

# Regulatory Framework for Sustainable Development

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# Sustainable Development

- Sustainable development means many things to many people:
  - Solar Installations
  - Green Roofs/Cool Roofs
  - Stormwater Control Measures
  - Electric Vehicle Charging Stations
  - Energy Benchmarking
  - Transportation Management
  - Reuse and recycling
  - Bird-Friendly Glass
  - Energy efficient insulation
  - Gray Water Pipes

# Regulatory Framework

## Zoning (Wis. Stat. Sec. 62.23(7)(am))

- “...the Council may regulate and restrict by ordinance...the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces,...the density of population, and the location and use of buildings, structures and population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes...”
  - **General Regulations**
  - **Conditional Use Approvals**
  - **Planned Development and other special zoning districts**
- **Other City ordinances, pursuant to general public health, safety, and welfare authority, such as Ch. 37, MGO, Erosion and Stormwater runoff control.**
- **State Building Code**
  - **2013 Wisconsin Act 270 established a uniform building code in Wisconsin, which preempts regulations related to construction standards that are more stringent than the state building code.**
    - **Preemption analysis does not apply to valid Zoning ordinances.**
- **State Energy Conservation Code**
  - **Wis. Stat. Sec. 101.027 creates energy conservation code for commercial and public buildings.**
    - **Different but similar preemption analysis may apply.**

# Paths to Sustainable Development

Other cities have identified three key components to generating sustainable development:

1. Remove obstacles, educate and assist.
2. Give incentives.
3. Establish requirements.

# Remove obstacles, educate and assist.

- Are there currently obstacles in the zoning code or other city ordinances preventing or discouraging the implementation of sustainable development initiatives?
  - Example = until recently in the City's zoning code, solar installation at a property zoned PD or subject to a CU required an alteration approved by staff or, in some cases, the Plan Commission. Ordinance recently eliminated this requirement, making it easier to install solar at property zoned PD or operated under a CU.
- Are there ways to educate property owners about the options and advantages of building more sustainably and then assisting them in navigating the implementation of sustainability measures in their project?
  - Example = property owner wishes to build a 20,000 sq. foot commercial building and, after educating and design assistance, learns that they can build the same building XX% more sustainability for the same price, with a likelihood of realizing savings over the life of the building.

# Give incentives.

Like other cities have done, Madison could provide incentives to developers who integrate sustainable building initiatives.

- Direct funding.
- Density or height bonuses.
- Development review process modifications.
- Waiver of fees.
- Many others.

# Establish requirements.

- Generally can impose sustainable development initiatives as requirements provided the State has not otherwise restricted the City from doing so with regard to any particular initiative (e.g., building code preemption).
- What to require.
  - What do we want to require and how?
- How to implement.
  - In Zoning Code General Regulations?
  - As part of conditional use or planned development approval?
  - Outside of Zoning Code?
  - As one large sustainable development bill?
- Preemption issues to consider.
  - Building code preemption
  - Energy usage

# Preemption issues related requirements.

- State Building Code Preemption Analysis
  - 2013 Wis. Act 270 preempts an ordinance that (1) is additional to or more restrictive than DSPS rules (2) applies to public buildings or buildings that are places of employment; (3) establishes minimum standards for constructing, altering, or adding to those buildings; and (4) was not enacted as a land use or zoning standard.
  - s. SPS 361.03(5)(a)1. and 2., Wis. Admin. Code, provides that preemption analysis does not apply to requirements enacted as land use or zoning requirements.
  - Thus, when evaluating the possibility of requiring sustainable building initiatives, with respect to each proposed requirement we ask:
    - Is the requirement an exercise of the city's land use or zoning authority?
    - If not, does it set a construction standard that is additional to or more restrictive than the state building code.

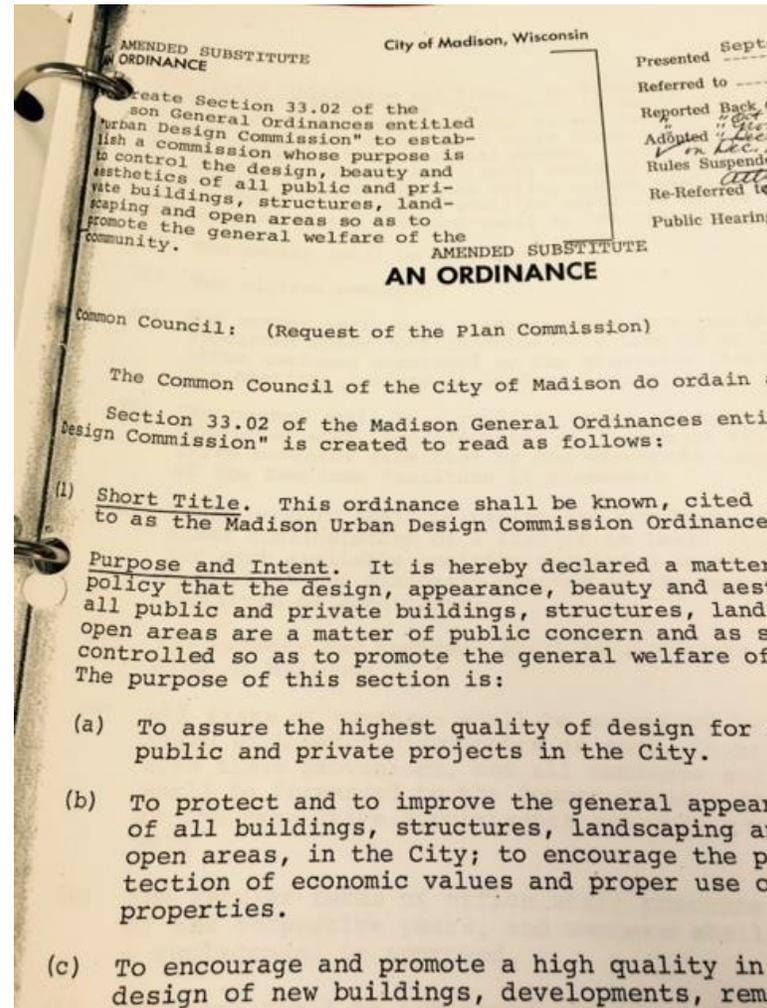
## Preemption issues related to requirements.

- Energy Usage Preemption Issues
- Similar to the adoption of the state building code, the State has already adopted an energy conservation code for commercial and public buildings, Wis. Stat. Sec. 101.027.
- So, like with the state building code, we may run into some of the same basic preemption issues that we run into with the building code.
  - Differences include that 101.027 does not contain specific preemption language like the state building code, but general preemption issues still exist under what is known as the *Anchor* test (matter of statewide importance on which the state has already acted).

# Possible key considerations.

- Are there currently obstacles to sustainable development?
- Are there things the City can do to educate and assist property owners in making sustainable building decisions.
- Should City implement through incentives, requirements, or both?
- Should implementation be done through multiple stand-alone ordinances or one omnibus sustainable development ordinance?
- Should implementation be through the Zoning Code, other MGOs, or both?
- Should implementation apply to the entire City or to specific districts?
- Should requirements be flexible, interchangeable, or allowed to play off of each other?
- How does sustainable development policy relate, if at all, to other important policy considerations (e.g., affordable housing)? Hinder? Help? Complement?

# How does the UDC fit into this puzzle?



# Purpose and Intent

- 1972 Purpose and Intent same as 2021 Purpose and Intent
  - “Design, appearance, beauty, and aesthetics of all public and private buildings, structures, landscaping and open areas are a matter of public concern...”
  - Assure highest quality of design
  - Protect and improve general appearances of all buildings.
  - Encourage and promote high quality design.
  - Foster civic pride in the beauty and nobler assets of the City

# Sustainability Goals

Establishing **Sustainable Design** as a core identity of the Urban Design District

## Energy Efficiency District

- Encourage Net zero buildings
- Encourage electric vehicle charging stations
- Require EV ready site
- Encourage rooftop PV
- Require PV ready buildings

## Improve Urban bio-diversity

- Require native plantings
- Preserve/expand urban tree canopy
- Integrate vegetation into built environment

## Increase stormwater management

- Encourage on site retention
- Require substantial green or blue roof
- Require partial permeable pavement
- Encourage rain gardens



*Examples of Sustainable Landscape and Building Elements*



*Consider Improvements for the Senior Center Open Space*

# Existing Ordinance

- MGO 33.24(2)(a): “to assure the highest quality of design...”
- MGO 33.24(4)(b): (planned developments) “shall review the design...”
- MGO 33.24(4)(c): (residential building complexes) “shall review the design...”
- MGO 33.24(8)(c): (UDD1) “[one basis for design review]...is relevant design recommendations in any element of the City’s Master Plan or other adopted plans.”
- MGO 33.24(8)6.a.iv: (UDD1) “the overall design of the building shall be of high quality...”
- MGO 33.24(14)(d)2.b.i. (UDD7) “[one guideline] is “green” building design that promotes energy efficiency is encouraged.”
- MGO 33.24(15)(e)12.(c) (UDD8) allows for bonus stories if “LEED...”
- Etc.

