



CITY OF MADISON
ZONING BOARD OF APPEALS
APPEAL APPLICATION

\$200 Filing Fee

Ensure all information is typed or legibly printed using blue or black ink.

Notices are sent to the District Alderperson and to owners of record as listed in the Office of the City Assessor. Maximum size for all drawings is 11" x 17".

Name of Applicant: Edgewood High School of the Sacred Heart, Inc.

Address: 2219 Monroe Street
Madison, WI 53711

Daytime Phone: (608) 257-1023 Evening Phone: N/A

Email: mike.cary@edgewoodhs.org (with copy to krist@foley.com and mdlee@foley.com)

1. The undersigned hereby appeals the decision of the Zoning Administrator in regard to
Madison General Ordinance Section No. 28.097

2. When relevant to a specific property, fill out below:
Street Address: 2219 Monroe Street
Madison, WI 53711

3. List of grounds for the appeal, statements, evidence of fact, and any additional information associated with the appeal are provided on a separate attachment.

Applicant Signature: *Michael Cary*

FOR OFFICE USE ONLY	
Amount Paid: <u>\$200.00</u>	Zoning District: <u>CI</u>
Receipt: _____	Hearing Date: <u>7-11-17</u>
Filing Date: <u>5-31-19</u>	Published Date: <u>7-4-19</u>
Received By: <u>HWT</u>	Appeal Number: <u>56510</u>
Parcel Number: <u>070927201015</u>	GQ: _____
Alder District: <u>13</u>	

DECISION	
The Board, in accordance with the findings of fact, hereby determines that the requested appeal for _____ is	
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
<input type="checkbox"/> Conditionally Approved	
Zoning Board of Appeals Chair: _____	
Date: _____	

May 31, 2019

VIA HAND DELIVERY

City of Madison Zoning Board of Appeals
215 Martin Luther King Jr. Boulevard
Suite 017, Madison Municipal Building
Madison, WI 53703

Re: Edgewood High School of the Sacred Heart, Inc.

Dear Sir/Madam:

Enclosed please find an Appeal Application and Edgewood High School of the Sacred Heart, Inc.'s Statement of Grounds for the Appeal of the City of Madison's Official Notices Dated April 1, 2019 and May 15, 2019, for Consideration at the June 20, 2019 Meeting of the Zoning Board of Appeals. A check in the amount of \$200 is also enclosed for the filing fee.

Sincerely yours,



Matthew D. Lee

Enclosures

ZONING BOARD OF APPEALS
FOR THE CITY OF MADISON

EDGEWOOD HIGH SCHOOL OF THE)
SACRED HEART, INC.)
)
v.)
)
CITY OF MADISON ZONING)
ADMINISTRATOR.)
)
_____)

**EDGEWOOD HIGH SCHOOL OF THE SACRED HEART, INC.'S STATEMENT OF
GROUNDS FOR THE APPEAL OF THE CITY OF MADISON'S OFFICIAL NOTICES
DATED APRIL 1, 2019 AND MAY 15, 2019, FOR CONSIDERATION AT THE JUNE 20,
2019 MEETING OF THE ZONING BOARD OF APPEALS**

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INTRODUCTION

For nearly a century, Edgewood High School of the Sacred Heart, Inc. (“Edgewood”) has used its on-campus athletic field to host athletic contests. This use is unquestionably allowed. After the rewrite of the City’s Zoning Code in 2013, Edgewood, like the four other public high schools in the City, was zoned as a Campus-Institutional District under Madison General Ordinance § 28.097. Allowed property uses within a Campus-Institutional District are set forth in subsection (3) of the Ordinance under the clear-as-crystal heading “Uses Within CI Districts.” That subsection allows schools in Campus-Institutional Districts to use their property, by right and without seeking a permit or other approval, as outdoor sports and recreational facilities, outdoor stadiums, and outdoor arenas. M.G.O. § 28.097(3). The Ordinance also allows, but does not require, those schools to submit a Master Plan to create a streamlined development-approval process to accommodate their development needs.

Despite Edgewood’s consistent use of its athletic fields for athletic contests and the clear language in the Ordinances allowing this use, the City’s Zoning Administrator claims that such use is prohibited under the Zoning Code. Earlier this year, the Zoning Administrator issued two Official Notices against Edgewood, claiming that Edgewood violated M.G.O. § 28.097 by playing athletic contests on its field. He asserts that, because Edgewood’s Campus-Institutional District Master Plan—voluntarily submitted to the City in 2014 after the rewrite of the Zoning Code in 2013—does not specifically identify athletic contests as an anticipated future use of the field, the Master Plan prohibits the use of Edgewood’s athletic field for athletic contests.

The Zoning Administrator’s position is untenable and wrong. Section 28.097(3) governs the use of property within Campus-Institutional Districts, period. Master Plans govern the *development* of structures, not the *use* of property. The Madison Common Council could have chosen to give Master Plans the power to impose use limitations, but it did not, and in fact removed

language from an earlier draft of Section 28.097 that would have done just that. Because the Ordinance alone controls Edgewood's use of its property, Edgewood has the unquestioned right to use its field for athletic contests, regardless of what its Master Plan does or does not say.

But this is not just a dispute about zoning. The Zoning Administrator is attempting to weaponize Edgewood's Master Plan against it, using it as an excuse to single out Edgewood as being prohibited from using its athletic field on equal footing with the City's public high schools. This violates both the Zoning Code as well as the federal Religious Land Use & Institutionalized Persons Act. Because Edgewood and the City's public high schools were identically zoned both before and after the 2013 rewrite, all of these high schools must be equally treated. It is beyond unfair to conclude that Edgewood's Master Plan changes that result, that somehow Edgewood inadvertently eliminated an otherwise permitted use of its athletic field as part of a voluntary process designed to make it easier, not harder, for educational institutions to develop their property.

For these reasons, this Board should vacate and reverse the Zoning Administrator's Official Notices. Given the devastating effect that the Zoning Administrator's actions are already having on Edgewood, it respectfully requests consideration of this appeal at the Board's June 20, 2019 meeting.

BACKGROUND

A. Madison's Zoning Code.

The City adopted the existing Zoning Code on October 26, 2011, with an effective date of January 2, 2013. *See* City of Madison ORD-12-00134. As part of the new code, the City created a new zoning designation, Campus-Institutional Districts, for "the City's major educational and medical institutions." These districts were created to "accommodate the growth and development needs of these institutions, and coordinate the master plans of these institutions with the City's

plans, policies and zoning standards.” M.G.O. § 28.097(1).¹ Institutions currently zoned in this category include Edgewood, the University of Wisconsin, Madison Memorial High School, Madison East High School, Madison West High School, and Madison La Follette High School.

Campus-Institutional Districts are unique in Madison’s Zoning Code. Four of the City’s primary zoning districts have either “permitted” or “conditional” uses. *See* M.G.O. § 28.032(1) (residential); M.G.O. § 28.061(1) (mixed-use and commercial); M.G.O. § 28.082(1) (employment); M.G.O. § 28.072(1) (downtown and urban). The same is true of seven of the nine zoning categories of “Special Districts.” *See* M.G.O. § 28.091(1) (“Agricultural District,” “Urban Agricultural District,” “Conservancy District,” “Parks and Recreation District,” and “Airport District”); M.G.O. § 28.099(3)–(4) (“Planned Mobile Home Park District”); M.G.O. § 28.100(2)–(3) (“Nonmetallic Mineral Extraction District”). A “Planned Development District,” another Special District zoning category, also has “permitted” or “conditional” uses, but instead of having allowable uses listed in the Ordinances, a property owner in one of these districts must propose allowable land uses in a “General Development Plan” submitted to the City. M.G.O. § 28.098(1), (4), (5)(b).

Campus-Institutional Districts do not operate under the permitted/conditional use framework. Rather, all “uses allowed within the Campus Institutional District are listed separately” in Section 28.097. M.G.O. § 28.091(1).² That separate list is found at Section 28.097(3), which divides allowable uses in this district into “primary or secondary” uses. M.G.O.

¹ A copy of Section 28.097 is included as Appendix A.

² The text of M.G.O. § 28.091(1) contains a typo. It states that Campus-Institutional District uses “are listed separately in Sec. 28.096,” but Section 28.096 governs “Airport Districts.” The drafters of this Ordinance must have intended to state that Campus-Institutional District uses “are listed separately in Sec. 28.097,” since that Section is entitled “Campus Institutional District,” it contains a subsection that does list uses for this district, and the uses for Airport Districts are already provided for in Section 28.091. *See* M.G.O. §§ 28.091(1); 28.097(3).

§ 28.097(3). The list of “primary uses” in a Campus-Institutional District includes “educational uses associated with colleges, universities, and secondary and primary schools, including classroom buildings, libraries, and offices.” M.G.O. § 28.097(3)(a)1 (capitalization altered). The list of “secondary uses” includes “indoor and outdoor sports and recreational facilities”; “stadiums, auditoriums, and arenas, open or enclosed,” “places of worship”; and “other uses related to the institution’s primary mission.” M.G.O. § 28.097(3)(b)5, 10, 15, 17 (capitalization altered).

Institutions zoned as a Campus-Institutional District may submit a “Campus Master Plan” to the City, which “guide[s] the future growth of those institutions.” M.G.O. § 28.097(1)–(2); (*see* Planning Division Staff Report on Edgewood Master Plan 6 (Mar. 24, 2014) (hereinafter “Planning Division Staff Report”)).³ To that end, a Master Plan generally includes a “description of existing conditions” and “the proposed conditions” on the campus, including “future needs/capital improvements,” “phasing of proposed improvements,” and “future land uses and buildings.” M.G.O. § 28.097(5)(c)(1)–(2) (capitalization altered).

For institutions zoned as a Campus-Institutional District as of the effective date of Section 28.097—which includes Edgewood and all of the other institutions listed previously—creation of a Master Plan is optional, but “[e]ncourage[d].”⁴ *See* M.G.O. § 28.097(1)(c), (2). For any “District created after the effective date of this ordinance,” submission of a Master Plan is mandatory. M.G.O. § 28.097(2)(a). There is no question here that submission of Edgewood’s Master Plan was voluntary, not required, under the Ordinances.

³ Available at <https://madison.legistar.com/View.ashx?M=F&ID=2947603&GUID=61593979-25C7-4F49-830B-8498385FE2D5>.

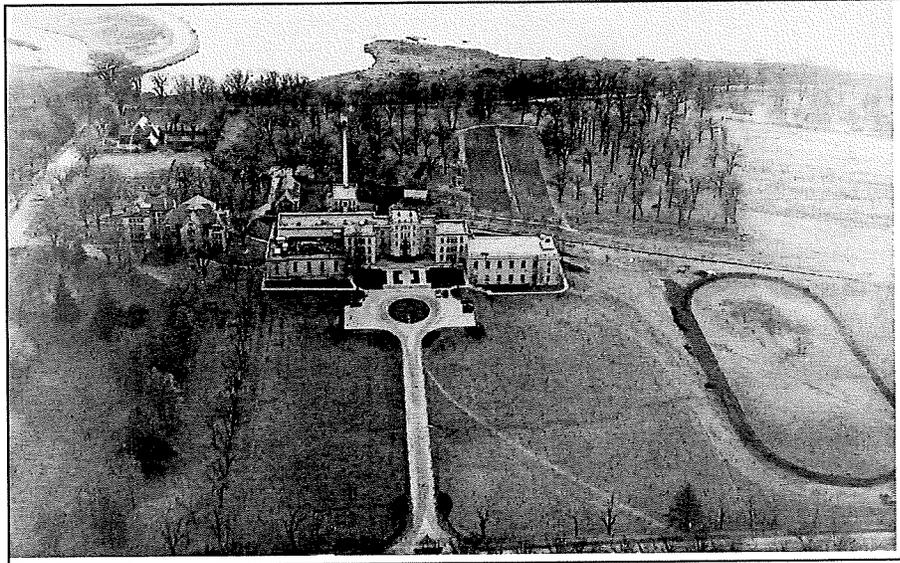
⁴ The City expressed this consistent position, at least with respect to public schools in the City, in a Memorandum dated November 14, 2011 from Planning Division Staff to the City’s Zoning Code Rewrite Advisory Committee, available at <https://madison.legistar.com/View.ashx?M=F&ID=1776153&GUID=42DBB077-A42D-4BCD-8ABB-2FC9A87ECC89>.

If a Campus-Institutional District submits a Master Plan, and that plan is approved by the City, then that plan governs the development of new structures within the Campus-Institutional District for the life of the plan, which is ten years. *See* M.G.O. § 28.097(2)(b)–(d), (4), (7). Specifically, for any “buildings properly identified on a Campus Master Plan,” the District need only obtain approval from “an architectural review committee prior to construction,” rather than obtain “conditional use approval” from the City. M.G.O. § 28.097(2)(c), (7)(a). (*See also* Planning Division Staff Report 6). In other words, if the City approves a Master Plan, then “the specific projects shown on the Campus Master Plan will not be reviewed by the Plan Commission [again] if those projects adhere to the approved master plan.” (Planning Division Staff Report 7.)

B. Edgewood High School.

The institution that became Edgewood High School began in 1881, after Governor Cadwallader C. Washburn gave his Edgewood Villa and 55-acre wooded estate to the Dominican Sisters of Sinsinawa to serve as a new location for their St. Regina Academy. The Sisters renamed their academy to Sacred Heart Academy at Edgewood in 1895, and then opened the doors to Edgewood High School of the Sacred Heart in 1927. Edgewood has operated continuously on its Monroe Street site ever since. It shares its campus with its two sister institutions, Edgewood College and Edgewood Campus School.

In addition to its academic and student-residential buildings, Edgewood has maintained an athletic field on-site since 1927. Today, this athletic field is named the “Goodman Athletic Complex.”



(Photo: Edgewood High School & Athletic Field 1937.) For nearly 100 years, Edgewood’s high-school teams have continuously used its athletic field for events like football, soccer, track and field, baseball, and summer sports camps. For example, in recent times, Edgewood has hosted multiple football games and soccer games on the athletic field. Since 1999, Edgewood has hosted numerous track meets (including parochial meets and meets for youth on the West Side of the City) on the athletic field. Lacrosse matches have been regular events on the athletic field since 2015. And since at least 1999, the athletic field included bleachers for fans. Beyond student athletic contests, Edgewood has also through the years allowed the community to access the athletic field and other parts of its property for games and recreational purposes, including the Monroe Street Farmers’ Market.⁵

Prior to 2013, the City zoned Edgewood as a residential district. (See Planning Division Staff Report 6.) After 2013, as “part of the mapping of the new Zoning Code,” the City zoned Edgewood as a Campus-Institutional District under Section 28.097, which remains its zoning classification today. (See Planning Division Staff Report 6.) This rezoning of Edgewood as a

⁵ Available at <https://www.monroestreetfarmersmarket.org/>.

Campus-Institutional District under the new code removed all permitted and conditional uses that were effective under Edgewood's previous zoning district prior to January 2, 2013, replacing them with the allowable uses listed in Section 28.097. M.G.O. §§ 28.009; 28.097.

Edgewood voluntarily submitted a Master Plan to the City in January 2014, under Section 28.097. (Edgewood High School Master Plan (2014) (hereinafter "Edgewood Master Plan").)⁶ Edgewood's Master Plan includes the requirements outlined by Section 28.097, namely a description of "existing conditions" and a description of "proposed conditions" for future development on campus. (Edgewood Master Plan 5, 14–19 (Part 2), 20–51 (Part 3)); *compare* M.G.O. § 28.097(5)(c)1–2. These future developments include the construction of 19 proposed buildings. (See Edgewood Master Plan 24–25.) In all, Edgewood designed its Master Plan to ensure "that all stakeholders are aware of potential future developments on campus" and to "provide a basis for implementing [Edgewood's] development decisions." (Edgewood Master Plan 5.) The plan "is not intended to be a detailed blueprint for construction" on Edgewood's campus. (Edgewood Master Plan 5.) Of particular relevance here, the Master Plan did not focus on the specific current uses of Edgewood's athletic field and so did not list all the current uses of Edgewood's field. (Letter from Douglas R. Hursch to Brian Munson, dated Jan. 4, 2019.)⁷

The City approved Edgewood's Master Plan, subject to conditions not relevant here, on April 22, 2014. (See Planning Division, Letter to Douglas R. Hursch dated April 22, 2014.)⁸ In the Planning Division Staff Report, which recommended approval of the plan to the Planning

⁶ Available at <https://madison.legistar.com/View.ashx?M=F&ID=2942558&GUID=64F457B3-DEC7-4D64-946F-B97F5BA12E4E>.

⁷ Available at <https://madison.legistar.com/View.ashx?M=F&ID=6970114&GUID=B42B4EC7-06AD-42A9-ADED-C722E1A4DE01>.

⁸ Available at <https://madison.legistar.com/View.ashx?M=F&ID=3064880&GUID=A9EAF5C5A-8DBD-4443-B14A-EA91D256A3D8>.

Division, the City noted that no Master Plan had yet been approved for a Campus-Institutional District. (Planning Division Staff Report 6.) Indeed, Edgewood’s Master Plan was the first Master Plan that the Plan Commission was ever asked to consider. (Planning Division Staff Report 6.) To date, only Edgewood and the University of Wisconsin have approved Master Plans. (See Planning Division, Letter to Gary Brown, dated October 4, 2017.)⁹ Other institutions zoned as Campus-Institutional Districts—including Madison Memorial High School, Madison East High School, Madison West High School, and Madison La Follette High School—do not have approved plans. (See Planning Division Staff Report on University of Wisconsin Master Plan 8 (June 19, 2017) (hereinafter “UW Planning Division Staff Report”) (noting in 2017 that the University of Wisconsin’s Master Plan is “only the second Campus Master Plan to come before the Plan Commission”).)¹⁰

C. The Zoning Administrator’s Enforcement Actions.

Despite Edgewood’s nearly 100 years of open use of its athletic field for athletic contests, physical-education classes, and sports-team practices, Zoning Administrator Matthew Tucker (“the Zoning Administrator”) claimed that he did not become “aware of the extensive use of the [Edgewood] athletic field” until after he attended an October 17, 2018 “neighborhood meeting.” (Email from Matthew Tucker, dated Oct. 26, 2018.) Shortly thereafter, the Zoning Administrator notified Edgewood that he believed its use of its athletic field for athletic contests was somehow “outside of the allowances” under Edgewood’s Master Plan. (Email from Matthew Tucker, dated Oct. 26, 2018.) He cited Section 3.8 of the Master Plan, entitled “Open Space Plan” and located

⁹ Available at <https://madison.legistar.com/View.ashx?M=F&ID=5489906&GUID=7C05863F-0E46-47D3-8A0C-EE3C112A8A0A>.

¹⁰ Available at <https://madison.legistar.com/View.ashx?M=F&ID=5307609&GUID=CE16A1CC-9F28-4582-BBD8-D9053F4BEBCC>.

within the “Proposed Conditions” part of the plan, which “identifies the athletics field to be used for ‘team practices, physical education practices.’” (Email from Matthew Tucker, dated Oct. 26, 2018; Edgewood Master Plan 20, 47.) So, according to the Zoning Administrator, any “programming” outside of these two categories—including athletic contests—is not an allowed use of the athletic field. (*See* Email from Matthew Tucker, dated Oct. 26, 2018.)

The Zoning Administrator issued an “Official Notice” against Edgewood on April 1, 2019. This notice asserts that Edgewood violated Section 28.097 by holding “athletic contests” (*i.e.*, high-school girls’ soccer games) on its athletic field, on the grounds that “[t]he Campus Master Plan states that the athletic field is used for team practices and physical education classes” only. (Official Notice, dated April 1, 2019.) The notice then orders Edgewood to “[d]iscontinue holding athletic contests on [its] athletic field.” (Official Notice, dated April 1, 2019.) A second “Official Notice” from the Zoning Administrator followed on May 15, 2019. (Official Notice, dated May 15, 2019.) This notice again asserts that Edgewood violated Section 28.097, specifically with regard to “athletic contests taking place on the athletic field” in March, April, and May (again, high-school girls’ soccer games). (Official Notice, dated May 15, 2019.)

In correspondence with Edgewood counsel on April 11, the City Attorney confirmed that the time period to appeal the first Official Notice had not yet begun to run. The second Official Notice listed seven separate violations, including the violations listed in the first notice. The second Official Notice was post-marked on May 16, 2019. Accordingly, Edgewood now timely appeals both of these Official Notices from the Zoning Administrator to this Board.

STANDARD OF REVIEW

Any person who is “aggrieved . . . by any decision of the Zoning Administrator” may appeal that decision “to the Zoning Board of Appeals.” M.G.O. § 28.202(4); *see also* M.G.O. § 28.205(5). This Board “may reverse or modify the decision appealed from if it determines that

it is error based on the terms of [the Zoning Code], a lawful condition of approval established under [the Zoning Code], or a provision of a federal or statute or constitution.” M.G.O. § 28.205(h).

GROUNDS FOR THE APPEAL

I. The Campus-Institutional District Ordinances Specifically Allow Edgewood To Use Its Athletic Field For Athletic Contests.

Municipal ordinances like those governing Campus-Institutional Districts must be interpreted according to the common, ordinary meaning of their text. *See State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110; *Bruno v. Milwaukee Cty.*, 2003 WI 28, ¶ 6, 260 Wis. 2d 633, 660 N.W.2d 656. Further, ordinances must be interpreted and applied “with a bias towards the free use of property.” *AllEnergy Corp. v. Trempealeau Cty. Env’t & Land Use Comm.*, 2017 WI 52, ¶ 164, 375 Wis. 2d 329, 895 N.W.2d 368 (2017).

Here, the text of Section 28.097 specifically allows Edgewood, as a Campus-Institutional District, to use its property as outdoor sports facilities, outdoor recreational facilities, open stadiums, or open arenas, any of which obviously encompass use for athletic contests—just like all other public schools in the City. Master Plans adopted under Section 28.097 do *not* subvert the use provisions of the Ordinance itself. Rather, Master Plans govern only the building and development of structures. Therefore, it is the Ordinance, not Edgewood’s Master Plan, that governs Edgewood’s use of its athletic field for athletic contests. The City’s position—that Edgewood’s Master Plan governs the use of Edgewood’s property and prohibits athletic contests—prohibits Edgewood from enjoying the same property-use rights as all other public schools in the City. But even if the Master Plan did govern use, Edgewood’s Master Plan does not foreclose

using the athletic field for athletic contests—and Edgewood certainly did not intend to prohibit that use.

A. The Campus-Institutional District Ordinances Expressly Allow Campus-Institutional Districts Like Edgewood And The City’s Public Schools To Use Their Property For Athletic Contests.

Madison’s Zoning Code is “a permissive zoning ordinance, which means that the ordinance permits only those [] uses [] that are specifically enumerated.” M.G.O. § 28.004(1). For Campus-Institutional Districts, specifically enumerated uses include “indoor and outdoor sports and recreational facilities”; “stadiums, auditoriums, and arenas, open or enclosed”; and “other uses related to the institution’s primary mission.” M.G.O. § 28.097(3)(b)(5), (15), (17) (capitalization altered). Section 28.091(1) confirms that the uses listed in Section 28.097(3) are all allowable uses in Campus-Institutional Districts. *See* M.G.O. § 28.091(1) (all “uses *allowed* within the Campus Institutional District are listed separately” in Section 28.097 (emphasis added)).

The Campus-Institutional District’s listing of allowable uses as “primary” and “secondary” is unique among the zoning districts recognized in the Zoning Code. All other primary zoning districts specifically classify their respective allowable uses as “permitted” uses or “conditional” uses.¹¹ In these other zoning districts, an entity may use its property for “permitted” uses without a permit from the City, while “conditional” uses first require a City permit. M.G.O. §§ 28.183(1)–(2); 28.11. Section 28.097, in contrast, does not classify allowable uses in Campus-Institutional Districts in this same manner. Instead, it lists all “uses allowed” within the district, classifying

¹¹ *See* M.G.O. § 28.032(1) (residential); M.G.O. § 28.061(1) (mixed-use and commercial); M.G.O. § 28.082(1) (employment); M.G.O. § 28.072(1) (downtown and urban); *See* M.G.O. § 28.091(1) (uses for “Agricultural District,” “Urban Agricultural District,” “Conservancy District,” “Parks and Recreation District,” and “Airport District” into “permitted” and “conditional” uses); M.G.O. § 28.099(3)–(4) (“Planned Mobile Home Park District”); M.G.O. § 28.100(2)–(3) (“Nonmetallic Mineral Extraction District”); M.G.O. § 28.098(1), (4) (“Planned Development District”).

them as either “primary or secondary.” M.G.O. §§ 28.091(1); 28.097(3). This means that, in a Campus-Institutional District like Edgewood and the City’s public schools, an entity may engage in *any* enumerated primary or secondary use without a permit from the City.

This is not to say that a Campus-Institutional District may engage in any primary or secondary use free from all City regulation. Rather, City regulations related to building codes, lighting, noise control, and the like may impose additional obligations not found within the Zoning Code that may ultimately qualify these uses to some degree. But, from the perspective of the Zoning Code—the only perspective at issue in this appeal—all enumerated primary and secondary uses are automatically allowable within the Campus Institutional District with no need for additional approval from the City. This is true whether the property owner is Edgewood or any of the City’s public high schools, since each are zoned as a Campus-Institutional District, and whether or not the property owner has submitted a Master Plan.

Application of Section 28.097 here is straightforward and plainly allows Edgewood to host athletic contests on its athletic field, just like the City’s public high schools. Because its property is zoned as a Campus-Institutional District, Edgewood may use its property as an outdoor sports facility or an outdoor recreational facility, as an open stadium or an open arena, or for any other use related to Edgewood’s primary mission. M.G.O. § 28.097(3)(b)(5), (15) (17). Each of these specifically allowed uses individually allows Edgewood to host athletic events. *See, e.g.*, Definition of “Stadium,” Merriam Webster’s Dictionary (“a large usually roofless building with tiers of seats for spectators at sports events”);¹² Definition of “Arena,” *Oxford English Dictionary* (“A level area surrounded by seats for spectators, in which sports, entertainments, and other public

¹² Available at <https://www.merriam-webster.com/dictionary/stadium>.

events are held.”).¹³ This is dispositive of Edgewood’s appeal, requiring reversal of the Zoning Administrator’s Official Notices.

B. Master Plans Do Not Control Allowed Land Use Within Campus-Institutional Districts.

Ignoring the plain text of Sections 28.097(3) and 28.091(1), the Zoning Administrator insists that voluntarily adopted Master Plans approved under Section 28.097 govern not only future development, but also the uses of property in a Campus-Institutional District. Nothing in Section 28.097 supports the Zoning Administrator’s conclusion.

Master Plans under Section 28.097 merely govern the “development” within Campus-Institutional Districts. *See* M.G.O. § 28.097(1). A Master Plan gathers “individual development proposals” within a Campus-Institutional District and presents them to the City for a single approval. *See* M.G.O. § 28.097(2)(c), (7). This stream-lined presentation of multiple development proposals “enable[s] adjacent neighborhoods and the broader community to understand the levels of development being proposed [in the Campus-Institutional District], their likely impacts, and appropriate mitigation measures.” M.G.O. § 28.097(2)(c). After the City approves a Master Plan, a Campus-Institutional District need only submit each individual proposal within the plan to an “architectural review committee” to begin construction—the Campus-Institutional District need not seek any permit from the City. *See* M.G.O. § 28.097(2)(c), (7). No text in Section 28.097 states that the Master Plan will govern the allowable use of property within a Campus-Institutional District; indeed, Master Plans need only contain a general “*description*” of existing “[l]and uses,” which description would aid in “understand[ing] the levels of development” within the district. M.G.O. § 28.097(1)(c), (5)(c)1.a (emphasis added). In short, Master Plans in Campus-Institutional

¹³ Available at <https://en.oxforddictionaries.com/definition/us/arena>.

Districts govern the development of structures on a piece of property, not use of that property itself.

Text removed from previous rejected drafts of Section 28.097(3) confirms this conclusion. During the Zoning Code rewrite process, the City's Zoning Code Rewrite Advisory Committee (ZCRAC) was presented with an initial draft of the Campus-Institutional District Ordinance dated January 14, 2009. The draft clearly stated, under the subsection entitled "Uses Within CI Districts," that "[t]he specific uses allowed within a CI district will be identified as part of the campus master plan. If no master plan has been prepared, all uses exceeding 4,000 square feet in gross floor area are considered conditional uses." See Cunningham Group Subchapter 28G Special Districts draft dated 1/14/09 at p. 9 (emphasis added).¹⁴ This language was subsequently deleted, following ZCRAC's decision to change the Campus-Institutional District language from permitted/conditional uses to allowed primary and secondary uses. Following this decision, a subsequent draft dated April 20, 2009, stated that "Uses within CI districts are defined as follows as either principal or secondary. *Uses are further defined based on the master plan status of the institution. A master plan must include a list of existing and planned principal and secondary uses within the campus.*" See Cunningham Group Subchapter 28G Special Districts draft dated 4/20/09 at pp. 10–11 (emphasis added).¹⁵ While that proposed language might have made Master Plans govern use, the final version of Section 28.097(3) enacted by the City *removed that language*. See M.G.O. § 28.097(3). Therefore, with this change, the drafters of this Ordinance clearly intended to limit the reach of Master Plans to development only, not uses. See generally Kalal, 2004 WI

¹⁴ Available at <https://madison.legistar.com/View.ashx?M=F&ID=1758897&GUID=11C428E0-6105-47A3-9C5E-F663F69FB819>.

¹⁵ Available at <https://madison.legistar.com/View.ashx?M=F&ID=1760495&GUID=F069D2EE-EB92-431A-B2E4-333C626BB1DE>.

78, ¶ 51 (“legislative history” may be “consulted to confirm or verify a plain-meaning interpretation”).

Section 28.098, which covers Planned Development Districts, also confirms that Campus-Institutional District Master Plans do not govern property use. Section 28.098 requires a proposed Planned Development District to submit a “General Development Plan” for the district that includes “a description of the proposed land uses,” which “proposed land uses . . . shall become permitted or conditional uses upon the approval of the Planned Development by the Common Council.” M.G.O. § 28.098(4), (5)(b). Thus, in contrast to a Master Plan, a General Development Plan *does* govern allowable uses in a Planned Development District. Had this same language appeared in Section 28.097 in relation to Campus-Institutional Master Plans, the Zoning Administrator’s position may have been correct. But it does not.

The Zoning Administrator’s interpretation of Section 28.097 also conflicts with the City’s previous public interpretation of Section 28.097, as reflected in City documents recommending the approval of Edgewood’s and the University of Wisconsin’s Master Plans. Both of those documents stated that the Campus-Institutional District “encourages the adoption of master plans . . . to guide the future growth” and “individual development” in the property. (Planning Division Staff Report 6; UW Planning Division Staff Report 8). Neither document states that either Edgewood’s or the University of Wisconsin’s Master Plans should or would control the current use of either institution’s property.

Finally, the Zoning Administrator’s interpretation of Section 28.097 creates absurd results—three (of the many) follow.

First, for schools like Edgewood (and the City’s public schools) that existed prior to the effective date of Section 28.097, the creation of a Master Plan is voluntary, but “[e]ncourage[d].”

See M.G.O. § 28.097(1)(c), (2)(a). Yet, under the Zoning Administrator’s view, a Master Plan severely limits the Campus-Institutional District by requiring strict enumeration of *all* current uses of *every* piece of property in order for such uses to be allowable. No district, fairly aware of that stricture, would ever adopt a Master Plan if it did not have to—and Edgewood did not have to. Edgewood certainly would not have voluntarily adopted a plan that disallowed the historical use of its athletic field when it had been hosting athletic contests on that field for nearly a century. Further, every Master Plan expires after ten years. So, under the Zoning Administrator’s view, Edgewood would once again obtain the right to use its property for athletic contests in 2024, when its Master Plan expires.

Had the City intended for Master Plans to govern the use of land, it would not have made these plans voluntary or temporary. One need only look to General Development Plans under Section 28.098 for proof: those plans *do* govern use in a Planned Development District, and are neither voluntary nor temporary. *See* M.G.O. § 28.098(1), (4)(a).

Second, neither Edgewood’s nor the University of Wisconsin’s Master Plan explicitly lists other current uses enumerated in Section 28.097. For example, neither Master Plan explicitly states that libraries are currently used for reading, that dining halls are currently used for dining, or that dormitories are currently used for sleeping. *Compare* M.G.O. § 28.097(3)(a)(1) & (3), (b)(2). Thus, in the Zoning Administrator’s view, students at Edgewood and the University of Wisconsin may not read, eat, or sleep anywhere in those districts.

Third, Edgewood has hosted the Monroe Street Farmers’ Market on its property for years and allowed members of surrounding neighborhoods to use its athletic field for games and recreation. These uses are not mentioned in the Master Plan. According to the Zoning Administrator, they too are prohibited.

C. Even If Master Plans Control Allowed Use Within A Campus-Institutional District, Edgewood’s Master Plan Contemplates And Includes Athletic Contests.

Even under the Zoning Administrator’s unjustifiable conclusion that Master Plans adopted under Section 28.097 control the use of property within a Campus-Institutional District, Edgewood’s Master Plan does in fact allow athletic contests on Edgewood’s athletic field.

Edgewood’s Master Plan describes its open spaces as including an “*Athletic field*,” a term that itself fairly implies athletic contests. (Edgewood Master Plan Appendix A.1, Open Spaces Diagram (emphasis added)); see Definition of “field,” *Oxford English Dictionary* (“A piece of land used for a particular purpose, especially an area marked out for a game or sport.”).¹⁶ Indeed, Edgewood has always understood that its “athletic field” was to be used for athletic contests, as evidenced by its consistent use for this purpose for nearly a century. The athletic field has also had bleachers for fans and spectators since at least 1999.

While it is true that the Master Plan states that the athletic field is used for “team practice” and “physical education classes,” it makes no sense to read this language as excluding the hosting of athletic contests. (Edgewood Master Plan 47.) This language appears in Part 3 of the Master Plan, which describes *proposed conditions* to satisfy *future needs* of Edgewood, in satisfaction of the future-looking-development requirement for Master Plans found in Section 28.097(5)(c)2. (See Edgewood Master Plan 20–21.) Given the future-looking context for this Part of the Master Plan, Section 3.8 is not, and was not intended to be, a list of all uses of the athletic field. Indeed, a letter from one of the Master Plan’s developers confirms that Edgewood did not focus on the specific current uses of its athletic field when drafting the Master Plan and so did not list all the current uses. (Letter from Douglas R. Hursch to Brian Munson, dated Jan. 4, 2019.) A more

¹⁶ Available at <https://en.oxforddictionaries.com/definition/us/field>.

logical location for a limitation on existing uses (if one were intended, which it was not) would have been Section 2.1 of the Master Plan, describing “Existing Buildings and Land Use”; however, in this directly applicable section, there is no qualifying or limiting language.

Finally, this Board should be especially skeptical of the Zoning Administrator’s exceedingly parsimonious reading of Edgewood’s Master Plan, given that this plan was the *very first* Campus-Institutional District Master Plan submitted to and approved by the City. (*See* Planning Division Staff Report 7.) Edgewood did not have the benefit of the City’s “direction . . . on the sufficiency of the master plan requirements in the Zoning Code.” (*See* Planning Division Staff Report 7.) The Planning Committee Staff Report itself requested such guidance from the Plan Commission, even as it recommended Edgewood’s Master Plan for approval. (Planning Division Staff Report 7; *see also* UW Planning Division Staff Report 8 (repeating this call for guidance from the Plan Commission after recommending University of Wisconsin’s Master Plan).) It would be unfair to conclude that Edgewood inadvertently eliminated an otherwise permitted use of its athletic field—something it plainly did not intend to do—as part of a voluntary process designed to make it easier, not harder, for educational institutions to develop their property.

II. Whatever Legal Basis That Allows The City’s Public Schools To Hold Athletic Contests On Their Property Equally Applies To Edgewood.

Edgewood’s holding of athletic contests on its property is indistinguishable from that of all other public high schools in the City. These public high schools are all zoned as Campus-Institutional Districts, like Edgewood. Just like Edgewood, none of them is obligated to file a Master Plan. Further, so far as Edgewood is aware, the Zoning Administrator has *never* taken an enforcement action against any of these public high schools for holding “unauthorized” athletic contests. Given that lack of enforcement, the Zoning Administrator must have concluded that these high schools’ hosting of athletic contests is proper under the Campus-Institutional District

Ordinances (which, as explained above, Edgewood agrees with), that it qualifies as legal non-conforming use under Section 28.191 of the Madison General Ordinances, or that some other legal basis applies. Whatever the legal basis for these public high school's athletic contests, that legal basis *must* apply equally to Edgewood. Indeed, the Zoning Administrator's failure to afford this equal treatment to Edgewood High School of the Sacred Heart runs afoul not just of the Zoning Code, but of federal law, as explained immediately below.

III. The Religious Land Use & Institutionalized Persons Act Requires The City To Allow Edgewood To Use Its Open Spaces For Athletic Contests.

The City's efforts to bar Edgewood from continuing to use its athletic field for athletic contests are also subject to the Religious Land Use & Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. RLUIPA is a federal statute that was enacted primarily to protect religious institutions from improper and burdensome land-use regulations. RLUIPA was designed to provide heightened protection for the free exercise of religion and equal treatment of religious institutions in the area of land-use regulation. *Cutter v. Wilkinson*, 544 U.S. 709, 714–15 (2005).

The two primary provisions of RLUIPA implicated in this matter are the "Substantial Burden" and "Equal Terms" provisions. Under the "Substantial Burden" provision:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc(a)(1).

Here, the Zoning Administrator has sought to impose the City's land-use regulations in a manner that substantially burdens Edgewood's and its students' religious exercise. There is no

question that Edgewood is a religious institution. It is a Catholic high school founded in 1881 by the Congregation of the Dominican Sisters of Sinsinawa. Through their sponsorship of Edgewood, the Sinsinawa Dominicans carry out their religious mission to teach and to preach.

In furtherance of the sincerely held religious beliefs of the Sinsinawa Dominicans and the school, Edgewood's mission is to educate the whole student for a life of learning, service, and personal responsibility through a rigorous academic curriculum that embraces the Sinsinawa Dominican values of Truth, Compassion, Justice, Partnership and Community. For nearly a century, athletics has been a primary way that the school has accomplished its mission to educate the whole student, to teach personal responsibility, and to instill and promote the Sinsinawa Dominican values. Since 1927, Edgewood has had its athletic field and track, and has used them for athletic contests in furtherance of its religious mission and values.

Edgewood's student-athletes are called the Crusaders, and the Edgewood Crusaders Athletics website describes how athletics and athletic contests are integral to the school's religious mission, and how they are engaged in as an exercise of the religious beliefs and values that animate the school.¹⁷ The goals of Edgewood athletics are to:

- Promote the mission and goals of Edgewood High School;
- Maintain Christian, sportsmanlike behavior at all times;
- Improve motor skills;
- See the need for better health and physical fitness;
- Promote a desire to succeed and excel;
- Foster the development of moral and ethical standards;
- Learn the high ideals of fairness in all human relationships;
- Learn to make proper decisions under pressure; and
- Enjoy competition and comradeship.

Athletic contests are also a primary way for Edgewood's students to connect with each other and experience the Dominican value of community. Through athletics and athletic contests, Edgewood

¹⁷ Available at <https://www.edgewoodcrusadersathletics.com/>.

students experience Christian fellowship and develop discipline, character, and unity. The importance of athletics and athletic contests to the school's mission and its students is reflected in the fact that 75% of Edgewood students participate in athletics.

Moreover, athletic contests provide a unique opportunity to educate, congregate in community, recreate, and publicly celebrate the school's values. Athletic contests on Edgewood's field have been, and will continue to be, used to promote and display Edgewood's religious mission and values to the community in a way that no other school activity can. Athletic contests draw people from the community to the campus and provide a unique platform from which the school and its athletes can promote the school's religious mission and values.

All of this evidence is sufficient to establish that Edgewood's use of its athletic field constitutes religious exercise under RLUIPA, which defines "religious exercise" to include "*any* exercise of religion, whether or not compelled by, or central to, a system of religious belief," and specifies that the "use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." 42 U.S.C. § 2000cc-5(7) (emphasis added). This broad construction is also required by 42 U.S.C. § 2000cc-3(g), which requires RLUIPA's terms to be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."

Prohibiting Edgewood from continuing to engage in its well-established religious land use constitutes a "substantial burden" on Edgewood's religious exercise. While RLUIPA does not define the term "substantial burden," the U.S. Supreme Court's and Seventh Circuit Court of Appeals' case law is instructive. Following the Supreme Court's RLUIPA decision in *Holt v. Hobbs*, 135 S. Ct. 853 (2015), the Seventh Circuit—the region of the federal appellate-court

structure covering Wisconsin, Illinois, and Indiana—recognized that the Supreme Court in *Holt* had articulated a standard “much easier to satisfy” than the onerous “substantial burden” standard that the Seventh Circuit had initially defined in the land use cases of *Eagle Cove Camp & Conference Center v. Woodboro*, 734 F.3d 673, 680 (7th Cir. 2013), and *C.L.U.B. v. Chicago*, 342 F.3d 752, 761 (7th Cir. 2003).

Under this “much easier to satisfy” standard, and in view of other Seventh Circuit cases, Edgewood can show that a denial of its historical use of its athletic field would “seriously,” and thus “substantially,” burden its religious exercise. It is important to note that the “substantial burden” analysis under RLUIPA focuses on the impact of the City’s land-use regulations on the specific religious exercise in question—not on the religious institution’s general religious mission or ability to engage in other religious exercises on the property. *See Holt*, 135 S. Ct. at 861–62. Moreover, since the focus of the law is on the impact on Edgewood’s religious land use, Edgewood can establish its “substantial burden” claim regardless of the intent, motives, or animus of the City or the Zoning Administrator. RLUIPA’s legislative history makes it clear that a religious institution can show a substantial burden on its religious exercise without a showing of animus and without “proving that there is an unconstitutional motivation behind a law,” 146 Cong. Rec. S6688 (daily ed. July 27, 2000)—though intent may be an aggravating factor, *World Outreach Conference Ctr. v. City of Chicago*, 787 F.3d 839, 843–44 (7th Cir. 2015). The Seventh Circuit has also recently reaffirmed that a religious institution can establish a “substantial burden” claim by showing that a municipality is demanding that the religious institution pursue additional or unnecessary zoning approvals to secure an existing, legally established right. *Church of Our Lord & Savior Jesus Christ v. City of Markham*, 913 F.3d 670 (7th Cir. 2019).

Once it is established that a land-use regulation or interpretation is being imposed in a manner that substantially burdens a religious exercise, RLUIPA shifts the burden to the municipal defendant to prove that its imposition of the substantial burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling interest. See 42 U.S.C. § 2000cc(a)(1); 42 U.S.C. § 2000cc-2(b). Compelling state interests are “interests of the highest order.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (“[O]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation.”). “Demonstrating a compelling interest and showing that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). The standard “is not watered . . . down but really means what it says.” *Lukumi*, 508 U.S. at 546 (internal citations omitted). Thus, the government must “show a compelling interest . . . in the particular case at hand, not a compelling interest in general.” *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007).

According to the U.S. Department of Justice, a municipality cannot simply point to an interest in noise, traffic, or parking in the abstract as a compelling interest justifying a substantial burden on religious exercise. Rather, the government must show that it has a compelling interest in achieving that interest through the particular restriction at issue.¹⁸ In other words, the government must show that its compelling interest requires having Edgewood discontinue its use of its athletic fields for athletic contests. Based on everything the Zoning Administrator has

¹⁸ U.S. D.O.J Policy Statement on the Land-Use Provisions of RLUIPA at 6–7, available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rliupa_q_a_9-22-10_0.pdf.

presented to date, the City does not have a significant or legal—let alone compelling—interest to justify barring Edgewood from continuing its historic and religious use of its athletic field.

Even if the City could show that its purported interest is compelling, it must also show that it employed the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc(a)(1)(B). In other words, the City must show that its interests could not have been achieved by narrower action that burdens the school to a lesser degree. *Elsinore Chr. Ctr. v. City of Lake Elsinore*, 291 F. Supp. 2d 1083, 1095 (C.D. Cal. 2003). The City will be unable to show that completely barring Edgewood from continuing to use the athletic fields for athletic contests constitutes the least restrictive means of furthering any interest whatsoever.

Finally, the City must also consider Edgewood’s equal-protection rights, both under the U.S. Constitution and RLUIPA’s “Equal Terms” provision. The City has a constitutional obligation to afford religious institutions the equal protection of the laws, and the Equal Terms provision expressly provides that:

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

42 U.S.C. 2000cc (b) (1).

An “Equal Terms” violation can be based solely on how a municipality has applied its land-use regulations to similar institutions or uses. In short, the City must treat Edgewood’s use of its athletic field on the same terms that it treats the other schools’ use of their fields. *See River of Life Kingdom Ministries v. Vill. of Hazel Crest*, 611 F.3d 367, 373 (7th Cir. 2010). From a land-use perspective, there is no accepted zoning criterion upon which the City could prohibit Edgewood from continuing its historical and legal use of its athletic field while allowing any, let alone all, of the other nonreligious schools within a Campus-Institutional District to continue their historical

uses of their athletic fields for athletic contests. *See id.*; *see also Church of Our Lord & Savior Jesus Christ*, 913 F.3d at 677 n.8.

Here, the City has singled out Edgewood, despite its long history of hosting athletic contests on its athletic field, for disparate treatment. All of the other high schools located within a Campus-Institutional District—all public high schools—have been allowed to continue to host athletic contests on their athletic fields. Like Edgewood, Madison West and Madison East High Schools have been hosting athletic contests on their campus fields since the 1920's, but neither of those public schools has faced City efforts to prohibit or restrict its use. Madison Memorial High School and La Follette High School have been hosting athletic contests on their fields since the 1960's, but neither school has faced City efforts to prohibit or restrict its use. All of these nonreligious high schools have been freely allowed to continue to host athletic contests. None of these public schools has been told that it must limit the use of its field to practices and physical education classes. None of these schools has been told that it cannot have lights on its field to allow for these athletic contests to be hosted at night or to protect the safety of its student-athletes. Of all the schools located in a Campus-Institutional District, only the religious school, Edgewood, has had its ability to continue hosting athletic contests threatened and prohibited by the City. Only Edgewood has been told that it cannot proceed to install lights (lights that the City *approved* for compliance with lighting and zoning on February 27, 2019 and March 1, 2019, respectively) based on the Zoning Administrator's arbitrary, capricious, and after-the-fact zoning interpretation.

By imposing its land-use regulations and the Zoning Administrator's improper interpretations to restrict only Edgewood's ability to host athletic contests, the City has treated Edgewood on less-than-equal terms as Madison's nonreligious schools within a Campus-Institutional District. This disparate treatment is more than sufficient to establish a *prima facie*

Equal Terms violation under RLUIPA. There is no accepted or legitimate zoning criterion upon which the City could justify prohibiting Edgewood from using its athletic field just like all the other high schools in a Campus-Institutional District, which the City has freely allowed to their historical and legal use for athletic contests (including with lights). The City and the Zoning Board of Appeals have an obligation under federal law to treat Edgewood's land use on equal terms.

[continues on the next page]

CONCLUSION

For all these reasons, Edgewood respectfully requests that the Board vacate and reverse the Zoning Administrator's Official Notices. The Zoning Administrator's actions are already inflicting irreparable harm on Edgewood, including imposing grave uncertainty on Edgewood's many planned uses of its athletic fields in the coming months and seasons. Accordingly, Edgewood respectfully requests that this Board consider this appeal at its June 20, 2019 meeting.

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Respectfully submitted,



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Appendix A

28.097 - CAMPUS-INSTITUTIONAL DISTRICT.

(1) Statement of Purpose.

The CI District is established to recognize the City's major educational and medical institutions as important activity centers and traffic generators, accommodate the growth and development needs of these institutions, and coordinate the master plans of these institutions with the City's plans, policies and zoning standards. The district is also intended to:

- (a) Permit appropriate institutional growth within boundaries while minimizing the adverse impacts associated with development and geographic expansion.
- (b) Balance the ability of major institutions to change and the public benefits derived from change with the need to protect the livability and vitality of adjacent neighborhoods.
- (c) Encourage the preparation of Campus Master Plans that enable adjacent neighborhoods and the broader community to understand the levels of development being proposed, their likely impacts, and appropriate mitigation measures.

(2) Master Plan Requirement.

- (a) Any Campus Institutional District created after the effective date of this ordinance shall submit a Campus Master Plan, which shall be approved as part of the map amendment.
- (b) Approved Campus Master Plans shall be effective for ten (10) years, and, during that period, may be altered pursuant to (8) below.
- (c) In a Campus Institutional District without a Campus Master Plan, individual development proposals and changes that exceed four thousand (4,000) square feet in floor area within any five (5) year period shall require conditional use approval. (Am. by ORD-15-00033, 4-8-15)
- (d) In the absence of a Master Plan, dimensional requirements are in (4) below.
- (e) Any PUD converting to CI carries the land use approval and restrictions from the PUD into the CI, and those rules and agreements are in full effect until a Campus Master Plan is adopted.

(3) Uses Within CI Districts.

Uses within CI districts are defined as follows as either primary or secondary.

(a) Primary Uses.

- 1. Educational uses associated with colleges, universities, and secondary and primary schools, including classroom buildings, libraries, and offices.
- 2. Medical facilities, including hospitals, clinics, laboratories and related facilities.
- 3. Dormitories, student and/or faculty housing.
- 4. Community Center.

(b) Secondary Uses.

- 1. Day care facilities.
- 2. Eating places within mixed-use buildings such as dormitories or student unions.
- 3. Fraternities and sororities.

4. General retail, financial and personal service uses within mixed-use buildings such as student unions.
5. Indoor and outdoor sports and recreational facilities.
6. Lodging facilities.
7. Museums and art galleries.
8. Parking, structured and surface.
9. Performing arts centers.
10. Places of worship.
11. Utilities and transportation facilities related to the primary use.
12. Veterinary clinics.
13. Agricultural uses.
14. Public utility and service uses.
15. Other uses related to the institution's primary mission.
16. Correctional Facility.
17. Stadiums, auditoriums, and arenas, open or enclosed.

(4) Dimensional Requirements.

In CI districts, with an approved Master Plan, dimensional requirements will be determined by the Master Plan. In CI Districts with no Master Plan, the dimensional requirements follow. Requirements represent minimums unless otherwise noted. Dimensions are in feet unless otherwise noted.

Campus-Institutional District	
Lot area sq. ft.	6,000
Lot width	50
Front yard setback	0
Side yard setback	0
Rear yard setback	0
Maximum lot coverage	85%
Maximum height	3 stories/68 See (a) below
Usable open space	0

(Am. by ORD-14-00002, 1-14-14)

- (a) Heights exceeding the maximum may be allowed with conditional use approval. (Cr. by ORD-14-00002, 1-14-14)

(5) Contents of Master Plan.

The Master Plan shall include the following elements and information:

- (a) Background/History. A summary of previous planning efforts by the institution in conjunction with the City and/or abutting neighborhoods or other interest groups, a description of the

campus master planning process and participants, and any other relevant background material.

- (b) Mission/Guiding Principles . A statement that defines the organizational mission and objectives of the institution and describes the role of the master plan within the context of the mission.
- (c) Facilities Plan . Includes a description of existing conditions on the campus and the proposed conditions under the Master Plan, including:
 - 1. Existing Conditions .
 - a. Land uses and buildings.
 - b. Building form (building type, height, bulk, etc.).
 - c. Landmarks, historic sites and districts.
 - d. Natural features and significant open-space areas.
 - 2. Proposed Conditions .
 - a. Future needs/capital improvements.
 - b. Phasing of proposed improvements.
 - c. Future land uses and buildings.
 - d. Building Form (building type, height, bulk, etc.).
 - e. Landscape treatment.
 - f. Open-space areas and other open-space uses.
 - g. Relationship to transportation/access plan (parking, transportation demand management, etc.).

(6) Standards for Master Plan Approval .

The Common Council will approve or reject the Master Plan following a recommendation by the Plan Commission. Approval of the Master Plan will be based on the Plan's treatment of the topics listed above and the degree to which it meets the intent of this district, as well as the following standards:

- (a) The Plan shall serve the public interest as well as the interest of the institution developing the plan.
- (b) The Plan shall be consistent with the goals of the Comprehensive Plan and adopted neighborhood, corridor or special area plans adjacent to campus boundaries.

(7) Final Building, Structured Parking, and Surface Parking Design Review .

- (a) All Campus Master Plans shall identify building location and maximum height. All buildings properly identified on a Campus Master Plan must be reviewed and approved by an architectural review committee prior to construction. The committee shall be established by the institution and shall meet the following standards:
 - 1. The building design review standards and guidelines, review procedures, categories of membership, and the language of any deed or plat restriction must be approved by the Urban Design Commission.
 - 2. Membership on the committee, including representation of planning staff and registered neighborhoods, and committee procedures must be approved by the Plan Commission. Committee meetings shall be public.
 - 3. Until an architectural review committee is established and approved by the Plan Commission, all building and site plans shall be reviewed and approved by the Urban

Design Commission, with an appeal process to the Plan Commission as established in Section 33.24.

- (b) In addition to undergoing the design review process in sub. (7)(a) above, and in order to minimize impact on City right-of-ways, all structured or surfaced parking facilities properly identified in a Campus Master Plan must be reviewed by the Pedestrian/Bicycle/Motor Vehicle Commission and Board of Public Works and approved by the Common Council prior to construction. In approving a structured or surface parking facility under this section, the Common Council may require a Traffic Impact Analysis (TIA) prepared by the applicant, a permanent right-of-way dedication to the city, and/or city right-of-way improvements, if deemed necessary by a Traffic Impact Analysis or an analysis prepared by the City Traffic Engineer. Any such analysis shall consider the cumulative effect of other structured and surface parking facilities in the area when determining whether a permanent right-of-way dedication or right-of-way improvement is necessary.
- (c) If there is no approved Master Plan, building design review will occur as part of the conditional use approval.

(Am. by ORD- 17-00073 , 7-26-17)

(8) Review by University of Wisconsin-Madison Campus Area Committees Prior to Final Building Design Review.

Prior to presenting final building design to the architectural review committee under Sub. (7) above, the University of Wisconsin-Madison shall present the final building design plans to a meeting of the Joint West and Joint Southeast area review committees after giving notice of the joint meeting by first class mail to the owners of record, as listed in the office of the City assessor, and occupants of multi-tenant buildings, of property in whole or in part situated within two hundred (200) feet of the boundaries of the properties affected.

(Cr. by ORD- 17-00084 , 9-13-17)

(9) Appeal of Decision by Architectural Review Committee .

The applicant or alder for the affected district may appeal any decision of the architectural review committee under Sub. (7) above to the Plan Commission. Appeal may be taken by filing a Notice of Appeal with the Secretary of the Plan Commission within 10 days of a final decision by the architectural review committee. The appeal should state the reasons for appeal and relief sought by the applicant or alder. Once an appeal is received, the Plan Commission shall set a public hearing as soon as practicable. At the conclusion of the public hearing, the Plan Commission may affirm, reverse, or modify the decision of the architectural review committee.

(Cr. by ORD- 17-00084 , 9-13-17)

(10) Changes to Master Plan .

No alteration of an approved Campus Master Plan, including changes to the proposed use of identified open space areas and other open space uses, shall be permitted unless approved by the Plan Commission, provided however, the Zoning Administrator may, following consideration by the alderperson of the district, issue permits for minor alterations that are approved by the Director of Planning and Community and Economic Development and are consistent with the concept approved by the Common Council. If the change or addition constitutes a substantial alteration of the original plan, the procedure in Sec. 28.097(6) is required.

(Renum. by ORD- 17-00084 , 9-13-17)