

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Common Council will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA  
ADMINISTRATION COMMITTEE  
Third Floor Council Chambers  
140 Main Street, Menasha  
September 6, 2016  
6:30 PM  
or immediately following Common Council  
AGENDA**

- A. CALL TO ORDER
- B. ROLL CALL/EXCUSED ABSENCES
- C. MINUTES TO APPROVE
  - 1. [Administration Committee, 8/15/16.](#)
- D. COMMUNICATIONS
  - 1. [ASD Steeno, 9/1/16; Fox Cities Area Room Tax Commission Draft By-Laws.](#)
- E. ACTION/DISCUSSION ITEMS
  - 1. [O-12-16 – An Ordinance Creating Title 8, Chapter 5 of the Code of Ordinances \(Removal of Salvageable Non-Structural Materials from Vacated Buildings\)](#)
- F. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

CITY OF MENASHA  
ADMINISTRATION COMMITTEE  
Third Floor Council Chambers  
140 Main Street, Menasha  
August 15, 2016  
MINUTES

DRAFT

A. CALL TO ORDER

Meeting called to order by Chairman Nichols at 6:30 p.m.

B. ROLL CALL/EXCUSED ABSENCES

PRESENT: Aldermen Keehan, Zelinski, Spencer, Benner, Nichols, Krautkramer, Collier.

EXCUSED: Alderman Taylor

ALSO PRESENT: Mayor Merkes, CA Captain, PC Styka, FC Kloehn, ASD Steeno, CDD Buck, AP Englebert, PHD McKenney, Clerk Galeazzi, Dave Maccoux (Schenck)

C. MINUTES TO APPROVE

1. [Administration Committee, 8/1/16](#)

Moved by Ald. Keehan seconded by Ald. Collier to approve minutes.

Motion carried on voice vote.

D. ACTION/DISCUSSION ITEMS

1. [Review and Accept 2015 City of Menasha Audit \(Dave Maccoux, Schenck, SC\)](#)

Dave Maccoux from Schenck, SC, reviewed the independent auditors' report of the year ending December 31, 2015. He provided comments and observations of the audit.

General discussion ensued on the audit.

Moved by Ald. Benner seconded by Ald. Keehan to review and accept 2015 City of Menasha Audit.

Motion carried on roll call 7-0.

2. [O-11-16 An Ordinance Amending Title 7, Chapter 6 of Code of Ordinances – Restaurant and Retail Food Establishments \(Introduced by Mayor Merkes\)](#)

CA Captain explained changes in the ordinance reflect updates to Wisconsin State Statutes and Wisconsin Administrative Code for restaurants and food establishments.

Moved by Ald. Keehan seconded by Ald. Collier to recommend to Common Council O-11-16 An Ordinance Amending Title 7, Chapter 6 of Code of Ordinances-Restaurant and Retail Food Establishments.

Motion carried on roll call 7-0.

E. ADJOURNMENT

Moved by Ald. Keehan seconded by Ald. Spencer to adjourn at 6:50 p.m.

Motion carried on voice vote.

Deborah A. Galeazzi, WCMC  
City Clerk



## MEMORANDUM

To: City of Menasha Administration Committee  
From: Peggy Steeno, Administrative Services Director  
Date: September 1, 2016  
RE: Fox Cities Area Room Tax Commission Draft By-Laws

Please find attached the draft By-Laws for the Fox Cities Area Room Tax Commission. I am providing this to you so that you are aware of what is occurring at the Commission, and can provide any feedback that you may have, to me in advance of the next Fox Cities Room Tax Commission Meeting which is being held on September 19<sup>th</sup>, when the draft By-Laws will be contemplated.

By way of background, this Commission was established through the Intergovernmental Agreement (IGA) in place for all of the room tax member communities. As a result of the IGA, the City of Menasha was able to appoint one member to the Commission. As the City's representative on that Commission, I will have a vote on the passage, and possibly editing, of these By-Laws. Please keep in mind that I am one of eighteen voting members on the Commission.

In regard to the By-Laws, please take special note of Section 6.05, as this section 'requests' that member communities contribute \$300 annually, either from the City portion of the room tax dollars or exclusive of them if there are not enough funds available, for each seat held on the Commission (note that some communities have more than one seat on the Commission based on the amount of room tax generated), for the support of the Commission and conducting Commission business. This is being identified as a Discretionary Fund.

Since the vast majority of the room tax, other than the small amount retained by the communities, is already fully allocated through the IGA, the Commission members, as a whole, felt that establishing the Discretionary Fund is necessary to effectively operate as a Commission.

Please let me know if you have questions on the draft By-Laws in advance of Tuesday's Meeting; otherwise, I look forward to discussing this item with you then.

**FOX CITIES AREA ROOM TAX COMMISSION**  
**BYLAWS**

**ARTICLE I. NAME AND PURPOSE**

Section 1.01 The FOX CITIES AREA ROOM TAX COMMISSION (the “Commission”) has been created as a Commission under the provisions of Section 66.0615 of the Wisconsin Statutes (“Room Tax Act”), formed to coordinate tourism promotion and tourism development using tax revenues generated from the imposition of room taxes in the Fox Cities Tourism Zone (as hereinafter defined) pursuant to the Room Tax Act. The jurisdiction of the Commission shall be the area comprised of the CITY OF APPLETON, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Appleton”), the CITY OF KAUKAUNA, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Kaukauna”), the CITY OF NEENAH, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“City of Neenah”), the VILLAGE OF KIMBERLY, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Kimberly”), the VILLAGE OF LITTLE CHUTE, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Little Chute”), the TOWN OF GRAND CHUTE, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Grand Chute”), the TOWN OF NEENAH, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Town of Neenah”), the TOWN OF MENASHA, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Town of Menasha”), the CITY OF MENASHA, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“City of Menasha”), and the VILLAGE OF SHERWOOD, WISCONSIN, a Wisconsin Municipal corporation and political subdivision (“Sherwood”), collectively, the “Municipalities”. The area comprising the Municipalities is deemed to be the “Fox Cities Tourism Zone.” The Municipalities have determined by written agreement that they are deemed to be one destination as perceived by the traveling public.

Section 1.02 The Commission is a quasi-Municipal body, corporate and politic, that is separate, distinct and independent from the State of Wisconsin and all local units of government. Its jurisdictional boundaries lie within the Fox Cities Tourism Zone. The Commission shall have all powers, authorities, duties and responsibilities set forth in Section 66.0615 of the Wisconsin Statutes and shall be subject to all provisions applicable to Commissions as provided therein. As a quasi-governmental body, the Commission shall comply with all applicable provisions of the Wisconsin Statutes and regulations promulgated thereunder as well as these Fox Cities Area Room Tax Commission Bylaws (“Bylaws”).

**ARTICLE II. OFFICE**

Section 2.01 The principal office for the Commission shall initially be at the Fox Cities Convention and Visitors Bureau (hereinafter “CVB”) Office located at 3433 W. College Ave, Appleton, WI 54914, which is generally the location where Commission meetings shall be held. However, the Commission may locate the principal office within the Fox Cities Tourism Zone and hold meetings within the Fox Cities Tourism Zone as determined by the Commission from time to time.

### **ARTICLE III. MEMBERSHIP**

Section 3.01 Membership on the Commission shall be as prescribed and established under the provisions of Sec. 66.0615(1m)(c) of the Wisconsin Statutes, as amended from time to time. ~~The Commission assumes under 66.0615(1m)(c) that the following language "...in which annual room tax collections are \$300,000 or less" means some room tax must be collected in order for a municipality to have a member on the Commission.~~

Section 3.02 The room tax collection totals for the previous year will be determined by the March Commission meeting and these figures will be used to determine membership numbers for the next year. All Commission appointments must be finalized by or at the June Commission Meeting.

Section 3.03 A non-member municipality is eligible to become a member of the Commission, provided that the Municipalities agree in writing that the non-member municipality and the Municipalities are deemed to be one destination as perceived by the traveling public, and it (i) adopts an ordinance to impose a Room Tax consistent with the then-current requirements of this Commission and the Room Tax Act, (ii) becomes a party to all instruments relating to the imposition of Room Tax to which Municipalities in the Fox Cities Tourism Zone are a party; and (iii) becomes a party to any other instrument as deemed necessary and proper by the Commission.

Section 3.04 Member municipalities must each pass a resolution adopting these Bylaws. The Commission shall keep on file a copy of each municipal resolution.

### **ARTICLE IV. COMMISSIONERS**

Section 4.01 The business affairs of the Commission shall be overseen by the Commissioners of this Commission.

Section 4.02 The number of Commissioners comprising the Commission shall be as prescribed under the provisions of Section 66.0615(1m)(c)(2), of the Wisconsin Statutes, as amended from time to time and according to Article III Sec. 3.02 of these Bylaws.

Section 4.03 The terms of office of each Commissioner shall be one (1) year, at the pleasure of the appointing official per Section 66.0615(1m)(c)(2), commencing in June of each year. In the event that the beginning month of the office is changed, the Commission may extend the term of sitting members until the new term begins, however such extension shall not extend for more than six months. Commissioners may be reappointed for an unlimited number of terms.

Section 4.04 Vacancies on the Commission shall be filled by the appointing authority who appointed the person whose office is vacant. A person appointed to fill a vacancy shall serve for the remainder of the unexpired term to which they were appointed.

Section 4.05 Commissioners shall receive no salaries for their services, but may receive reimbursement for their actual and necessary expenses incurred in the performance of their duties, as approved by the Commission.

Section 4.06 The Commission shall provide by resolution for the confidentiality of information obtained under Section 66.0615(2). All Room Tax returns, schedules, exhibits, writings or audit reports relating to such returns, on file with the Commission and the Municipalities are deemed confidential, except that the Commission or the Municipalities may divulge their contents to the following, and no others:

- (a) The person or his/her legal representative who filed the return; and
- (b) Officers, employees or agents of the Municipal treasurer and the Commission; and
- (c) Other persons for the use in the discharge of duties imposed by law, or in the discharge of the duties of their office (unless otherwise prohibited by law), or by order of a court. The Commission may provide for the publishing of statistics classified so as not to disclose the identity of particular returns.

The Commission shall provide that persons violating the resolution enacted under this subsection may be required to forfeit not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00). Revenue from fines will become part of the Commission's Discretionary Funds. The Commission may use all lawful and reasonable means to collect amounts owed.

## **ARTICLE V. MEETINGS**

Section 5.01 All annual, regular, and special meetings of the Commission shall be held at the general meeting location of the Commission unless otherwise provided.

Section 5.02 The Annual Meeting of the Commission shall be held on a date during the month of June of each year, at such time as shall be determined by the Chairperson or through provisions stated in these Bylaws.

Section 5.03 Regular meetings of the Commission shall be held quarterly in the months of June, September, December, and March at such times as shall be fixed by the Chairperson upon no less than forty-eight (48) hours prior notice.

Section 5.04 Special meetings of the Commission may be called by the Commission Chairperson or by the Vice-Chairperson, in the absence of the Chairperson. Special meetings of the Commission may also be called upon a written request signed by five (5) Commissioners stating the purpose or purposes of such Special Meeting request. The person or persons authorized to call special meetings of the Commission may fix the date and time of such meeting upon no less than forty-eight (48) hours prior notice.

Section 5.05 To the extent provided by these Bylaws, the Commission, or any committee of the Commission, may, in addition to conducting meetings in which each Commissioner participates in person, and notwithstanding any place set forth in the notice of the meeting by these Bylaws, conduct any annual, regular or special meeting by the use of any electronic means of communication, provided (1) all participating Commissioners may simultaneously hear each other during the meeting and (2) all requirements of the Open Meetings Law are met. A Commissioner participating in a meeting by any means pursuant to this Section 5.05 shall be deemed to be present in person at the meeting.

Section 5.06 Notice of any regular or special meeting shall be given by written notice, delivered personally, by mail, facsimile transmission or e-mail to each Commissioner at his or her business address, facsimile number, e-mail address or at such other address or number as such Commissioner shall have designated in writing and filed at the Commission's principal office. Such notice shall normally be given at least three (3) calendar days prior to a regular meeting and, in no case, less than forty-eight (48) hours prior to a meeting. In the case of an emergency, notice to Commissioners shall be given at least two (2) hours before a meeting.

- (a) Public notice of all meetings shall be in accordance with the Open Meetings Act. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice is given by electronic mail, such notice shall be deemed to be delivered when the sender transmits the message. If notice is given by facsimile transmission, such notice shall be deemed to be delivered when the sender receives in-hand a confirmation sheet indicating that the transmission is complete.
- (b) Whenever any notice is required to be given to any Commissioner under the provisions of these Bylaws, or under the provisions of any statute, a waiver thereof, in writing, signed at any time, whether before or after the time of the meeting, by the Commissioner entitled to such notice, shall be deemed equivalent to the given of such notice. The attendance of a Commissioner at a meeting shall constitute a waiver of notice of such meeting, except where a Commissioner attends a meeting and objects because the meeting is not lawfully called or convened.

Section 5.07 A majority of the number of Commissioners then in office shall constitute a quorum for the transaction of business at any meeting of the Commission.

Section 5.08 Except as otherwise specified by law or these Bylaws, the affirmative vote or approval of a majority of the Commissioners present at a meeting at which a quorum is present, shall be the act of the Commission, or a committee of the Commission in the case of a committee meeting. The voting on all matters presented for a vote shall be by voice vote, unless a Commissioner requests a roll call, or if roll call vote is required by law, in which case the Yeas and Nays shall be entered upon the minutes of the meeting. All resolutions or votes of the Commission shall be entered in full in the minutes of the meeting or otherwise reduced to writing.

Section 5.09 Meetings of the Commission shall generally be conducted by Robert's Rules of Order as revised from time to time.

## ARTICLE VI. REPORTS, AUDITS, AND FINANCES

Section 6.01 It is recognized that the Fox Cities Convention and Visitors Bureau will be providing the labor behind the tasks spelled out in this section gratuitously but it is not the intent of the Commission to be a significant burden on the CVB. This effort by the CVB is welcomed and appreciated by the Commission, which will make its best efforts to keep requests of CVB staff minimal.

Section 6.02 The CVB will submit the following reports to the Commission:

- (a) A quarterly report that includes a detailed report of all administrative expenses, if any, of the Commission for the past quarter and a detailed report itemizing all expenses incurred in the past quarter that have been or should have been paid by the Commission. At the discretion of the CVB, the aforementioned reports may be combined into one report. This report should be delivered within sixty (60) days after the end of the quarter.
- (b) An annual report summarizing the activities of the Commission for the prior year and the purposes for which the room tax revenues were spent, as well as a balance sheet and income statement. This report should be delivered within one hundred and eighty (180) days after the end of the calendar year, but in no event less than ten (10) days prior to the Annual Meeting of the Commission as required by Section 5.02.

Section 6.03 It is anticipated that the Commission funds shall be audited by and through the annual audit of the CVB. Such audit shall be conducted by a reputable and licensed accounting firm with an audit letter issued by a certified public accountant. In the event that an audit is not accomplished by the CVB or the Commission desires to conduct an audit independent of the CVB, the Commission may authorize such an audit upon the affirmative vote of the Commission. This audit shall be conducted as soon as practicable after January 1 and shall be completed and received by the Commission no later than ten (10) days prior to the Annual Meeting of the Commission.

Section 6.04 Room tax revenue is currently designated for various purposes ("Nondiscretionary Funds"). The three percent (3%) designated for the exhibition center remains under the control of the Commission for dispersal to the City of Appleton for Commission approved expenditures in furtherance of construction of the exhibition center in accordance with approved municipal agreements. Expenditures for the exhibition center may also include bond payments once bonding is secured. These exhibition center funds will be kept separate and distinct from all other funds and are subject to annual audits.

Section 6.05 Member municipalities are requested to contribute annually by June 1<sup>st</sup> an amount equal to ~~0.1% of all collected room tax revenue~~ \$300 for each seat on the Commission that is appointed by a for the municipality (although source of funds is up to the Member Municipality) for the support of the Commission and conducting of Commission business ("Discretionary Funds"). The Discretionary Funds will be kept separate and distinct from room tax revenues, will be subject to annual audits, and expenditures will only be made upon proper

approval of the Commission. The Discretionary Funds will be allowed to accumulate until a twenty thousand dollar (\$20,000) savings is reached, at which time municipal contributions will be suspended until the Discretionary Funds are below fifteen thousand dollars (\$15,000).

Section 6.06 The Commission may approve expenditures of Nondiscretionary Funds for designated and approved purposes and approval of Discretionary Funds for the conduct of Commission business. Upon approval of any expenditure, a payment will be issued to the recipient and approved/signed by the executive director of the CVB and the Commission Chairperson, or Vice-Chairperson in the absence of the Chairperson.

## **ARTICLE VII. OFFICERS**

Section 7.01 The principal officers of the Commission shall be a Chairperson, a Vice-Chairperson, and Secretary/Treasurer. The Commission shall select such officers from its members. Such other officers and assistant officers as may be deemed necessary by action of the Commission may be elected or appointed by the Commission.

Section 7.02 The Chairperson, Vice Chairperson, and Secretary/Treasurer (the "Elected Officers") shall be elected by the Commissioners at the June meeting of the Commission or at such other time as determined by the Commission. If the election of such officers shall not be held at such meeting, such election shall be held as soon thereafter as it may be convenient. Each officer shall hold office for a term of one (1) year, commencing on the day of his or her election, or until his or her successor shall have been duly elected and shall have qualified, or until his or her death or resignation or until he or she shall have been removed from office in the manner hereinafter provided.

Section 7.03 Any officer or agent elected or appointed by the Commission may be removed by the Commission whenever, in its judgment, the Commission's best interests will be served thereby. Such removal shall be accomplished by having such matter appear on the agenda of the meeting provided with the notice and such vote occurring according to Roberts Rules of Order by a majority of the members in attendance, provided a quorum has been satisfied.

Section 7.04 A vacancy in any principal office because of death, resignation, removal, disqualification or otherwise, shall be filled by the Commission for the unexpired portion of the term.

Section 7.05 The Chairperson shall be the Commission's principal executive officer and, subject to the control of the Commission, shall, in general, supervise all of the business and affairs of the Commission. The Chairperson shall, when present, preside at all meetings of the Commission. The Chairperson shall have the authority, either alone, with another officer or through his designee, to sign, execute and acknowledge, on behalf of the Commission, all deeds, mortgages, bonds, contracts and other documents or instruments which are necessary or proper in the regular course of the Commission's business or which may be authorized by the Commission, except in cases where the signing and execution thereof shall be expressly

delegated by the Commission or by the Bylaws to some other officer or agent of the Commission, or shall be required by law to be otherwise signed or executed. The Chairperson shall in general perform all duties incidental to the office of the Chairperson and such other duties as may be prescribed by the Commission from time to time. The Chairperson shall be an ex-officio member of all of the Commission's committees. In the absence of actual knowledge by third parties to the contrary, the execution of an instrument of the Commission by the Chairperson shall be conclusive evidence, as to such third parties, of his or her authority to execute the instrument on behalf of the Tourism Zone.

Section 7.06 In the absence of the Chairperson, or in the event of the Chairperson's death or inability or refusal to act as directed by the Commission, the Vice-Chairperson shall perform the duties of the Chairperson; and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairperson. The Vice-Chairperson may sign, with the Secretary/Treasurer, bonds or notes of the Commission and shall perform all other duties as from time to time may be assigned by the Chairperson and/or the Commission. In the absence of actual knowledge by third parties to the contrary, the execution of any instrument of the Commission by the Vice-Chairperson shall be conclusive evidence, as to such third parties, of his or her authority to act in the stead of the Chairperson.

Section 7.07 The Secretary/Treasurer shall:

- (a) Keep or appoint someone to keep the minutes of the meetings of the Commission in one or more books provided for that purpose.
- (b) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
- (c) Act as the custodian or designate an individual to act as custodian of the Commission's records and see that books, reports, statements, certificates and all other documents and records required by law are properly kept and filed.
- (d) Keep a register of the post office address of each Commissioner and each officer, which shall be furnished to the Secretary/Treasurer by each such person.
- (e) Sign with the Chairperson and/or Vice-Chairperson, all bonds, notes, agreements, deeds, instruments, certificates and other documents of the Commission which shall have been authorized by resolution of the Commission.
- (f) Oversee and report on expenditures, balance sheets, and income statements.
- (g) In general perform all duties incidental to the office of the Secretary/Treasurer and such other duties as from time to time may be assigned to him or her by the Chairperson and/or the Commission.

Section 7.08 The Commission may, from time to time, appoint, hire and employ such other personnel as it shall deem necessary to exercise and carry out the powers, duties and

functions of the Commission. The qualifications, duties and numbers of such personnel shall be consistent with the policies determined by the Commission.

Section 7.09 Officers shall receive no salaries for their services, nor shall they be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties, unless approved by the Commission.

## **ARTICLE VIII. CONTRACTS AND FINANCIAL TRANSACTIONS**

Section 8.01 The Commission may authorize any officer or officers and/or employees, to enter into any contract, or to execute and deliver any instrument in the name of and on behalf of the Commission, and such authorization may be general or confined to specific instances. The Chairperson shall have the authority to enter into any contract or to deliver any instrument in the name and on behalf of the Commission with respect to any approved budgetary item or as may be granted by the Commission for other specific items from time to time.

Section 8.02 No loans shall be contracted on behalf of the Commission and no evidence of indebtedness shall be issued in its name unless authorized by or under the authority of a resolution of the Commission. Such authorization may be general or confined to specific instances.

Section 8.03 The Commission shall have the power and authority to enact such rules and regulations, consistent with the provisions of applicable Wisconsin Statutes, as it may deem necessary concerning the issue, transfer, registration and verification of the Commission's financial transactions.

## **ARTICLE IX. INDEMNIFICATION**

Section 9.01 The Commission shall not indemnify any Commissioner, officer or employee of the Commission for any actions taken or expenses incurred in any proceeding, including those in which the Commissioner, officer or employee was a party to such action because he or she is or was at the time of the events upon which proceeding was based, a Commissioner, officer or employee of the Commission.

Section 9.02 Each Commissioner, officer and employee of the Commission shall be responsible for obtaining their own liability coverage or making arrangements to extend their employer's liability coverage, to cover the Commissioner, officer or employee's activities on or in connection with the Commission.

## **ARTICLE X. ROOM TAX COLLECTION**

Section 10.01 It will be each member municipality's responsibility to collect room taxes in accordance with established state and local laws ~~from all hotels, motels, bed and breakfasts, and any other short term rentals ("Establishments") comprising stays of less than thirty (30) consecutive calendar days.~~ As stated in the Inter-Governmental Agreement, member municipalities must pay to the designated entity all room taxes collected.

Section 10.02 Member municipalities must use all lawful measures to collect room taxes and do so within a reasonable amount of time. Lawful measures and reasonable amounts of time will include but are not limited to:

- (a) Phone calls and letters for Establishments less than thirty (30) days late.
- (b) Phone calls and letters related to rescinding the license for Establishments between thirty (30) and sixty (60) days late.
- (c) Rescinding license for Establishments between sixty (60) and ninety (90) days late.
- (d) Legal action to collect room taxes for Establishments between ninety (90) and one hundred twenty (120) days late

Section 10.03 As determined by the Commission, municipalities not paying collected room taxes to the designated entity or municipalities not using all lawful measures to collect room taxes or not doing so in a reasonable amount of time, taking into account the circumstances of each instance, will be fined one-half percent (0.5%) of the room tax owed (once determined) but in any case not less than twenty five dollars (\$25) per calendar day the room tax owed is late. This fine will be invoiced monthly to the member municipality with late room tax collections and will include a one and one-half percent (1.5%) monthly interest charge on late invoice payments. In the event the actual amount of money owed is unknown or in dispute, an estimated amount will be invoiced and a settlement of differences will occur after actual amounts are determined. Revenue from fines will become part of the Commission's Discretionary Funds. The Commission may use all lawful and reasonable means to collect amounts owed.

Section 10.04 All efforts, legal or otherwise, made by or on behalf of the Commission will be reimbursed by the member municipality for which efforts against were made.

ORDINANCE O-12-15

AN ORDINANCE CREATING TITLE 8, CHAPTER 5 OF THE CODE OF ORDINANCES  
(Removal of Salvageable Non-Structural Materials from Vacated Buildings)

Introduced by \_\_\_\_\_.

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 8 of the Code of Ordinances of the City of Menasha, Wisconsin, by creating Sec.8-5, as follows:

**Title 8 – Health and Sanitation**

**CHAPTER 5**

Removal of Salvageable Non-Structural Materials from Vacated Buildings

**SEC. 8-5-1 REMOVAL OF SALVAGEABLE NON-STRUCTURAL MATERIALS FROM VACATED BUILDINGS.**

- (a) **PURPOSE.** The purpose of this ordinance is to regulate the removal of scrap and salvageable equipment and materials from Vacated Buildings without immediate functional replacement thereof. The phrase “immediate functional replacement thereof” does not include replacement that occurs as part of a remodeling project pursuant to valid and subsisting building, heating, plumbing, or electrical permits. The Council finds the regulation of scrap and salvage activities is necessary in order to: prevent the complete abandonment of property, which reduces the chance that such property will, in the future, be devoted to any productive or enjoyable public or private use; prevent conditions that will create health and safety hazards and aggravate blight; prevent interference with the enjoyment of and reduction of the value of private property; and ensure salvage activities are completed in a timely manner and in such a fashion that prevents health and safety hazards, nuisances, and environmental pollution.
- (b) **INTERPRETATION.** In its interpretation and application the provisions of this ordinance shall be held to be the minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes. Where any terms or requirements of this ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply.
- (c) **ADMINISTRATION.** The Community Development Director shall have general supervision of the administration and enforcement of this Chapter.
- (d) **APPLICABILITY.** The requirements of this ordinance apply to all persons within the City of Menasha and to all waste, refuse, or recyclable materials generated within the City of Menasha.

**SEC. 8-5-2 DEFINITIONS.**

- (a) “Owner” means the title holder(s) to real property on which stands any Vacated Building or structure from which any Salvageable Material is removed or proposed to be removed.
- (b) “Operator” means any person, including a corporation or other business entity or holder of a security interest, that undertakes, directs, or allows the removal of Salvageable Material from a Vacated Building within the jurisdictional limits of the City of Menasha.
- (c) "Salvageable Material" means real or tangible personal property that:
  - 1. is man-made;
  - 2. is affixed to real property or any improvement to real property;
  - 3. is detachable from real property or any improvement to real property; and/or

4. is proposed to be removed or has been removed for potential or intended resale value, re-use, or scrap or recycling purposes.

Salvageable Materials shall include any such materials detached from real property or any improvement to real property without a permit after the effective date of this ordinance.

- (d) "Salvaging" shall mean the removal of fixtures, equipment, or building materials from a residential, commercial, or industrial structure following cessation of residential use or business operations, unless such removal is for the purpose of continuing a previous or similar use.
- (e) "Tenant" means a person or entity entitled by agreement to occupy the building or structure, or portion thereof, from which any Salvageable Material is removed.
- (f) "Vacated Building" means a building or structure, or portion thereof, which had a principal non-residential use as its most recent use, of which principal use has ceased. The cessation of the primary activities constituting the principal use shall be determinative of whether the principal use has ceased. The presence of personnel in the building or structure is not determinative of whether the use has ceased.

### **SEC 8-5-3 EXCLUSIONS.**

This Ordinance does not apply to the following:

- 1. Salvaging operations at structures where the most recent allowable use by law was residential;
- 2. Salvaging operations at non-residential structures under ten thousand square feet (10,000 sq. ft.);
- 3. Items/materials removed where replacement will occur as part of a remodeling process over time pursuant to a valid and subsisting building, heating, plumbing, or electrical permit;
- 4. Salvaging operations that occur as part of an approved demolition plan, pursuant to a valid demolition permit or otherwise, in which the Permit Holder/Owner/Operator is obligated to complete said demolition within a specified time frame;
- 5. Equipment, items, or supplies removed by the Owner for personal re-use; and/or
- 6. Equipment, items, or supplies owned and removed by the Tenant during the term of a written lease.

### **SEC 8-5-4 RECYCLING.**

- (a) The Permit Holder shall cause to be salvaged, reused, or recycled all of the following material/items removed and debris produced on-site as part of the salvaging permit activities:
  - 1. Concrete, brick, and/or wood, unless it has been rendered non-recyclable or non-re-useable by the application or attachment of paint, stains, varnish, or other liquids or solids;
  - 2. Non-toxic metals; and
  - 3. Non-asbestos containing shingles.
- (b) The City of Menasha maintains the right to suspend requirements of this section if the market for above materials changes, making compliance unattainable, or if the condition of the material(s) and/or proximity to recycling/re-use facilities makes compliance impracticable, as determined by the Code Official.

### **SEC 8-5-5 PARTIAL EXEMPTION.**

A partial exemption is allowed under this Ordinance for items and materials removed for the sole purpose of historical or cultural preservation. A request for exemption shall be filed in the Community Development Department. The request for exemption shall include documentation of historical or cultural significance acceptable to the Code Official, which may include written request for preservation by a historic society or equivalent.

### **SEC. 8-5-6 PERMIT.**

- (a) No person, corporation, or other business entity or holder of a security interest may remove, direct the removal of, or allow to be removed any Salvageable Material from a Vacated Building unless such removal is performed pursuant to a valid permit issued pursuant to this ordinance. The Owner and Permit Holder shall be jointly and severally responsible for complying with the terms of any permit issued pursuant to this ordinance.
- (b) PERMIT FEES. No permit shall be issued or renewed without the payment of the applicable fee having been received by the Community Development Department. Permit fees shall be established by the Common Council.

**SEC. 8-5-7 PERMIT APPLICATION.**

- (a) The applicant may be the Owner, a Contractor hired by the Owner, Tenant, or the holder of a security interest in the property, Vacated Building, or the Salvageable Material. Under all circumstances, the applicant, if other than the Owner, shall be jointly and severally responsible for compliance with the terms of this Ordinance.
- (b) Application for permit, whether initial or renewal, shall be made in writing and filed in the Community Development Department on forms provided by the City of Menasha. The application shall include the following items.
  - 1. Location and square footage of building(s) or structure(s).
  - 2. Name, address, and contact information of the Owner of the building(s) or structure(s).
  - 3. Names, addresses, and contact information for contractors engaged to carry out the activity.
  - 4. Plan for removal of Salvageable Material including the following details:
    - i. Project schedule and budget;
    - ii. Inventory and projected quantities (by weight or volume) of materials to be removed from the building for salvage purposes;
    - iii. Proposed disposition of Salvageable Materials;
    - iv. Dust, noise, and odor control;
    - v. Hours of operation;
    - vi. Fire suppression;
    - vii. Traffic safety and public infrastructure protection;
    - viii. Site security;
    - ix. Building and grounds management and restoration; and
    - x. Proposed post-salvage property ownership and use, if known.
  - 5. Plan for removal of hazardous wastes/materials.
    - i. Hazardous materials inventory including raw materials, waste materials, asbestos containing materials, and (with respect to any portion of the building, structure, or Salvageable Material to be altered in the course of the work) lead painted surfaces and PCB-containing materials.
    - ii. Hazardous materials handling, management, and disposal prior to salvaging.
    - iii. Proposed environmental monitoring or remediation.
  - 6. Plan for removal of recyclable materials.
    - i. Inventory and estimate (by weight or volume) of materials to be recycled.
    - ii. Proposed disposition, ownership, and use of materials to be recycled, if known.
    - iii. Percentage of material to be recycled. This percentage should only include non-salvageable material not identified as hazardous material or waste.
  - 7. Proof of required demolition/renovation notifications to the appropriate State regulatory agency(ies).
  - 8. The Code Official, or other entities of the City of Menasha, may require additional information of a specific applicant.

### **SEC 8-5-8 INVESTIGATION.**

The Community Development Director, or designee of, shall notify the Building Inspector, Director of Public Works, Public Health Officer, and Fire Chief, of each new application or request for renewal. These officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether a permit shall be issued taking into consideration all applicable regulations, ordinances, and laws. These officials shall furnish to the Community Development Director, in writing, the information derived from such investigation, accompanied by a recommendation as to whether a permit should be granted or denied. No permit shall be renewed without a re-inspection of the premises and report as originally required.

### **SEC 8-5-9 PERMIT GRANT.**

- (a) The Community Development Director shall consider such permit applications only after receiving the recommendations as required under Section 8-5-8 above.
- (b) Consideration shall be given to the following: the application; the reports received under Section. 8-5-8; the expertise of the applicant; the effect of the proposed operation on the surrounding neighborhood; the effect on the community of having a stripped structure remain if the structure is not proposed to be immediately razed or immediately renovated; the presentation, if any, of the applicant; the comments of the public; and other such matters germane to the decision.
- (c) In granting a permit, the Community Development Director shall address the following matters: proof of insurance; the amount of the Irrevocable Standby Letter of Credit to be required of the Permit Holder as a condition of issuance of the permit and as a requirement of operation; the justification for drawing against and content of the presentment required to draw against the Irrevocable Standby Letter of Credit; other State or local permits as required by law, rule, or regulation that must be obtained as a condition of issuance of the permit or as a requirement of operation; reporting period for submittal of required reports pursuant to Section 8-5-17 herein; percentage of non-salvageable materials required to be recycled; reasonable special operating requirements to be required of the Permit Holder in addition to those listed in Subsection 8-5-7 herein; and such other matters or limitations as the Community Development Director determines necessary to protect the public interest.

### **SEC 8-5-10 IRREVOCABLE STANDBY LETTER OF CREDIT.**

- (a) As a condition of issuance of the permit, the Permit Holder shall provide and maintain in effect an Irrevocable Standby Letter of Credit naming the City of Menasha as beneficiary in an amount required by the Administrative Services Director and in a form approved by the City of Menasha Attorney. The City Attorney shall also approve the form and content of the draw order and all necessary presentment required to compel payment by the issuer to the City of Menasha of all funds subject to the Irrevocable Standby Letter of Credit.
- (b) The Irrevocable Standby Letter of Credit shall be the guarantee of performance by the Permit Holder. The Irrevocable Standby Letter of Credit must be issued by a financial institution certified by the State to conduct such business within the State of Wisconsin, allowing for direct draw by the City of Menasha upon presentment to the issuing bank, without court action or approval by Permit Holder, to complete work or repair damage that was the obligation of the Permit Holder. The Irrevocable Standby Letter of Credit must contain as part of its provisions that it will be maintained constantly in force as an obligation to the City of Menasha for no less than one year after project completion as reasonably determined by the Community Development Director or one year after the expiration of a permit issued under this section to the Permit Holder, whichever is later.
- (c) In determining the required amount of the Irrevocable Standby Letter of Credit the Administrative Services Director shall consider: the recommendations, if any, of the reports of city officials; the expertise of the applicant; the capitalization of the applicant; the scope of the proposed project; the

cost of rectifying the possible environmental hazards that could be created; the effect of the proposed operation on the surrounding neighborhood; the cost of remediation of the City of Menasha; and potential inability of the Permit Holder to fulfill its obligations. Annually, upon documented request of the Permit Holder, the Administrative Services Director may review the pertinent facts and decide to reduce the amount of the required Letter of Credit in accordance with work completed or threats mitigated. In the circumstance that the Administrative Services Director determines the requirements to obtain an Irrevocable Standby Letter of Credit are unreasonable, the Administrative Services Director may, in the exercise of his or her discretion, authorize one or more alternate forms of security in lieu of an Irrevocable Standby Letter of Credit.

#### **SEC 8-5-11 PERMIT TERM.**

- (a) The initial term for a permit under this section shall be for a period of one (1) year from the date of issue. Renewals and renewal term shall be at the discretion of the Director of Community Development.
- (b) ASSIGNMENT. No permit issued pursuant to this ordinance is assignable or transferable without the advance written permission of the Director of Community Development, which shall not be granted unless the Permit Holder and prospective assignee demonstrate to the satisfaction of the Director of Community Development that assignee is capable of completing the project and all required forms of insurance and financial assurance are made effective prior to the assignment.

#### **SEC 8-5-12 GENERAL OPERATING REQUIREMENTS.**

- (a) The following general operating requirements shall apply to the Permit Holder and those working for Permit Holder subject to terms of the permit in accordance with the provisions of the ordinance:
  - 1. The valid permit issued pursuant to this ordinance shall be plainly displayed on the premises upon which the building is located.
  - 2. The building and premises shall, at all times, be maintained in as clean, neat, and sanitary of a condition as such premises will reasonably permit.
  - 3. No garbage, refuse, or other waste likely or susceptible to give off a foul odor or attract vermin shall be kept on the premises, except for domestic garbage kept in rodent-proof covered containers, which are removed from the premises as often as necessary to provide a sanitary, odor free, and vermin free environment.
  - 4. Work done under this permit shall be performed in accordance with the permit and any plans approved by the Community Development Director and is subject to inspection by the Code Official and other inspectors as provided in this ordinance. Any violation of the permit shall be deemed a violation of this ordinance.
  - 5. As a condition of issuing the permit, a Permit Holder shall maintain insurance policies during the life of the permit in the following minimum amounts. These policies shall be primary and provide coverage work performed on the property or associated with the work under the permit and shall provide certificates issued by the carriers as proof of all required coverages:
    - i. Automobile Liability (Owned, non-owned, leased): Twenty-five Hundred Thousand Dollars (\$250,000) each person/Five Hundred Thousand Dollars (\$500,000) each accident for Bodily Injury and One Hundred Thousand Dollars (\$100,000) for Property Damage
    - ii. Bodily Injury: One Million Dollars (\$1,000,000) each occurrence.
    - iii. Property Damage: One Million Dollars (\$1,000,000) each occurrence.
    - iv. Pollution Legal Liability: Five Million Dollars (\$5,000,000) each loss where risk is presented of exacerbation of existing environmental pollution or discharge of any hazardous waste to the environment or asbestos removal, abatement, remediation, or dumping/disposal in a Federal or State regulated facility is required; the Community Development Director may require a greater or lesser minimum amount down to and

including zero (\$0) of Pollution Legal Liability insurance policy, depending on the circumstances of the project that is the subject of the permit.

- v. Workers' Compensation: Statutory Limits.
  - vi. Umbrella Liability: Two Million Dollars (\$2,000,000) over the primary insurance coverages listed above.
6. No scrap salvage or debris, which is temporarily stored on the premises, shall be allowed to rest or protrude over any public rights-of-way or public property or become scattered about or blown off the premise.
  7. No mechanized process whatsoever shall be utilized on premises to reduce the volume of salvageable material or debris after such salvageable material has been detached from the real property, unless a special exception is provided by the Community Development Director in conjunction with a specific permit. Such prohibited mechanized processes include, but are not limited to, crushing and shredding.
    - i. There shall be strict compliance with SEC. 11-7-3 subsection P.
    - ii. There shall be strict compliance with SEC. 11-7-8 subsection O.
  8. No premises or building subject to a permit shall be allowed to become a public nuisance or be operated in such a manner as to adversely affect public safety, health, or welfare.
  9. There shall be full compliance with the City of Menasha City Code, as well as any city, county, state, or federal regulations which may be applicable. These include, but are not limited to Title 15; Title 5, Section 3; and Title 8, Section 1.
  10. The Permit Holder shall, during the salvage process, maintain the work site in a safe and secure condition.
  11. The Permit Holder shall keep a log of all shipments to and from the work site during the project, including the date, time, transport company, vehicle license number, and description of type and amount of material transported.
  12. The Permit Holder shall identify, handle, manage, store, and dispose of all wastes, lead, asbestos, waste oils, hazardous materials, and hazardous substances as provided in the plan submitted as part of the application and permitting process. In the event of any changed conditions or plans, the Permit Holder is required to promptly notify the Director of Community Development in order to pursue an amended permit.
  13. The Permit Holder shall dispose of building debris in a licensed landfill except for salvaged and recycled materials. At any time, the Permit Holder shall produce to the Community Development Director receipts and/or an itemized list of debris disposed of by dumping, recycling, or salvage.
  14. The Permit Holder shall meet all recycling requirements as provided in the approved permit.
  15. The Permit Holder shall be responsible for disconnections of utilities, including plumbing and electrical, necessary for safe conduct of the salvaging process and shall provide evidence that the necessary disconnections have been accomplished.
  16. The Permit Holder shall restore the site and/or Vacated Building to the conditions set forth in the approved plans in the permit.
  17. The Permit Holder shall comply with all orders of the Community Development Director imposed upon granting of the permit.
  18. The Irrevocable Standby Letter of Credit imposed as a condition of issuance of the permit shall be maintained in full force and effect at all times until one year following the Community Development Director's finding project completion.
  19. Permit Holder must provide to the City of Menasha, and must maintain current, a list of contractors doing work that is subject to a permit issued pursuant to this ordinance, which shall include proof of valid and subsisting policies of insurance in satisfaction of the General Operating Requirements specified herein. As used herein, the phrase "maintain current" means that the list filed with the City of Menasha is updated by the Permit Holder as necessary to comply with the ordinance prior to each contractor commencing work pursuant to the permit.

20. Permit Holder shall also ensure that subcontractors have appropriate insurance as determined by the Community Development Director. This may include coverage under the Permit Holder's policy, individual coverage, or a combination thereof. The Community Development Director may also require subcontractors to obtain separate permits pursuant to this Ordinance based on the type of proposed activities or extent or complexity of the salvaging activities proposed.

**SEC 8-5-13 INSPECTIONS.**

- (a) Permit Holders and property owners shall allow inspection by representatives of the City of Menasha having enforcement powers to inspect the premises subject to the permit, as often as may be required to allow said representatives to perform their duties and assure compliance with this ordinance, as well as state and federal laws. Inspections shall be made during normal hours of business operation except when the presence of emergency circumstances which require prompt action to protect the public health, safety, and welfare or to preserve evidence of noncompliance with this ordinance or state or federal laws.
- (b) Inspection may include inspection of the entire property subject to the permit, including buildings, structures, basement, sub-basements, vaults, and other areas of the property.
- (c) The unreasonable failure to allow inspections shall be grounds for denial, suspension, or revocation of the permit.
- (d) Inspections may include but are not limited to: taking wipe samples; waste, structural or product sampling; sampling of pits; the logging, gauging, and sampling of existing wells; videotaping; preparing site sketches; taking photographs; and/or testing or sampling the groundwater, soil, surface water, sediments, air, soil vapor, or other material.

**SEC 8-5-14 NON-RENEWAL, SUSPENSION OR REVOCATION.**

- (a) If in the opinion of the Community Development Director, the public is subject to imminent danger due to violation of any one or combination of the General Operating Requirements, the Community Development Director may issue an order to the violator or the Permit Holder requiring immediate cessation of those operations giving rise to the imminent danger. The recipient of any such order shall cause such operations to cease as directed by the Code Official. Failure to maintain insurance, a Letter of Credit as required, or to permit inspection as required are each per se violations implicating imminent danger to the public necessitating an order to cease all operations.
- (b) There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the Community Development Director upon application of a Permit Holder as described in Section 8-5-7 of this ordinance.
- (c) If the Community Development Director decides not to renew, suspends, or revokes a permit, a written report of such action shall be made, which shall include findings of fact, conclusions, and reasons for the action taken with respect to the permit.
- (d) The Permit Holder shall be provided with a copy of the report and may make a written appeal of the decision to the Common Council to be considered at its next regular meeting following the issuance of the report. The Common Council, after considering the Community Development Director's report and any arguments presented by the Community Development Director or the Permit Holder, may sustain, modify, or overrule the suspension, revocation, or nonrenewal.

**SEC 8-5-15 VIOLATIONS AND LIABILITY.**

- (a) It shall be a violation of this ordinance to perform, conduct, direct, or allow removal of Salvageable Material except in conformance with a valid permit issued pursuant to this ordinance.
- (b) It shall be a violation of this ordinance to disobey or act contrary to any order issued pursuant to this ordinance.

- (c) The Owner and Permit Holder shall be jointly and severally liable for any violation of this ordinance and any violation of any condition of the permit pursuant to this ordinance, whether caused by act or omission, including applicable fines and penalties together with the City of Menasha's costs of enforcement, including attorneys' fees.

**SEC 8-5-16 ENFORCEMENT, FINES, AND PENALTIES.**

The Community Development Director shall have the primary responsibility to enforce this ordinance. Violations of this ordinance shall be subject to the general provisions of Section 1-1-7. For the purpose of calculating fines and penalties, each day of continuing violation shall constitute a separate offense. Any violation of this ordinance constitutes a public nuisance and in addition to any other remedies provided or allowed the City of Menasha may apply to a court of competent and local jurisdiction for injunctive relief and the assessment of damages including attorneys' fees and costs.

**SEC 8-5-17 REPORTING.**

- (a) Permit Holders shall provide reports to the Community Development Director in accordance with the reporting requirements specified in the permit as approved by the Community Development Director. The following reports are required.
1. Salvageable Materials report that identifies the type, quantity, and disposition of Salvageable Materials removed from the property during the reporting period.
  2. Hazardous wastes/materials report that identifies the type, quantity, and disposition of hazardous wastes/materials removed from the site during the reporting period. This report should be accompanied by supporting documentation of disposal, name and contact information of haulers, and copies of any applicable permits/exemptions.
  3. Waste report that identifies the type, quantity, and disposition of non-salvageable waste materials removed from the site.
  4. Any instances of environmental monitoring performed during the reporting period and results of the same.
- (b) Upon demand of the Community Development Director the following reports must also include:
1. Supporting documentation of removal and disposition of materials which shall include weigh tickets, bills of lading, sales receipts, and chain of custody logs or equivalent documentation.
  2. A statement by the Permit Holder that documentation supporting compliance with this ordinance will be maintained for two years from submission of the reports.
  3. A statement from the Permit Holder that documentation supporting the information in the reports is truthful and accurate.

SECTION 2: This ordinance shall become effective upon its passage and publication as provided by law.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Donald Merkes, Mayor

ATTEST:

\_\_\_\_\_  
Deborah A. Galeazzi, City Clerk