

Chapter 86 SUBDIVISIONS*

***Cross references:** Buildings and building regulations, ch. 14; floods, ch. 38; mobile homes, ch. 54; planning, ch. 66; streets, sidewalks and other public places, ch. 82; utilities, ch. 98; vegetation, ch. 102; zoning, ch. 106.

State law references: Platting lands generally, Wis. Stats. § 236.01 et seq.

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ARTICLE I. IN GENERAL

Sec. 86-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alley means a public right-of-way which normally affords a secondary means of vehicular

access to abutting property.

Arterial street means a street which provides for through traffic for a heavy volume of vehicles, from or within the city. It has a secondary function of providing access to abutting land.

Block means an area of land within a subdivision that is entirely bounded by a combination or combinations of streets, exterior boundary lines of the subdivision and streams or water bodies.

Building line means a line parallel to a lot line and at a distance from the lot line to comply with the zoning chapter's yard and setback requirements.

Certified survey map means a map of land division, prepared in accordance with Wis. Stats. § 236.34, and in full compliance with this chapter.

Collector street means a street which shall provide for the ready collection of traffic from commercial and residential areas and conveyance of this traffic to the major street and highway system, and shall be properly related to special traffic generators such as schools, churches and shopping centers and other concentrations of population and to the arterial street into which they feed. It includes principal entrance streets to residential subdivisions. It provides access to abutting property.

Commission means the plan commission created by the common council pursuant to Wis. Stats. § 62.23.

Comprehensive development plan means a comprehensive plan, also called a master plan, prepared by the city, indicating the general locations recommended for the various functional classes of land use, places and structures, and for the general physical development of the city, and includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof.

Condominium development means a real estate development in which a condominium form of ownership pursuant to Wis. Stats. ch. 703 is utilized.

Cul-de-sac means a short street having but one end open to traffic and the other end being permanently terminated in a vehicular turnaround.

Division of land means where the title or any part thereof is transferred by the execution of a land contract, an option to purchase, an offer to purchase and acceptance, a deed or a certified survey.

Easement means the area of land set aside or over or through which a liberty, privilege or advantage in land, distinct from ownership of the land, is granted to the public or some particular person or part of the public.

Final plat means the final map, drawing or chart on which the subdivider's plan of subdivision is presented for approval and which, if approved, will be submitted to the county register of deeds.

Frontage street means a minor street auxiliary to and located on the side of an arterial street for control of access and for service to the abutting development.

Improvement, public means any sanitary sewer, storm sewer, open channel, curb and gutter, water main, roadway, park, parkway, public access, sidewalk, pedestrian way, planting strip or other facility for which the city may ultimately assume the responsibility for maintenance and operation.

Local street means local streets shall be arranged to conform to the topography, to discourage use by through traffic, to permit the design of efficient storm and sanitary sewer systems and to require the minimum street area necessary to provide safe and convenient access to abutting property. A local street is a street connecting with not more than two local or collector streets.

Lot means a parcel of land having frontage on a public street or other officially approved means of access, occupied or intended to be occupied by a principal structure or use and sufficient in size to meet the lot width, lot frontage, lot area, yard, parking area and other open space provisions of this chapter and any applicable zoning ordinance.

Lot, area means the area contained within the exterior boundaries of a lot excluding, streets and land under navigable bodies of water.

Lot, corner means a lot abutting intersecting streets at their intersection.

Lot, reversed corner means a corner lot which is oriented so that it has its rear lot line coincident with or parallel to the side lot line of the interior lot immediately to its rear.

Lot, through means a lot having a pair of opposite lot lines along two more or less parallel public streets and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines.

Lot lines means the peripheral boundaries of a lot.

Lot width means the width of a parcel of land measured along the front building line.

Master plan means the extensively developed plan, adopted by the plan commission and certified to the common council pursuant to Wis. Stats. § 62.23, including proposals for future land use, transportation, urban redevelopment and public facilities. Devices for the implementation of these plans, such as zoning, official map, land division and building line ordinances and capital improvement programs shall also be considered a part of the master plan.

Minor subdivision means the division of land by the owner or subdivider resulting in the creation of two, three or four parcels or building sites.

Official map means a map developed pursuant to Wis. Stats. § 62.23(6) which further provides that the common council may establish an official map for the precise designation of the right-of-way lines and site boundaries of streets, highways, parkways, parks and playgrounds, both existing and proposed. The state statutes further provide that the map may be extended to include areas beyond the corporate limits but within the extraterritorial plat approval jurisdiction of the municipality.

Outlot means a parcel of land, other than a lot or block, so designated on the plat.

Owner means the plural as well as the singular and may mean either a natural person, firm, association, partnership, private corporation, public or quasipublic corporation, or combination of these.

Pedestrian pathway means a public way, usually running at right angles to streets, which is intended for the convenience of pedestrians only. It may also provide a public right-of-way for utilities.

Planned unit development (or cluster development or PUD) means a form of development usually characterized by a unified site design for a number of housing units. The

concept usually involves clustering buildings, providing common open space, and mixing different types of housing (single-family, duplexes and apartments). Ordinances permitting planned unit development permit planning a project and calculating densities for the entire development rather than on an individual lot-by-lot basis. It is hereby declared that regulating planned unit developments requires greater involvement of public officials in site plan review and development aspects of both zoning and subdivision regulation since such developments require exceptions from both types of regulation.

Plat means the map, drawing or chart on which the subdivider's plat of subdivision is presented to the city for approval.

Preliminary plat means the preliminary plat map, drawing or chart indicating the proposed layout of the subdivision to be submitted to the plan commission and the common council for their consideration as to compliance with the comprehensive development plan zoning code and this chapter, along with required supporting data.

Protective covenants means contracts entered into between private parties or between private parties and public bodies pursuant to Wis. Stats. § 236.293, which constitute a restriction on the use of all private or platted property within a minor land division or subdivision for the benefit of the public or property owners and to provide mutual protection against undesirable aspects of development which would tend to impair stability of values.

Replat means the process of changing, or a map or plat which changes, the boundaries of a recorded subdivision plat or part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat or certified survey map without changing exterior boundaries of such block, lot or outlot is not a replat.

Shorelands means those lands within the following distances: 1,000 feet from the high-water elevation of navigable lakes, ponds and flowages or 300 feet from the high-water elevation of navigable streams or to the landward side of the floodplain, whichever is greater.

Subdivider means any person, firm or corporation, or any agent thereof, dividing or proposing to divide land resulting in a subdivision, minor subdivision (certified survey map) or replat.

Subdivision means a division of a lot, parcel or tract of land by the owner thereof or his agent for the purpose of sale or of building development where:

- (1) The act of division creates five or more parcels or building sites.
- (2) Five or more parcels or building sites of four acres each or less in area are created by successive divisions within a period of five years.
- (3) The act of division or the creation of any parcels or building sites results in the creation or alteration of any street or alley.
- (4) The definitions in this section shall apply with equal effect to the division or creation of parcels or building sites whether or not such tracts shall, at such time, be part of a previously platted subdivision.

Surveyor means a state-registered land surveyor.

Sewer service area means the area expected to be served by public sanitary sewer and water utility within the next 20-year period as mapped in the city comprehensive plan or the city's land use plan.

Wetlands means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions. (Wis. Stats. § 23.32(l).)

Wisconsin Administrative Code means the rules of administrative agencies having rulemaking authority in the state, published in a loose-leaf, continual revision system, as directed by Wis. Stats. § 35.93 and Wis. Stats. ch. 227, including subsequent amendments to those rules.

Standard specifications means specifications which identify the materials and construction methods that are to be used for the construction of sanitary sewers, water mains, storm sewers and streets.

(Ord. No. 98-12, § 1(86-1-10), 5-8-1998)

Cross references: Definitions generally, § 1-2.

Sec. 86-2. Introduction and purpose of chapter.

(a) *Introduction.* In accordance with the authority granted by Wis. Stats. § 236.45 and for the purposes listed in Wis. Stats. §§ 236.01 and 236.45, the common council does hereby ordain as follows:

- (1) The provisions of this chapter shall be held to be minimum requirements adopted to promote the health, safety, morals, comfort, prosperity and general welfare of the city.
- (2) This chapter shall not repeal, impair or modify private covenants or public ordinances, except that it shall apply whenever it imposes stricter restrictions on a use.
- (3) Whenever the public necessity, convenience, general welfare or good zoning/subdivision practice requires, the common council may, by ordinance, change or amend or supplement the regulations established by this chapter or amendments thereto. Such change or amendment shall be subject to the review and recommendations of the city plan commission.

(b) *Purpose.* The purpose of this chapter is to promote the public health, safety, convenience and general welfare of the community. The regulations of this chapter are designed to lessen congestion in the highways and streets; to foster the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to discourage overcrowding of the land; to protect the community's agriculture base; to facilitate adequate provision for transportation, public water and sewerage, schools, parks, playgrounds and other public necessities; and to facilitate the further division of large tracts of land into smaller parcels. The regulations of this chapter are made with the reasonable consideration of, but not limited to, the present character of the city and its environs, with the objectives of conserving the value of the land and improvements placed thereon, providing the most appropriate environment for human habitation, encouraging commerce and industry, protecting farming and open spaces, and providing for the most appropriate use of land in the city.

(Ord. No. 98-12, § 1(86-1-1), 5-8-1998)

State law references: Similar provisions, Wis. Stats. ch. 236.

Sec. 86-3. Abrogation and greater restrictions.

It is not intended by this chapter to repeal, abrogate, annul, impair or interfere with any existing easements, covenants, agreements, rules, regulations or permits previously adopted or issued pursuant to law. However, where this chapter imposes greater restrictions, the provisions of this chapter shall govern.

(Ord. No. 98-12, § I(86-1-2), 5-8-1998)

Sec. 86-4. Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the city, and shall not be deemed a limitation or repeal of any other power granted by the state statutes.

(Ord. No. 98-12, § I(86-1-3), 5-8-1998)

Sec. 86-5. Compliance with chapter provisions.

No person shall divide any land located within the jurisdictional limits of this chapter which results in a subdivision, minor land division or a replat. No such subdivision, minor land division or replat shall be entitled to recording. No street shall be laid out or improvements made to land without compliance with all requirements of this chapter and the following:

- (1) The provisions of Wis. Stats. ch. 236 and Wis. Stats. § 80.08, as amended.
- (2) The rules of the division of health, state department of commerce, contained in Wis. Admin. Code, chapter H 85, for minor land divisions and subdivisions not served by public sewer.
- (3) The rules of the division of highways, state department of transportation contained in Wis. Admin. Code chapter hwy. 10 for subdivisions which abut a state trunk highway or connecting street.
- (4) The rules of the state department of natural resources contained in the Wis. Admin. Code for floodplain management program.
- (5) Comprehensive plans or components of such plans prepared by state, regional, county or municipal agencies duly adopted by the common council.
- (6) All applicable local and county regulations, including zoning, sanitary, building and official mapping ordinances.
- (7) The city comprehensive plan, land use plan or components thereof.
- (8) All applicable rules contained in the Wisconsin Administrative Code not listed in this section.
- (9) Standard specifications.

(Ord. No. 98-12, § I(86-1-20(A)), 5-8-1998)

Sec. 86-6. Jurisdiction.

Jurisdiction of the regulations of this chapter shall include all lands within the corporate limits of the city. The provisions of this chapter, as they apply to divisions of tracts of land into less than five parcels, shall not apply to:

- (1) Transfers of interests in land by will or pursuant to court order.
- (2) Leases for a term not to exceed ten years, mortgages or easements.
- (3) The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this chapter or other applicable laws or ordinances.
- (4) Cemetery plats under Wis. Stats. § 157.07.
- (5) Assessor's plats made under Wis. Stats. § 70.27, but such assessor's plats shall comply with Wis. Stats. §§ 236.15(l)(a) --(g) and 236.20(l) and (2)(a)--(c).

(Ord. No. 98-12, § I(86-1-20(B)), 5-8-1998)

Sec. 86-7. Certified survey.

Any division of land, other than a subdivision as defined in Wis. Stats. § 236.02(12), shall be surveyed, and a certified survey map prepared as provided in Wis. Stats. § 236.34.

(Ord. No. 98-12, § I(86-1-20(C)), 5-8-1998)

Sec. 86-8. Building permits.

The city shall not issue any building permit relating to any parcel of land forming all or any part of lands included in a subdivision, land division, replat or certified survey map originally submitted to the city on or after the effective date of the ordinance from which this chapter is derived until the applicant has complied with all of the provisions and requirements of this chapter.

(Ord. No. 98-12, § I(86-1-20(D)), 5-8-1998)

Sec. 86-9. Land suitability.

(a) *Suitability.*

- (1) No land shall be subdivided for residential, commercial or industrial use which is held unsuitable for such use by the common council, upon the recommendation of the plan commission, for reason of flooding, inadequate drainage, adverse soil or rock formation, unfavorable topography or any other feature likely to be harmful to the health, safety or welfare of the future residents of the proposed subdivision or of the community.
- (2) The common council, in applying the provisions of this section, shall, in writing, recite the particular facts upon which it bases its conclusion that the land is not suitable for residential, commercial or industrial use and afford the subdivider an

opportunity to present evidence regarding such unsuitability if he so desires. Thereafter, the common council may affirm, modify or withdraw its determination of unsuitability.

- (b) *Existing flora.* The subdivider shall make every effort to protect and retain all existing trees, shrubbery, vines and grasses not actually lying in public roadways, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and rails. Such trees are to be protected and preserved during construction in accordance with sound conservation practices, possibly including the preservation of trees by well islands or retaining walls whenever abutting grades are altered, pursuant to a landscaping plan filed by the subdivider.

(Ord. No. 98-12, § I(86-1-21), 5-8-1998)

Sec. 86-10. Condominium developments.

- (a) *Applicability of chapter provisions to condominiums.* This chapter is expressly applicable to condominium developments within the city's jurisdiction, pursuant to Wis. Stats. § 703.27(l). For purposes of this chapter, a condominium unit and any associated limited common elements shall be deemed to be equivalent to a lot or parcel created by the act of subdivision.

- (b) *Purpose.*

- (1) The city hereby finds that certain issues arise in condominium developments that require limited applicability of this chapter to condominium developments. The state legislature has recognized that subdivision ordinances may apply to condominiums, but that subdivision ordinances shall not impose burdens upon condominiums that are different from those imposed on other property of a similar character not subject to a declaration of condominium.

- (2) The factor that makes this chapter applicable to a condominium development is the creation of multiple, distinct property entities at or near the ground surface, subject to property taxation as separate parcels, with each property entity having different ownership and management. The city determines that this factor makes a condominium development dissimilar, both physically and in ownership, from developments in which the land and improvements are under unitary ownership, management and control.

- (3) Thus, the common council hereby finds that new condominium developments can place impacts on community resources in the same manner as other new developments which are characterized by division of land into lots. These impacts include:

- a. Additional population density.
- b. Possibility of use of particular land in a manner unsuitable to the land's characteristics.
- c. Additional demands upon city area parks, recreation areas, utility facilities and schools.
- d. Additional traffic and street use.

- (c) *Portions of chapter applicable.* The following sections of this chapter shall apply to

condominium developments:

- (1) Section 86-9 relating to land suitability and construction practices.
- (2) Sections 86-31, 86-51 and 86-52 relating to preliminary plat approval. This stage of approval shall be the only approval required for a condominium development. The technical requirements for preliminary plats set forth in section 86-136 shall not apply, since condominiums have separate technical standards set forth in Wis. Stats. ch. 703.
- (3) Section 86-13 relating to fees for review.
- (4) Article III of this chapter relating to required improvements.
- (5) Article IV of this chapter relating to design standards for improvements.
- (6) Article V of this chapter relating to dedication requirements.

This section shall not apply to the following condominiums: Any condominium plat recorded prior to the effective date of the ordinance from which this chapter is derived. Any conversion of a structure or structures in existence on the effective date of the ordinance from which this chapter is derived to a condominium after the effective date of the ordinance from which this chapter is derived.

(Ord. No. 98-12, § I(86-1-20(E)), 86-1-22), 5-8-1998)

Sec. 86-11. Variances and exceptions.

- (a) Where, in the judgment of the common council, it would be inappropriate to apply literally the provisions of this chapter because exceptional or undue hardship would result, the common council may waive or modify any requirements to the extent deemed just and proper. Application for any such variance shall be made in writing by the subdivider at the time when the preliminary plat is filed for consideration, stating fully all facts relied upon by the petitioner, and shall be supplemented with maps, plans or other additional data which may aid the plan commission and common council in the analysis of the proposed project.
- (b) The plan commission shall not recommend and the common council shall not grant variances or exceptions to the regulations of this chapter unless it shall make findings based upon the evidence presented to it in each specific case that:
 - (1) The granting of the variation will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - (2) The conditions upon which the request for a variation is based are unique to the property for which the variation is sought and are not applicable generally to other property.
 - (3) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, financial hardship or self-imposed hardship, if the strict letter of the regulations of this chapter were carried out.

- (4) Such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same vicinity.
 - (c) Such relief shall be granted without detriment to the public good, without impairing the intent and purpose of this chapter or the desirable general development of the city in accordance with any city comprehensive plan, land use plan or component thereof, this chapter, or the city zoning chapter. A two-thirds majority vote of the entire membership of the common council shall be required to grant any modification of this chapter, and the reasons shall be entered in the minutes of the common council.
 - (d) The plan commission may waive the placing of monuments, required under Wis. Stats. § 236.15(1)(b), (c) and (d), for a reasonable time on condition that the subdivider execute a surety bond to ensure the placing of such monuments within the time required by the city.
- (Ord. No. 98-12, § 1(86-1-90), 5-8-1998)

Sec. 86-12. Enforcement, penalties and remedies.

- (a) *Violations.* It shall be unlawful to build upon, divide, convey, record or monument any land in violation of this chapter or the state statutes, and no person shall be issued a building permit by the city authorizing the building on, or improvement of, any subdivision, minor land division or replat with the jurisdiction of this chapter not of record as of the effective date of the ordinance from which this chapter is derived until the provisions and requirements of this chapter have been fully met. The city may institute appropriate action or proceedings to enjoin violations of this chapter or the applicable state statutes.
- (b) *Penalties.*
 - (1) Any person who fails to comply with the provisions of this chapter shall, upon conviction, forfeit no less than \$100.00 nor more than \$1,000.00 and the costs of prosecution for each violation, and in default of payment of such forfeiture costs shall be imprisoned in the county jail until payment thereof, but not exceeding six months. Each day a violation exists or continues shall constitute a separate offense.
 - (2) Recordation improperly made has penalties provided in Wis. Stats. § 236.30.
 - (3) Conveyance of lots in unrecorded plats has penalties provided for in Wis. Stats. § 236.31.
 - (4) Monuments disturbed or not placed have penalties as provided for in Wis. Stats. § 236.32.
 - (5) Assessor's plat made under Wis. Stats. § 70.27 may be ordered by the city as a remedy at the expense of the subdivider when a subdivision is created by successive divisions.
- (c) *Appeals.* Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom, as provided in Wis. Stats. §§ 236.13(5) and 62.23(7)(c)10, 14 and 15, within 30 days of notification of the rejection of the plat. Where failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat is approved if it finds that the action of the approving or objecting agency is arbitrary, unreasonable or discriminatory.

(Ord. No. 98-12, § I(86-1-91), 5-8-1998)

Sec. 86-13. Administrative and other fees.

- (a) *General.* The subdivider shall pay the city all fees as required in this section and at the times specified before being entitled to recording of a plat or certified survey map.
- (b) *Engineering fee.* The subdivider shall pay a fee equal to the actual cost to the city for all engineering work incurred by the city in connection with the plat or certified survey map, including inspections required by the city. The subdivider shall pay a fee equal to the actual cost to the city for such engineering work and inspection as the city engineer deems necessary to ensure that the construction of the required improvements is in compliance with the plans, specifications and ordinances of the city or any other governmental authority. Engineering work shall include the preparation and review of construction plans, standard specifications, inspections and administration of the construction project. Fee to be paid immediately upon completion of the installation of all improvements, excluding street paving.
- (c) *Administrative fee.* The subdivider shall pay a fee equal to the cost of any legal, administrative or fiscal work which may be undertaken by the city in connection with the plat or certified survey map. The fee shall be paid immediately following the approval of the final plat.
- (d) *Preliminary plat review fee.*
 - (1) A fee of \$25.00 for a preliminary review of a certified survey map of four or fewer lots. The subdivider shall pay a fee of \$50.00 for more than four lots, plus \$5.00 for each lot within the preliminary plat. Such payment shall be to the city clerk/treasurer at the time of first application for approval of any preliminary plats to assist in defraying the cost of review.
 - (2) A reapplication fee of \$25.00 shall be paid to the city clerk/treasurer at the time of reapplication for approval of any preliminary plat which has previously been reviewed.
- (e) *Final plat review fee.*
 - (1) The subdivider shall pay a fee of \$50.00 plus \$2.00 for each lot within the final plat to the city clerk/treasurer at the time of first application for final plat approval of such plat to assist in defraying the cost of review.
 - (2) A reapplication fee of \$25.00 shall be paid to the city clerk/treasurer at the time of a reapplication for approval of any final plat which has previously been reviewed.
- (f) *Condominium development review fee.* The developer shall pay a fee of \$25.00 plus \$2.00 for each unit shown on a condominium plat. The fee shall be paid at the time of submittal of the preliminary plat.
- (g) *Objecting agency review fees.* All review fees, as required by the state department of development, state department of transportation, state department of commerce and the state department of natural resources, etc., shall be paid by the developer to the proper reviewing agency at the time of application.

(Ord. No. 98-12, § I(86-1-100), 5-8-1998)

Secs. 86-14--86-30. Reserved.