

## SEC. 2-4-6 PARKS AND RECREATION BOARD.

### Definitions:

Parks - All established park areas or open space within the city and its park system that is open to the general public and fall under Park and Recreation jurisdiction

Marina - All property within any security fencing surrounding boat slips. In absence of a security fence the docking slips comprise a marina.

(a) **APPOINTMENTS.** The Parks and Recreation Board shall consist of seven (7) persons appointed by the Mayor and confirmed by the Common Council. Each Board member shall hold such office for a term of three (3) years, said terms to end September 30 in the year of expiration. Six (6) of the members shall be citizen members and one (1) member shall be an Alderman annually selected at the Council's organizational meeting. All members, including the Chairperson, shall have voting privileges.

(b) **COMPENSATION; OATHS.** Board members shall receive such compensation as shall be determined by the Council from time to time. Members shall take an official oath as prescribed by Sec. 19.01, Wis. Stats., to be filed with the City Clerk.

(c) **OFFICERS.** The Board shall annually elect one (1) member as chairperson.

(d) **PROCEDURE.** Four (4) members shall constitute a quorum. The Chairperson, or acting Chairperson, shall be considered in determining a quorum. Action shall be by a majority of those present and voting. The Board shall adopt rules of procedure for governing the conduct of its meetings.

(e) **POWERS AND DUTIES.** The Board shall have all the powers conferred by law upon parks and recreation commissions and shall be chargeable with all the duties so required such as ~~recommend~~ recommendations to the Common Council, oversee work, and oversee funds of all parks, playgrounds, and recreational activities as part of properties within the City. The Parks and Recreation Board is specifically empowered and directed:

(1) To ~~govern~~, manage, control, improve and care for all public parks located within, or partly within and partly without, the corporate limits of the City and secure the quiet, Updated:

7/20/2011

orderly and suitable use and enjoyment thereof by the general public people; also to adopt rules and regulations to promote these purposes.

(2) To acquire in the name of the City for park purposes by gift, purchase, devise, bequest or condemnation, either absolutely or in trust, money, real or personal property, or any incorporeal right or privilege, provided gifts to the City of money or other property, real or personal, either absolutely or in trust, for park purposes shall be accepted only after they have been recommended by the Board to the Common Council and approved by said Common Council by resolution.

(3) ~~To recommend~~ Mandatory recommendations to the Council and the Planning Commission include the buying, leasing, selling, changing or removing accessibility to or transferring of lands in the name of the City for park or marina purposes within or without the City, as well as the leasing of buildings, lands and boat slips within the Menasha Marina.

(4) To execute every trust imposed upon the use of property or property rights by the deed, testament or other conveyance transferring the title of such property to the City for park purpose.

(5) To have the powers necessary and convenient for the effective and efficient management, ~~control~~, supervision and operation of the City park system and recreation programs, and the maintenance of the Menasha Marina, subject to budgetary approval by the Common Council.

(6) To have management jurisdiction of parks, swimming pool and playgrounds throughout the City and assume full responsibility for the equipping, developing and maintaining the physical facilities and existing boundaries of the park system.

(7) To establish such rules and regulations to promote the quiet, orderly and suitable use of the City parks, playgrounds, and the Menasha Marina as the Board shall deem necessary.

(8) To establish rules and regulations, including user fees as deemed necessary as approved by the Council and desirable for the proper use, care and operation of parks, park facilities, recreation programs, Menasha Marina and other activities under their control, provided however that such rules and regulations do not conflict with the laws of the State of Wisconsin, the powers of the Common Council or this Code of Ordinances.

(9) To have maintenance jurisdiction of the Menasha Marina and assume full responsibility for the equipping, developing improving and maintaining the current physical facilities of the Marina.

~~(10) And such other and further duties as may be necessary for the proper carrying out of the purposes of said Board.~~

(11) The expansion, contraction or elimination of public land boundaries, or general public accessibility to public lands must be recommended to, and approved by the Common Council through resolution.

(12) Nothing in Sec. 2-4-6 affects the statutory or ordinance authority of the Common Council or Planning Commission.

(f) **PUBLIC RECREATION PROGRAM.** The City Parks and Recreation Board shall determine the recreational needs and shall have jurisdiction over the public recreation program of the City and shall be empowered to:

(1) Establish park rules and program policies.

(2) Cooperate and coordinate with public school activities.

(3) Cooperate with any private recreational activities.

(4) Approve any schedules of all recreational activities in public parks and school buildings.

(g) **RECORD.** The Parks and Recreation Board shall keep a written record of its proceedings to include all actions taken, a copy of which shall be filed with the City Clerk.

(h) **FINANCE.**

recreation programs, Menasha Marina and equipment, summer or seasonal employees, etc. Said annual budget request shall contain estimates as to revenues to be derived from recreation programs or activities as well as estimated expenditures for operating the parks and recreation system and the Menasha Marina.

(2) Deposits. All revenues and income from the operation of park and recreation programs shall be deposited with the City Treasurer as general revenue of the City or to be applied to Tax Incremental Financing debt if otherwise required by law.

(3) Monetary Contributions. All moneys donated to the City specifically for park or recreation use shall be deposited in City accounts as a non-lapsing fund or reserve for such specific use.

(1) Budget. The Board shall assist in preparing an annual budget for submission to the Common Council, which budget shall reflect the Board's recommendations as to maintenance or acquisition of City parks, open spaces, park and related facilities, Updated: 7/20/2011



## MEMORANDUM

Date: May 31, 2012

To: Administration Commission  
From: Pamela A. Captain, City Attorney

RE: Ordinance Drafting and Proposed Changes to SEC. 2-4-6 (Park and Recreation Board)

The main source of legal authority for Cities is found in the Wisconsin Statutes. Chapter 27 of the Wisconsin Statutes governs parks. City park board powers are set forth in §27.08, Wis. Stats. Menasha city code currently is consistent with the state statute in the powers that have been granted to the Parks and Recreation Board. SEC. 2-4-6(e), provides, "The Board shall have all the powers conferred by law upon parks and recreation commissions . . ."

I am recommending that the proposed changes to SEC. 2-4-6 not be adopted since some of the changes are superfluous and other changes ambiguous or duplicative. Additionally, I am unable to discern what the proposed changes are meant to accomplish. Finally, some of the changes conflict with the state statute and therefore cause confusion.

Please be informed that I did not write nor was I consulted with regard to these proposed changes to city ordinance SEC 2-4-6. SEC. 2-3-4(b)(1) of the Code of Ordinances indicates that one of the major duties and responsibilities of the city attorney is to draft ordinances. It is not advisable to have a non-lawyer draft ordinances or ordinance changes. Ordinances are adopted by the common council, but should be written by an attorney especially since in the event that an ordinance is challenged it will be interpreted by a court. The usual process is for an alderman, the Mayor, a board, committee or the common council to tell its attorney what it wants to accomplish and then the attorney will provide a draft ordinance. There is a process of discussion that generally occurs between the attorney and the governmental body in order to determine what the governmental body desires. The attorney should select the appropriate language in order to accomplish the desires of the governmental body while meeting the legal requirements of statutory construction.

If the Administration Committee desires to recommend changes to SEC. 2-4-6 I request that it express what outcome it wants so that I can draft changes consistent with what it wants to accomplish.