The proposed ordinance recognizes that the City contains active nonconforming quarries and that the City benefits from the close proximity of quarry resources for local road and other construction projects. The ordinance also recognizes that quarrying operations may present potential health and welfare concerns to neighboring property owners and that these concerns may be attenuated through a cohesive set of quarrying regulations enforceable by the City through zoning. Accordingly, this ordinance creates a new Special District in the Zoning Code, Section 28.100, called the Nonmetallic Mineral Extraction District (abbreviated "ME").

Under the proposed ordinance, mining operators may apply to rezone their property to combine any legal nonconforming use with other adjacent property they wish to quarry to create a ME district. Applications to rezone to the ME district would go through the normal rezoning process and be subject the standards for zoning map amendments in Section 28.182, with noticing as specified in Section 28.181.

Most of the extraction and processing of nonmetallic minerals would be permitted in the ME district, including the recycling of aggregate and construction materials for reuse in local road and other construction projects. Minimum requirements for the proposed ME district include a minimum frontage of 300 feet on a public street and five acres of lot area, with setbacks as specified in the ordinance. Any property rezoned ME would be subject to the supplemental regulations in Section 28.151 proposed by this ordinance, which include:

- Submittal of a scaled site/ operations plan detailing extraction and staging areas, access, and phasing;
- No mineral extraction activities may occur closer than 100 feet from the boundaries of the site;
- Hours of operation at a nonmetallic mining site shall be 6:00 a.m. to 6:00 p.m. unless otherwise required to fulfill obligations under a government contract;
- A safety fence shall be installed around the entire boundary of the nonmetallic mining site unless the site has been reclaimed per Madison General Ordinances;
- Operators will be required to use spray bars for water in the crushing process to reduce dust and shall spray private access roads within the site with water as necessary to control dust;
- A nonmetallic mining site shall be available for inspection by City staff with at 48 hours prior written notice unless the City has probable cause to believe that a violation of this ordinance has occurred or is occurring, in which case an inspection may occur at other times with reasonable advance notice to the operator;
- A nonmetallic mining operator shall conduct at least one public meeting each year between January 4 and February 15 for the purpose of fostering communication between the nonmetallic mining operator, its neighboring residents, and the City, with notices provided to property owners within 500 feet of the site as well as a Class 1 notice per Wis. Stats. Ch. 985;
- The operator shall maintain a compliance phone number and email address for neighboring residents to report any problems or concerns; and
- A requirement to file with the City Engineer an annual report that includes: mining and recycling activity occurring on the property in the previous year, including the number of acres being actively mined and officially reclaimed, and the frequency and location of blasting; the number and nature of complaints; nonmetallic mining plans for the upcoming year, including the number of acres that may be converted from inactive to active mining use, the number of acres that may be officially reclaimed,

the anticipated frequency and location of blasting, and whether any mining activities will result in excavation below the water table.

Blasting at a nonmetallic quarry or mine in the ME District may be allowed only upon conditional use approval by the Plan Commission pursuant to the standards in Section 28.183, with mandatory renewal every five years, subject to the conditions and any additional conditions required by the Plan Commission during its review of the conditional use. Each renewal will be treated as a new conditional use. Like with all conditional uses, continuing jurisdiction would apply to the blasting activity at a quarry or mine. Blasting is primarily regulated by Wis. Admin. Code Chs. SPS 307 (Explosive Materials), the National Fire Protection Association (NFPA) 495 Chapter 10, and MGO Section 34.01(13) (Madison Fire Code).

In the supplemental regulations pertinent to blasting, the hours of blasting would be limited to the hours specified in Wis. Admin. Code § SPS 307.42, which limits surface blasting to between sunrise and sunset, unless more restrictive time periods are specified by the Wisconsin Department of Safety and Professional Standards (SPS), or the hours of blasting are approved by SPS based on a showing by the operator that the public will not be adversely affected by noise and other impacts. The operator shall provide notice of each blast as required by Wis. Admin. Code § SPS 307.41, which requires a minimum of 24 hours written or verbal notification to “affected properties” as determined by an equation in the administrative code. Pre-blast notice to the Madison Fire Department at least 24 hours prior to the event will also be required per the proposed zoning ordinance. The impacts of the blasting shall be recorded per SPS 307.43, and blasting resultants shall not exceed the levels contained in SPS 307.44. At least four seismographs shall be installed and maintained at locations near the boundary lines of the nonmetallic mining site, unless otherwise in consultation with City staff, and the operator shall post seismograph results from each blast on a website accessible by the general public within five business days of each blast. When feasible, the mining operator shall develop mining faces that advance away from or transverse at 90 degrees to residential areas in order to minimize blasting resultants.

Chapter 66.1001(3) of Wisconsin Statutes requires that zoning ordinances (text and map) enacted or amended after January 1, 2010 be *consistent with* the City’s comprehensive plan. 2010 Wisconsin Act 372 clarified “Consistent with” as “further or does not contradict the objectives, goals and policies contained in the comprehensive plan.” Existing or future quarry or mine sites in the City and its immediate environs are not identified on the City’s Comprehensive Plan Generalized Future Land Use Maps and there is little or no supporting text that addresses mineral extraction. However, existing quarries and mines are commonly referenced in the more detailed neighborhood development plans that guide the growth of the newly developing edges of the City. No future quarries or mines are specifically recommended as a future permanent use of a property within a neighborhood development planning area. Instead, any such future facilities would likely be viewed through the lens of being a long-term *interim* use of a property pending development of the subject property in a manner consistent with the applicable neighborhood development plan. In considering a request to rezone a property to the ME district, Planning staff would likely recommend to the Plan Commission and Common Council whether they felt that the site and reclamation plans proposed material extraction in a fashion that would facilitate future implementation of the recommended land uses and development pattern once quarrying/ mining activities ceased.

In closing, the City currently contains active quarries/ mines over which it has no zoning regulations, and operators own additional property that they cannot extract materials from because the Zoning Code does not allow it. The City Attorney’s Office, with input from the Planning Division, Zoning Administrator, City Engineer, alders with quarries in their districts, the community, and quarry operators, has developed a comprehensive

slate of voluntary regulations to govern non-metallic mineral extraction within the City limits. Staff believes that the proposed regulations are responsive to the needs of quarry and mine operators while protecting the health, safety and general welfare of the broader public. During the establishment of a specific ME district, staff would seek to ensure that the proposed mineral extraction would be conducted in a manner consistent with the land uses and development pattern recommended in adopted City plans once quarrying/ mining activities ceased.

44740 – (Substitute) Allowing for Storage Lockers in the Mixed-Use and Commercial Districts, Employment Districts, and the DC, UOR, and UMX districts

The proposed text amendment will allow for the installation of storage lockers that may be used by individuals to store personal belongings. This will be a permitted use in all mixed-use and commercial districts, all employment districts, and the Downtown Core (DC), Urban Office Residential (UOR), and Urban Mixed Use (UMX) districts. This ordinance also creates supplemental regulations that will apply to each use, including that the use must be operated by a religious or non-profit institution, the operator must submit a management plan that includes, in part, that the operator may terminate the use of a locker at any time and for any reason, and that the area surrounding the storage lockers must be well lit and include sufficient trash receptacles that are emptied regularly. No more than ten lockers would be allowed per zoning lot. Finally, this ordinance creates MGO Section 9.26, which requires that any owner or operator obtain a license before operating a personal storage locker structure. This license may be revoked if there are three (3) or more violations of this or any provision in Chapter 28 within any twelve-month period.

The substitute creates MGO Section 9.26.

Staff supports this amendment.