CITY OF ANTIGO

FINANCE, PERSONNEL, AND LEGISLATIVE COMMITTEE MEETING

MULTI-PURPOSE ROOM	**Wednesday, August 16, 2023**
CITY HALL, 700 EDISON STREET	**6:00 PM**

Call to Order

Discussion and Action May Occur on Any of the Following Agenda Items:

1. Minutes from July 19 and August 2, 2023 Meetings
2. Approve Transferring Funds Between Accounts at Banner Banks Via Internet Banking
3. Reimbursement Resolution Approving Interim Financing for Lead Service Line Replacement Until Such Time as the Bond Proceeds are Received
4. Operating Fund Financial Report for Budget to Actual Comparing June 30, 2023 to June 30, 2022
5. Increase "Class A" Intoxicating Liquor and Fermented Malt Beverage License Quota to Nine and Allow a License for Tienda Tres Hermanos Antigo, LLC at 820 Fifth Avenue (if they qualify after an application is submitted)
6. Approval for City Hall Heating, Ventilation, and Air Conditioning (HVAC) Control Upgrades Quote for $65,774.26 from Refrigeration Control and Design, Inc., Waive the Bidding Process, and Transfer Capital Equipment/Improvement Funds
7. Extend Tax Increment Finance District (TIF) 3 for One Year to Capture the Increment to be Utilized to Benefit Low-To-Moderate Income Housing
8. Terminate Tax Increment Finance District No. 3
9. Amend Tax Incremental Finance District No. 6 to Allocate the Increment Generated to Tax Incremental Finance District No. 5
10. Antigo Block Co. Inc. Lease for the Property at 213 Superior Street for $100 Per Month
11. MSA Professional Services Contract to Assist with Reallocating TIF #6 Funds to TIF #5
12. Correct Ordinance Section 2-581 Membership and Terms for Library Board to Reflect the Joint Library Agreement
13. Discussion on Timely Removal of Political Signs After An Election (referred by Alderperson Bauknecht)

Any Other Matters Authorized by Law to be Considered

Adjournment

Upon reasonable notice, efforts will be made to accommodate disabled individuals through appropriate aids and services. For additional information, contact Cheryl Barta, 700 Edison Street, Antigo, Wisconsin 54409. (715) 623-3633 extension 100. Members of and possibly a quorum of members of other governmental bodies may be in attendance to gather information. Any governmental body other than that specifically referred to above will take no action.

DATE MAILED: August 10,2023 TERENCE BRAND

“Antigo Area on the go”

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: Approve Transferring Funds Between Accounts at Banner Banks Via Internet Banking

We now have the capability for online banking with Banner Banks. We can look up accounts, balances, etc. but we cannot transfer funds between accounts. For example, the health insurance accounts are at Banner Banks and if we need to transfer money from the investment account to the checking account for claims, we would still have to call the bank to do this.

Because our accounts require two signatures for withdrawals, Banner Banks will not allow the transfers unless they have a resolution from Council approving one person being able to transfer between accounts. Because the funds are staying in a City account, we are asking for the capability to do these transfers online.

If approved, a resolution would need to be forwarded to Council allowing us to transfer funds between accounts at Banner Banks via Internet banking.

Should you have any questions, please feel free to contact me.

"Antigo Area on the go"

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: Reimbursement Resolution Approving Interim Financing for Lead Service Line Replacement Until Such Time as the Bond Proceeds are Received

The City of Antigo is again applying for Lead Service Line funding through the Wisconsin Department of Natural Resources (DNR). This allows the City to pay the cost of property owners' replacement of lead service lines leading to their homes. We have had these in the last few years and always received 100% principal forgiveness which means the City does not pay back the loan. This year, the DNR is requiring a resolution be approved by Council stating that we are using our funds to pay the costs until we are reimbursed through the bonds. This is common when the City pays the costs up front and then receives reimbursement.

If approved, a resolution will need to be forwarded to the September Council meeting.

If you have any questions, please contact Charley Brinkmeier or myself.

Antigo
"Antigo Area on the go"

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: Operating Fund Financial Report for Budget to Actual Comparing June 30, 2023 to June 30, 2022

Attached is a comparison expenditure budget to actual for June 30, 2023 to June 30, 2022 for the operating fund. This is in the same format as what is included in the budget booklet each year. There is no action needed on this report. You will receive these periodically to update you on where our budget stands.

If you have any questions on this report, please feel free to contact me.

EXPENDITURE BUDGET THROUGH 6-30-23						
FUNCTION AREA	**2022 BUDGET incl. Carry Forwards**	**2022 ACTUAL**	**2022 PERCENT % EXPENDED**	**2023 BUDGET incl. Carry Forwards**	**2023 EXPENDED**	**2023 PERCENT % EXPENDED**
COUNCIL						
Council	44,825	26,451	59.01%	46,825	29,548	63.10%
Legal	126,305	62,529	49.51%	135,633	84,865	62.57%
Donations	53,300	18,400	34.52%	80,800	45,900	56.81%
TOTAL COUNCIL	**224,430**	**107,381**	**47.85%**	**263,258**	**160,313**	**60.90%**
ADMINISTRATION						
Codification of Ordinances	13,679	1,301	9.51%	11,177	2,033	18.19%
Labor Negotiations	21,000	1,197	5.70%	22,751	29,055	127.71%
Bank Charges/Cash Short/Over	26,500	13,285	50.13%	26,500	18,702	70.57%
Mayor	30,648	11,883	38.77%	29,527	13,693	46.37%
Administrative Services	167,820	81,003	48.27%	178,750	86,368	48.32%
Clerk-Treasurer	429,147	188,858	44.01%	421,425	196,967	46.74%
Elections	36,927	9,720	26.32%	26,939	14,059	52.19%
Information Services	276,974	128,866	46.53%	319,304	174,922	54.78%
Safety Coordinator	15,232	6,306	41.40%	12,576	6,845	54.43%
Accounting and Auditing	21,747	23,572	108.39%	20,887	19,241	92.12%
Cable Television	0	0	0.00%	0	0	0.00%
Contractual Assessing Services	33,000	14,239	43.15%	33,000	14,235	43.14%
General Buildings/City Hall	107,700	37,933	35.22%	99,320	43,324	43.62%
Taxes	5,401	867	16.06%	4,500	588	13.07%
General Insurance	15,613	12,668	81.14%	15,571	13,115	84.23%
Bldg Inspector/Zoning Admin	243,965	118,574	48.60%	222,444	100,543	45.20%
Director of Public Works	305,011	79,914	26.20%	179,135	178,747	99.78%
Economic Development	122,685	85,014	69.29%	73,700	36,934	50.11%
WelFit Participation Fee	3,400	1,630	47.94%	2,000	3,341	167.06%

Attachment: Expenditure Budget 6-30-23 vs 6-30-22 (6316 : Financial Report)

FUNCTION AREA	2022 BUDGET	2022 ACTUAL	2022 PERCENT %	2023 BUDGET	2023 EXPENDED	2023 PERCENT %
Employment Practices Liability	6,248	5,171	82.76%	6,447	4,933	76.52%
Unemployment Comp Assessmn	0	0	0.00%	0	0	0.00%
125 Plan	0	0	0.00%	0	0	0.00%
Severance Reserve	194,360	110,326	56.76%	160,325	64,213	40.05%
TOTAL ADMINISTRATION	**2,077,057**	**932,327**	**44.89%**	**1,866,277**	**1,021,858**	**54.75%**
POLICE	2,018,795	991,350	49.11%	2,121,806	999,961	47.13%
TOTAL POLICE	**2,018,795**	**991,350**	**49.11%**	**2,121,806**	**999,961**	**47.13%**
FIRE/AMBULANCE						
Fire Protection	533,934	323,734	60.63%	631,418	356,911	56.53%
Ambulance **	2,050,527	668,763	32.61%	2,147,780	684,193	31.86%
TOTAL FIRE/AMBULANCE	**2,584,461**	**992,497**	**38.40%**	**2,779,198**	**1,041,104**	**37.46%**
STREET DEPARTMENT						
Flood Control	27,069	840	3.10%	28,888	471	1.63%
Street Commissioner	154,148	75,596	49.04%	163,908	82,420	50.28%
Street Shop Operations	224,448	139,844	62.31%	223,186	108,743	48.72%
Street Machinery Operations	296,139	136,816	46.20%	303,698	152,074	50.07%
Street Maintenance	374,282	108,183	28.90%	378,411	101,085	26.71%
Street Construction	14,393	0	0.00%	13,271	0	0.00%
Snow & Ice Control	251,469	113,082	44.97%	242,067	179,922	74.33%
Tree & Brush Control	46,721	16,253	34.79%	52,106	22,708	43.58%
Weed Control	27,751	2,061	7.43%	31,220	739	2.37%
Street Signs & Markings	129,404	48,179	37.23%	124,118	47,438	38.22%
Bridges	12,456	2,136	17.15%	13,345	436	3.26%
Alleys & Boulevards	50,389	2,009	3.99%	47,745	10,286	21.54%
Parking Lots	34,084	15,525	45.55%	34,619	24,085	69.57%
Street Dept. Outside Labor	28,417	8,462	29.78%	15,865	9,465	59.66%
Street Dept. Other Dept Labor	11,055	3,112	28.15%	16,420	6,075	37.00%

Attachment: Expenditure Budget 6-30-23 vs 6-30-22 (6316 : Financial Report)

FUNCTION AREA	2022 BUDGET	2022 ACTUAL	2022 PERCENT %	2023 BUDGET	2023 EXPENDED	2023 PERCENT %
Spring Clean Up	28,950	11,436	39.50%	32,790	19,005	57.96%
Celebrations	33,287	15,212	45.70%	29,134	11,314	38.84%
TOTAL STREET DEPARTMENT	**1,744,462**	**698,746**	**40.06%**	**1,750,791**	**776,266**	**44.34%**
PARK/REC/CEMETERY DEPT						
Cemeteries	45,026	26,299	58.41%	48,381	14,242	29.44%
Parks & Playgrounds	282,626	107,377	37.99%	290,994	89,355	30.71%
Ball Parks	36,599	220,877	603.51%	37,753	37,760	100.02%
Park & Rec Administration	142,713	67,650	47.40%	147,286	72,831	49.45%
Recreation Programs	16,512	12,805	77.55%	17,200	8,732	50.77%
Office & Shop	57,428	31,290	54.49%	35,427	32,440	91.57%
Machinery Operations	59,637	31,511	52.84%	46,483	28,993	62.37%
PRC Dept Other Dept Labor	1,055	0	0.00%	0	0	0.00%
Swimming/Wading Pools	9,188	2,323	25.28%	13,406	652	4.87%
Parks Snow & Ice	27,615	20,344	73.67%	26,526	35,817	135.02%
Ice Skating Rinks	12,519	4,668	37.29%	17,971	4,622	25.72%
Skate Park	0	0	0.00%	2,000	0	0.00%
Campground	20,745	5,094	24.55%	9,848	4,842	49.17%
Forestry	23,590	14,208	60.23%	22,383	25,884	115.64%
TOTAL PARK/REC/CEMETERY	**735,253**	**544,447**	**74.05%**	**715,658**	**356,170**	**49.77%**
MISCELLANEOUS						
Demolition of Buildings	213,502	912	0.43%	248,900	27,059	10.87%
Street Lighting	153,786	61,250	39.83%	163,936	61,461	37.49%
Animal Pound	3,000	0	0.00%	3,000	0	0.00%
Contingency Fund	37,400	74,525	199.26%	29,875	0	0.00%
TOTAL MISCELLANEOUS	**407,688**	**136,687**	**33.53%**	**445,711**	**88,520**	**19.86%**
TOTAL OPERATING BUDGET	**$9,792,146**	**$4,403,435**	**44.97%**	**$9,942,699**	**$4,444,192**	**44.70%**

"Antigo Area on the go"

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: Increase "Class A" Intoxicating Liquor and Fermented Malt Beverage License Quota to Nine and Allow a License for Tienda Tres Hermanos Antigo, LLC at 820 Fifth Avenue (if they qualify after an application is submitted)

The City currently has a quota of 8 "Class A" Intoxicating Liquor and Fermented Malt Beverage licenses approved for issuance. All 8 of these licenses are filled by current businesses. This type of license is for alcohol sales to be consumed off-premises (such as a grocery store) and the Common Council has the authority to increase the quota if they choose to do so.

We have received a request (attached) from Tienda Tres Hermanos Antigo, LLC, to allow a "Class A" license at a premises, 820 Fifth Avenue, that has not held a license previously. They are opening a Mexican grocery store. In order to consider this request, the quota for the intoxicating liquor license would need to be increased by 1 (to 9). If the quota increase is acceptable, there would also need to be approval to allow a previously unlicensed premises to obtain a license (if they qualify after an application is submitted).

There are two things to consider with this item that go together because if you do not approve the increase in the quota, there would be no need to take action on the unlicensed premises. Also if you do not approve the unlicensed premises to become licensed, there is no need to increase the quota.

If approved, a resolution would need to be forwarded to Council along with the license applications for the store.

Should you have any questions, please feel free to contact me.

August 7th, 2023

Common Counsel
City of Antigo
700 Edison St.
Antigo, Wi 54409-1955

Ref: Class "A" Intoxicating Liquor and Class "A" Fermented Malt Beverage

Dear Common Counsel,

I am writing this letter to request a new Class "A" Intoxicating Liquor and Class "A" Fermented Malt Beverage license for my establishment, Tienda Tres Hermanos Antigo, LLC Mexican grocery store at 820 5th Ave., Antigo, WI 54409. We are a new Mexican grocery store in the area and believe that obtaining a Class "A" license will be crucial to our success. This new establishment in Antigo is an expansion of our business in Wausau, Wisconsin.

We have successfully been in business in Wausau, Wisconsin with a Mexican grocery store and a Mexican restaurant for over 13 years with a clear record. We are committed to operating our business in compliance with all regulations set by the state and local authorities. We understand the importance of responsible alcohol sales and will ensure that all our staff are trained in responsible sales practices.

Thank you very much for considering our request for opening a new Class "A" Intoxicating Liquor and Class "A" Fermented Malt Beverage license for my new business in your beautiful city, Antigo, Wisconsin.

If you need further information, do not hesitate to contact my manager Annie Williams (715-803-8141). She will be happy to assist you.

Best Regards,

Gonzalo Ramirez

Gonzalo Ramírez-Palacios
Owner (312)982-9594
Tienda Tres Hermanos Antigo, LLC
(715)350-4299

"Antigo Area on the go"

To: Mayor and City Council

From: Charley Brinkmeier, Land Surveyor/Project Manager

Date: August 16, 2023

Re: Approval for City Hall Heating, Ventilation, and Air Conditioning (HVAC) Control Upgrades Quote for $65,774.26 from Refrigeration Control and Design, Inc., Waive the Bidding Process, and Transfer Capital Equipment/Improvement Funds

---

The controls for City Hall HVAC system have been failing over the last year or more. We requested multiple firms to come review the system and make recommendations for change. Refrigeration Control And Design Inc. (RCAD) was the only firm that responded to our request. Other firms stated they did not have time for a system of our size. We have used RCAD in the past at the wastewater treatment plant and the street shop. This company has come highly recommended and has proven more than competent. We are asking the committee to waive the bidding process and approve the quote from RCAD with installation of a new HVAC control system for the amount of $65,774.26.

As this is not budgeted, the funds would come from the following Capital Equipment/ Improvement Account with funds replenished in future budgets for the deferred items:

$14,000 - Remainder of the City Hall Flooring Fund

$14,000 - Remainder of the Fire Department Flooring Fund

$20,000 - Council Chambers Sound System

$30,000 - City Hall Windows

The total is $78,000, which would give us a contingency if something were to be discovered to need replacement during time of installation.

If approved a resolution will need to be forwarded to Council.

R Refrigeration
C Control
A And
D Design, Inc.

Refrigeration Control And Design, Inc … d/b/a ***R/CAD***

Commercial & Industrial

751 Washington Street
PO Box 1052
Rhinelander WI 54501
(715) 365-2009 Main Office
(715) 365-3282 Fax

REFRIGERATION * HEATING * VENTILATING * AIR CONDITIONING * ENGINEERING * CONTROLS

www.rcadrefrigeration.com - Website rcad@rcadhvac.com - Email

7/26/2023

City of Antigo City Hall

Update Building HVAC controls to ProLon Controls

To include:
Install new Modbus Communication Network throughout entire facility
Remove and replace existing HVAC controller with listed ProLon Controls.

(1)	PL-PN2-NC-HMI-M2-XXX MASTER CONTROL W DISPLAY
(4)	PL-M2000-RTU RTU ZONE CONTROL
(38)	PL-VC2000-PI VAV CONTROLLERS
(2)	PL-M2000-RTUS SINGLE ZONE ROOFTOP CONTROLS
(40)	PL-T500-WGL COMMUNICATING WALL SENSORS
(1)	PL-M2000-BLR BOILER CONTROL
(2)	PL-M2000-FLX FLEX I/O
(13)	PL-T1100-WGL SINGLE ZONE THERMOSTAT CONTROLS
(9)	10K TYPE 3 ODA SENSORS
(26)	PL-DS 10K TYPE 3 DUCT SENSORS
(1)	PL-M2000-MUA MAKE UP AIR UNIT CONTROL
2000’	24/2 STRANDED, SHIELDED, LOW CAP, PLENUM ORANGE JACKET Comm Bus Wire
Misc.	FASTENERS, CONNECTORS AND MOUNTING HARDWARE

Total Controllers and Installation Materials Only	$ 45,112.89
Total Installation and Start Up Labor	$ 18,800.00
Total Applicable Tax	$ 1,861.37

Total System Installed and Started Estimate **$ 65,774.26**

Stanley A Grys Jr. D.E.S.
President / Engineer
Refrigeration Control And Design, Inc.
d/b/a/ R/CAD
751 Washington Street
PO Box 1052
Rhinelander WI 54501
715-365-2009 Main Office
715-550-0923 Cell
rcad@rcadhvac.com

"Antigo Area on the go"

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: Extend Tax Increment Finance District (TIF) 3 for One Year to Capture the Increment to be Utilized to Benefit Low-To-Moderate Income Housing

Tax Incremental Finance District (TIF) No. 3 will have all of the debt paid in 2023 because of the allocation from TIF No. 6. Normally the TIF would then be closed and the value of the TIF would be returned to the taxing entities value. In the case of TIF 3, the City can approve an extension to keep TIF 3 open one more year to capture the increment and use it for the benefit of low-to-moderate income housing.

Usually anything relating to a TIF would have to be approved by the TIF Joint Review Board (JRB) but this extension only requires the Common Council approval. The JRB did meet a few weeks ago and I did discuss this extension with them. There was no one opposed to extending this one year.

Before the meeting, staff will discuss a few ideas on where these funds, estimated to be about $83,000, could be utilized. We will present these ideas at the meeting.

If approved, a resolution will need to be forwarded to Council.

Antigo
"Antigo Area on the go"

To: Mayor and City Council
From: Kaye Matucheski, Clerk-Treasurer/Finance Director
Date: August 16, 2023
Re: Terminate Tax Increment Finance District No. 3

There was an action item tonight to extend Tax Incremental Finance District (TIF) No. 3 for an additional year to benefit low-to-moderate income housing. After this extension, TIF 3 will no longer have any expenditures and can be terminated. The Council needs to approve this termination so a resolution will need to be sent to the next meeting.

Antigo
"Antigo Area on the go"

To:	Mayor and City Council
From:	Kaye Matucheski, Clerk-Treasurer/Finance Director
Date:	August 16, 2023
Re:	Antigo Block Co. Inc. Lease for the Property at 213 Superior Street for $100 Per Month

Antigo Block Co, Inc. has been leasing the vacant property at 213 Superior Street from the City for several years. Currently there is not an agreement in place for this lease. Mark Desotell, Director of Administrative Services, discussed the need to formalize this arrangement at the April Finance, Personnel & Legislative (FPL) meeting. Attached is the lease, drafted by City Attorney, Mike Winter, for your review.

Should you have any questions, please feel free to contact me ahead of the meeting as Mark is out and I will get answers.

If approved a resolution will need to be forwarded to Council.

LEASE

This lease made and entered into by and between **CITY OF ANTIGO**, a Wisconsin Municipal Corporation, hereinafter called ("Lessor"): and **ANTIGO BLOCK CO., INC.**, hereinafter called ("Lessee"):

1. **PREMISES.** The Lessor hereby leases to the Lessee the property located at 213 Superior Street, Antigo, Wisconsin 54409.

2. **TERM.** The Term of this lease will be for one (1) year, commencing the 1st day of September and ending the 30th day of August.

3. **RENTS.**

(a) The Lessee agrees to pay Lessor rent as follows: $100.00 per month. All rental payments shall be due the ____ day of each month.

(b) Acceleration of Rents. In the event Lessee defaults under the terms of this rental agreement, the Lessor may proceed with eviction and termination of the Lessee's right of possession to the premises. Lessor shall be entitled to claim all remaining rent due on the contract immediately.

(c) Lessee at its sole expense shall insure its own personal property located on the leased premises. Lessor shall not be responsible for any loss, damage or destruction of lessee's personal property located on the leased premises unless caused by the intentional or negligent acts of Lessor.

4. **INDEMNITY AND LIABILITY INSURANCE.** Lessee will protect, indemnify and save harmless the Lessor from and against any and all loss, costs, damage and expense occasioned by or arising out of any negligent conduct of Lessee causing or inflicting injury and/or damage to any person or property happening or done in upon or about the leased premises, or due directly or indirectly to the tenancy, use of occupancy thereof, or any part thereof by the Lessee or any person claiming through or under the Lessee. The Lessee further covenants and agrees that it will, at its own expense, procure and maintain casualty and liability insurance in a responsible company or companies authorized to do business in the State of Wisconsin, in amounts not less than $1,000,000.00 for each occurrence, and $1,000,000.00 aggregate, protecting the Lessor against such claims, damages, or costs or expenses on account of injury to any person or persons or to any property belonging to any person or persons by reason of such casualty, accident, or other happening on or about the demised premises during the term of this lease or any extension thereof. Certificates or copies of said policies, naming the Lessor as an additional insured, and providing for ten (10) days notice to the Lessor before cancellation shall be delivered to the Lessor within twenty (20) days from the date of the beginning of the term of this lease or this lease shall then terminate.

Lessee will provide the Lessor with proof of statutorily required Workers Compensation Insurance.

5. **REMOVAL OF FIXTURES, PARTITIONS, ETC.** Trade fixtures, partitions or any other equipment installed in, on, under or about the premises by Lessee shall always remain the property of Lessee. Any damage to the demised premises caused by the placement or removal of such fixtures, partitions, or equipment shall be repaired by Lessee.

6. **USE OF PREMISES.** The Lessee may use and occupy the leased premises for the purpose of selling concrete/landscape products and may not be used for any other purpose without the express written consent of the Lessor. Lessee agrees to comply with all State, Federal, and local laws in the conduct and operation of its business including all laws pertaining to the handling, storage, and disposal of hazardous substances, materials, and contaminants.

At the end of the lease term, the property shall be surrendered by Lessee to Lessor in as good condition as at the commencement of the lease, ordinary wear and tear excepted.

Lessee shall keep the premises neat and orderly and free of any debris, garbage or junk accumulations. A violation of this provision shall be considered a breach of the lease.

Lessee shall be responsible for all snow removal from the property.

7. **ASSIGNMENT AND SUBLETTING.** The Lessee shall not assign this lease or any interest therein nor let or sublet the said premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person without the written consent of the Lessor.

8. **DEFAULT.** If default is made by Lessee in payment of the rent or any part thereof or for any condition of the Lease and such default shall continue for thirty (30) days after written notice by Lessor to Lessee to pay or remedy the same, or if either party shall be in default under any other provision of this lease and such default shall continue to exist after receipt by the defaulting party of their thirty (30) days written notice thereof, Lessor may terminate this lease and take possession of the leased premises (if the Lessee is the defaulting party), or Lessee may terminate this lease and surrender possession of the leased premises to Lessor (if Lessor is the defaulting party). Such termination of lease shall be without prejudice to the right of recovering damages against the defaulting party for breach of this lease.

9. **MISCELLANEOUS.**

(a) This lease shall be construed and enforced in accordance with the laws of the State of Wisconsin.

10. **SUCCESSORS.** All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and the assigns of the parties hereto, provided that nothing in this paragraph shall be deemed to permit any assignment, subletting, occupancy or use contrary to what is stated elsewhere in this lease.

11. **NOTICES.** Notices as provided for in this lease, as well as any payments, shall be addressed to the following:

Lessor:
700 Edison Street
Antigo, WI 54409

Lessee:
230 Milton Street
Antigo, WI 54409

IN WITNESS WHEREOF, this lease is hereby executed this ______ day of __________, 2023.

Lessor: City of Antigo

BY ______________________________
Terry Brand, Mayor

BY ______________________________
Kaye M. Matucheski, Clerk/Treasurer

Lessee: Antigo Block Co., Inc.

BY ______________________________
Cal Wick, President

This document drafted by:
Attorney Michael B. Winter
835 Fifth Avenue
Antigo, WI 54409
(715) 623-2905

"Antigo Area on the go"

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: MSA Professional Services Contract to Assist with Reallocating TIF #6 Funds to TIF #5

Tax Increment Finance District (TIF) #6 was allocated to TIF #3 for many years as TIF #3 was not cash flowing. TIF #3 will now have the debt to the City paid with no other expenses so it is no longer in need of the increment from TIF #6.

Instead of closing TIF #6, we can start the process of requesting the TIF Joint Review Board to approve allocating TIF #6 funds to TIF #5 as that TIF is also not cash flowing and owes the City approximately $1,000,000. By allocating these funds, the debt to the City can be paid back.

In order to assist with the process to change the allocation, there are several steps and deadlines that have to be met for the State. In order to assist with this, a quote was received from MSA Professional Services (MSA) for $14,000. MSA has assisted with all of the City's TIF Districts and is very familiar with our TIFs so we are suggesting continuing with them. The funds would be derived from the TIF district funds for this process.

If approved, a resolution would need to be forwarded to Council. Should you have any questions, please feel free to contact me.

MSA Professional Services Agreement

MSA Project Number: 00058104

This AGREEMENT (Agreement) is made effective July 12, 2023 by and between

MSA PROFESSIONAL SERVICES, INC (MSA)
Address: 11 East Marshall Street, Suite 201; Rice Lake, WI 54868
Phone: 715-304-0303
Representative: Dave Rasmussen Email: drasmussen@msa-ps.com

CITY OF ANTIGO
Address: 700 Edison Street; Antigo, WI 55409
Phone: 715-623-3633
Representative: Kaye Matucheski Email: kmatucheski@anitgo-city.org

Project Name: City of Antigo TID #6 Allocation Amendment

The scope of the work authorized is: See Attachment A: Scope of Services

The schedule to perform the work is: Approximate Start Date: 07/01/23
Approximate Completion Date: 12/31/23

The lump sum fee for the work is: $14,000

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

Approval: Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

CITY OF ANTIGO	MSA PROFESSIONAL SERVICES, INC.
Terry Brand, Mayor	Brittney Mitchell, Team Leader
Date:	Date: 6/28/2023
OWNER ATTEST:	
Kaye Matucheski, Clerk-Treasurer/Finance Officer	David M. Rasmussen, Community Development Specialist
Date:	Date: 6/27/23

MSA PROFESSIONAL SERVICES, INC. (MSA)
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC)

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), and quoted fees for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities.**

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in Attachment A. The OWNER shall furnish the services of other consultants other than those designated in Attachment 1, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

4. **Costs and Schedules.** Costs (including MSA's fees and reimbursable expenses) and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, pandemics, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

7. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other recommendations made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not warrant or represent that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

10. **Municipal Advisor**. MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

12. **Electronic Documents and Transmittals**. Owner and MSA agree to transmit and accept project related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's

Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

13. **Building Information Modelling (BIM).** For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 10 of this Agreement.

14. **Construction Site Visits.** If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in Attachment A– Scope of Services. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

15. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

16. **Betterment.** If, due to MSA's error, any required or necessary item or component of the Project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

17. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in identifying, generating, treating, storing, or disposing of hazardous substances or materials which may be present at the Project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the Project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

18. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or

for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

19. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this Project by the OWNER or extensions of this Project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

20. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

21. **Accrual of Claims**. To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

22. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in section 29 of this Agreement.

23. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** MSA shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this contract.

24. **Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

25. **Successors and Assigns**. The successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

26. **Notices**. Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

27. **Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Severability**. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

29. **No Waiver**. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

30. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

31. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be Langlade County, Wisconsin.

32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

ATTACHMENT A:
SCOPE OF SERVICES

SECTION I: BASIC SERVICES

MSA agrees to provide planning services for the allocation amendment of Tax Incremental District (TID) #6 to TID #5 (hereinafter sometimes referred to as the PROJECT) required under Wisconsin Statutes 66.1105, including the following.

1.1 Conduct one District planning meeting, the required Plan Commission meeting, and OWNER's City Council meeting for the OWNER during the formulation and adoption of the amended TIF Project Plan.

1.2 Assist with the establishment of a Joint Review Board and conduct two meetings with the Joint Review Board.

1.3 Draft and prepare for signature all resolutions, letters, documents and notices required for amended TIF Project Plan approval.

1.4 Prepare amended TID Project Plan.

1.5 Prepare economic feasibility study, projected tax increment shares for inclusion in the TIF Project Plans as required.

1.6 Liaison with the Department of Revenue (TIF - certifying State Agency).

1.7 Provide owner with digital copy of the amended TID No. 6 Project Plan.

1.8 Assist with preparation and submittal of documents required by the Department of Revenue (DOR) for TIF Project Plans certification, including DOR-required "base packet" information.

1.9 Assist in preparing updated tax parcel mapping and/or preparing metes and bounds descriptions for purposes of defining TID.

SECTION II: ADDITIONAL SERVICES

If authorized by the OWNER, MSA shall furnish Additional Services of the following type which are not considered customary Basic Services:

2.1 Maintenance and administrative services to the OWNER in conjunction with the TIF Project Plan after approval by the DOR.

2.2 Surveying and drafting services as requested by OWNER to update or revise the OWNER'S base map and/or prepare a reproducible copy of the base map.

2.3 Prepare Developer's Agreement which further defines OWNER's TIF implementation as well as specific expectations of a given private developer.

SECTION III: OWNER'S RESPONSIBILITIES

3.1 Provide a Planning Commission to direct the Plans.

3.2 Assist MSA in the establishment of a Joint Review Board.

3.3 Designate in writing a person to act as the OWNER's representative with respect to the services to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to the services.

3.4 Assist MSA with the assemblage of documentation required for determination of blight within the TID(s) (if applicable).

3.5 Provide up-to-date tax parcel map information or documentation (i.e. tax parcel descriptions) for purposes of defining TIF District boundaries, descriptions, and determining property valuations within the District.

3.6 Provide copies of studies, plans and reports that include information on community goals, objectives, needs, and capacities of public facilities (as applicable).

3.7 Advertise for the required public hearings.

3.8 Review, approve and sign all documents and submittals.

3.9 Provide the services of the Attorney, Assessor and Clerk as needed in preparing the TIF Project Plan and/or DOR base packet.

3.10 Provide such legal, accounting, and insurance counseling services as may be required for the Project, and such auditing service as the OWNER may require.

3.11 Pay the Department of Revenue $1,000.00 Review Fee for each new TID created.

City of Antigo – TID #6 Amendment

Date	Meeting/Action
August 1, 2023	City notifies taxing entities (school district, county, vocational college, and any special taxing districts) on the proposed amendment (allocation) of TID No. 6 and upcoming meetings. MSA provides the letters for the City's review and distribution.
August 2, 2023	First Notice of Public Hearing is published in the local newspaper (Class I). Joint Review Board public meeting is published. MSA prepares the Notice of Public Hearing and meetings.
August 9, 2023	Joint Review Board meets to choose chairperson and citizen member. A review of the draft of amended Project Plan for TID No. 6 occurs.
August 9, 2023	Plan Commission holds the Public Hearing on the amended Project Plan of TIF No. 6. Following the Public Hearing, the Plan Commission shall meet and act on a resolution recommending approval to the City Council. MSA attends the Public Hearing and the Plan Commission meeting.
August 9, 2023	City Council action on the amendment to TID No. 6. Approval by resolution contains findings that detail the TID's consistency with state statutes. MSA attends this meeting.
August 16, 2023	Joint Review Board public meeting notice is published. MSA prepares public meeting notice.
Week of August 21, 2023	Upon approval of the City Council, the Joint Review Board holds a second meeting to review and act, by resolution, on the amendment of TID No. 6. The JRB submits its decision to the City no more than 7 days after the vote. MSA attends this meeting.
August 28, 2023	Department of Revenue is notified of the amendment to TID No. 6 by the City of Antigo and subsequent approval by the Joint Review Board.
On or Before December 31, 2023	Submit base packet documentation and Project Plan for Wisconsin Department of Revenue certification.

Antigo
"Antigo Area on the go"

To:	Mayor and City Council
From:	Kaye Matucheski, Clerk-Treasurer/Finance Director
Date:	August 16, 2023
Re:	Correct Ordinance Section 2-581 Membership and Terms for Library Board to Reflect the Joint Library Agreement

The City has an agreement with Langlade County for a Joint Library. In this agreement is the breakdown of appointment of Library Board members. It states:

2. LIBRARY BOARD

a. The joint Library Board shall consist of nine (9) members.

1. Three (3) members shall be appointed by the Mayor of the City of Antigo, subject to confirmation by the City of Antigo Common Council.
2. Five (5) of its members shall be appointed by the Chair of the Langlade County Board of Supervisors, subject to confirmation by the Langlade County Board of Supervisors.
3. One (1) member shall be the Superintendent of the Unified School District of Antigo or his/her designee. The Mayor of the City of Antigo, subject to confirmation by the City of Antigo Common Council, will appoint this member.

b. The composition of the Board shall be adjusted every ten (10) years, following the publication of the latest federal decennial census, to reflect the respective populations of the City and County.

The City ordinances have never been updated to reflect this. Therefore, I am asking for approval to change Ordinance Section 2-581 Membership and Terms to the above as it currently reads:***Sec. 2-581. - Membership and terms.***

Pursuant to Wis. Stats. § 43.54, the library board shall consist of seven members appointed by the mayor, subject to confirmation by the council, to serve three-year terms. One member shall be a school district administrator or his/her representative, one member shall be a member of the county board or his/her representative, and not more than one member of the council shall serve on the library board at any one time. Up to two members may be residents of towns adjacent to the city.

If approved, a correcting ordinance will be forwarded to Council. Should you have any questions, please feel free to contact me.

"Antigo Area on the go"

To: Mayor and City Council

From: Kaye Matucheski, Clerk-Treasurer/Finance Director

Date: August 16, 2023

Re: Discussion on Timely Removal of Political Signs After An Election (referred by Alderperson Bauknecht)

There was a referral at the last Council meeting for a discussion on timely removal of political signs after an election. The City Attorney has opined that the City cannot do this based on a League of Wisconsin Municipalities opinion. See his e-mail below and the attached legal opinion.

At last week's council meeting someone made a referral regarding a possible ordinance for the removal of political signs after an election. I do not believe that we can do that. I have attached a legal opinion, Elections #606, which discusses this, and I have underlined some of the pertinent language. If there are any questions, please let me know. Thank you.

Yours truly,
Attorney Michael Winter

Winter Law Office

835 5th Avenue

Antigo, WI 54409

715-623-2905

715-623-7682 (FAX)

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004

Elections # 606
The First Amendment & Political Signs: Is Your Ordinance Constitutional?
August 31, 2004

Summary - Elections # 606
Comment surveys First Amendment principles regarding; (1) disparate treatment of commercial and noncommercial speech; (2) content-neutral versus content-based speech regulation; (3) the Doctrine of Prior Restraint and; (4) the Public Forum Doctrine and highlights application of these principles by the Supreme Court and other federal courts to a variety of political sign regulations.

See - Licensing 383, Powers of Municipalities 896, Streets & Alleys 644

Every thoughtful public official would be alarmed by a proposed ordinance that contained the following restriction on political speech: No person shall speak words containing political content except forty-five days prior to an election. However, the same official is likely to exhibit a more subdued response to an ordinance that contained the following provision: No person shall erect, place, locate, etc. any political sign except forty-five days prior to an election.

There are many possible reasons why public officials are more comfortable with government regulation of political speech in a sign versus political speech delivered orally despite judicial recognition that "[c]ommunication by signs and posters is virtually pure speech."[1] While generally intended to survey some key First Amendment principles that apply to political signs and highlight judicial treatment of some typical political sign regulations, this comment should also give officials some reason to examine the political sign restrictions in their community during this period of heightened political activity.

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / KEY PRINCIPLES FOR REGULATION OF POLITICAL SIGNS

KEY PRINCIPLES FOR REGULATION OF POLITICAL SIGNS

A number of First Amendment principles apply to political sign regulations. However, there are four that command more attention than others. The first is concerned with a comparative assessment of the regulation between commercial and noncommercial speech. The second focuses on the question of whether the regulation is content-neutral or content-based. The third principle addresses the ability of the government to impose prior restraints like fees, permits, licenses, etc. on the exercise of constitutionally protected free speech. The fourth and final principle is concerned with the question of whether the regulation relates to a public or non-public forum.

While these principles have generally achieved a uniform development by the Supreme Court in the broad arena of free speech litigation, specific application to political signs is fairly rare. Likewise, there are relatively few Seventh Circuit or Wisconsin Federal District court decisions with a specific focus on political sign restrictions. Such cases are even more rare in Wisconsin state courts. Accordingly, this comment draws heavily on Supreme Court decisions and federal cases from non-Wisconsin jurisdictions to outline the above principles and their specific application to political signs. This should give officials some indication of the permissible scope of political sign regulation and the probable response to political sign regulations in their municipality by courts with jurisdiction in Wisconsin.

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / Disparate Treatment of Commercial & Non-Commercial Signs: Regulating Political Signs & Commercial Signs Differently

Disparate Treatment of Commercial & Non-Commercial Signs: Regulating Political Signs & Commercial Signs Differently

Although a highly fractured decision, the leading case on municipal sign regulation is still *Metromedia v. San Diego*.[2] In the case, the U.S. Supreme Court considered a San Diego ordinance that limited the content of all onsite signs and banned all offsite signs except the following kinds of offsite signs:

government signs; signs located at public bus stops; signs manufactured, transported, or stored within the city, if not used for advertising purposes; commemorative historical plaques; religious symbols; signs within shopping malls; for sale and for lease signs; signs on public and commercial vehicles; signs depicting time, temperature, and news; approved temporary, off-premises, subdivision directional signs; and [temporary] political campaign signs.[3]

Justices Stevens, Burger and Rehnquist, in separate dissenting opinions concluded the San Diego ordinance was valid. On the other side, Justices Brennan and Marshall concluded the entire ordinance was invalid but concurred with the judgment of the plurality opinion, which found only part of the ordinance invalid.

The four-member plurality of the Court upheld the ordinance restrictions on signs with commercial messages. However, the plurality found the ordinance restrictions on signs with noncommercial messages invalid.[4]

Significantly, the *Metromedia* plurality opinion is the first where the Court split the First Amendment analysis between government regulation of signs conveying commercial speech and regulation of signs conveying noncommercial speech and reaffirmed its earlier holding: "The Constitution … accords lesser protection to commercial speech than to other constitutionally guaranteed expression."[5] Therefore, *Metromedia* lends constitutional support for local regulations that treat commercial and noncommercial (*e.g.* political) speech differently.

However, the *Metromedia* Court noted that "our recent commercial speech cases have consistently accorded noncommercial speech a greater degree of protection than commercial speech."[6] This statement reflects an important First Amendment principle for the regulation of political speech and other noncommercial speech in a sign ordinance. There is a hierarchy of constitutionally protected speech. Noncommercial speech occupies a superior position to commercial in that hierarchy. Accordingly, a municipal sign ordinance that treats commercial and noncommercial signs differently cannot invert this constitutional principle and protect commercial speech more than it protects political or other noncommercial speech.[7]

Some communities have addressed this inversion problem with substitution clauses that allow a noncommercial message to be substituted in all locations where a commercial message sign is authorized.[8] This kind of provision has been deemed constitutionally essential in some cases.[9] However, a substitution clause that applied to onsite but not offsite signs, "isolated business and property owners as a privileged class" and invalidated the ordinance.[10]

The substitution clause approach may also create a problem. Such provisions essentially provide *equal* protection to commercial and non-commercial speech. However, *Metromedia* seems to indicate that commercial speech and noncommercial speech are not constitutionally equal. Instead, commercial speech is constitutionally subordinate to noncommercial speech. Therefore, if there is a true hierarchy of constitutionally protected speech under the First Amendment, there may be some lingering constitutional deficiency in a municipal ordinance that only accomplishes equal protection of commercial and noncommercial speech and fails to place noncommercial speech, such as political signs, in a more favored position.[11]

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / Content-Based Restrictions of Signs: Regulating Political Signs Because They Are Political Signs

Content-Based Restrictions of Signs: Regulating Political Signs Because They Are Political Signs

The regulatory focus on commercial versus noncommercial content of the sign messages sustained in part by the Court in *Metromedia* represents an exception to the general rule that "[r]egulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment."[12] The strength of this exception has been arguably undermined by subsequent decisions of the Court, which cast some doubt on the relative protection of commercial and noncommercial speech reasoning of *Metromedia*.[13] Nonetheless, another important consideration when a local government regulation affects political signs or other forms of speech is whether the regulation is linked to the message content of the sign or not.

The Supreme Court uses several measures to determine whether a restriction on speech is content-based or content-neutral. A law imposes content-based restrictions on speech when "the very basis for the regulation is the difference in content."[14] A regulation is not content-neutral merely because it does not discriminate between viewpoints on a particular subject.[15] A regulation which imposes restrictions based upon the particular viewpoint or information in the speech or imposes restrictions based upon the general subject matter of the speech imposes content-based restrictions.[16] Also, a regulation which imposes restrictions based upon the identity of the speaker imposes content-based restrictions.[17] Further, an otherwise content-neutral regulation which has incidental effects which burden some or all speech must be "justified without reference to the content of the regulated speech."[18] Otherwise, the regulation will be deemed a content-based regulation of speech.[19]

When a regulation imposes content-based restrictions on speech, the regulation is constitutional only if it passes the test of strict scrutiny. Under the strict-scrutiny test, the government must show that the regulation is narrowly tailored to serve a compelling state interest.[20] To show that a regulation is narrowly tailored, it must not "unnecessarily circumscrib[e] protected expression."[21] Moreover, narrow tailoring of remedies requires that "[i]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative. To do otherwise would be to restrict speech without an adequate justification, a course the First Amendment does not permit."[22]

When a regulation imposes content-neutral restrictions on speech, courts evaluate the constitutionality of the regulation using an intermediate level of scrutiny. Two tests are generally used to implement intermediate scrutiny: a time, place, and manner test and the four-part test set forth in *United States v. O'Brien*, 391 U.S. 367 (1968).[23]

Under a time, place or manner test, the government restrictions "must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication."[24] "[T]he essence of time, place, or manner regulation lies in the recognition that various methods of speech, regardless of their content, may frustrate legitimate governmental goals. No matter what its message, a roving sound truck that blares at 2 a.m. disturbs neighborhood tranquility."[25]

Regulations which impose restrictions on speech based upon the subject matter of the speech fail the time, place, and manner test. Such regulations "slip from the neutrality of time, place, and circumstance into a concern about content."[26] Therefore, a constitutionally permissible time, place, or manner restriction may not be based upon either the content or subject matter of speech.[27]

Under the *O'Brien* test, a regulation will be sustained if it is content-neutral and if "it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."[28] When a content-neutral ordinance aimed at the secondary effects of protected speech incidentally restricts that speech, courts use the constitutional test employed in *O'Brien*.[29]

Under intermediate scrutiny, the restriction on protected speech must be narrowly tailored. The regulation "need not be the least restrictive or least intrusive means" of effecting the government's purpose.[30] A regulation may not, however, "burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals."[31] If the regulation burdens substantially more speech than is necessary to further the government's legitimate interests, then the regulation fails either the time, place, and manner test or the *O'Brien* test.

These limitations on the ability of the government to implement content-based speech regulations present a substantial barrier to any political sign regulation that is based on the fact that the sign contains a political message rather than some other speech. This barrier is created in part by the fact that the typical public purposes for political sign regulations such as traffic safety, aesthetics and preservation of property values do not rise to the level of a compelling governmental interest.[32] Consequently, an ordinance restricting the "posting of political signs on private and public property to a period of not more than 60 days before and 7 days after the date of the election for which they are intended" that was designed to further government interests in aesthetics and traffic safety was found invalid by the Washington Supreme Court.[33]

Likewise, the U.S. District Court for the Eastern District of Wisconsin reached the same conclusion in an unpublished decision regarding a City of Pewaukee ordinance that restricted election campaign signs on private property to forty-five days prior to and seven days after an election.[34] However, protecting voters from fraud and intimidation is a sufficiently compelling interest to sustain an ordinance prohibiting the display of political campaign signs within one hundred feet of a polling place.[35]

Even if the proffered government interests might be compelling, the second requirement that content-based restrictions be "narrowly-tailored" is no less onerous. Consideration of this principle led to the invalidation of a total ban on all election campaign signs in residential zones by the Town of Brookfield, Wisconsin.[36] Likewise, an ordinance establishing a limit of two political signs has been found unconstitutional.[37]

Content-neutral sign restrictions that regulate the physical characteristics of signs and reach political signs or messages have been routinely upheld.[38] For example, the Ninth Circuit Court of Appeals upheld the part of a city ordinance that limited the total area of temporary signs per parcel to 16 square feet.[39] The Seventh Circuit Court of Appeals has also signaled support for sign size limits.[40]

However, the special protection afforded political speech under the First Amendment makes political sign regulation difficult even when the regulation is treated as content-neutral.[41] For example, the City of Ladue, Missouri enacted an ordinance that prohibited all publicly-displayed signs on private property, subject to a few narrow exceptions and applied the restriction to prohibit an individual from displaying a small window sign signaling opposition to the Persian Gulf War. The Supreme Court, noting that "[m]ost Americans would be understandably dismayed … to learn that it was illegal to display from their window an 8- by 11-inch sign expressing their political views," struck down the city's sign ordinance.[42] The Court reasoned that the city's ordinance "foreclose[d] an entire medium of expression" and did not leave an adequate substitute contrary to the content-neutral standard for ample alternative channels for the communication. Further, the Court relied, in distinguishing the posting of signs on public property, on the "special respect for individual liberty in the home [that] has long been part of our culture and our law" and which has "special resonance when the government seeks to constrain a person's ability to *speak* there."[43]

The Wisconsin state legislature has delegated some authority to regulate political signs to cities and villages. Sections 12.04(4)(a) and (b) of the Wisconsin Statutes authorize city and village regulation of the size, shape or placement of political signs on residential property "during an election campaign period" if the regulation is "necessary to ensure traffic or pedestrian safety" or, in limited cases, exceeds "11 square feet in area." The regulation of political signs having an electrical, mechanical or audio auxiliary is also authorized.

Significantly, courts will probably view a local ordinance enacted under these authorizations as a content-based restriction on speech. Accordingly, they must satisfy the difficult strict scrutiny analysis applied by the courts to such restrictions. However, the constitutional validity of these authorizations and local ordinances developed under them is diminished by the fact that they are linked to interests (safety) that courts have regularly said are not the kinds of compelling interests adequate to support a content-based restriction on speech. Moreover, the authorizations and the corresponding ordinances apply to political speech on private property, a circumstance where the balance of interests does not favor the government. Since content-based restrictions on speech are rarely successful, an ordinance restricting political speech on private property that is based on sec. 12.04 may not survive judicial review.

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / Prior Restraint of Political Signs: Fees, Permits, Licenses & Other Pre-Approvals

Prior Restraint of Political Signs: Fees, Permits, Licenses & Other Pre-Approvals

Any regulation that limits the use of political signs is a restraint on speech. However, some government restraints on speech receive special attention in First Amendment cases. These are characterized by the courts as prior restraints and typically include fees, permits, licenses, or other pre-publication or pre-dissemination hurdles that create some opportunity for government censorship or favoritism during the administration of the particular regulation.[44]

The United States Supreme Court's early encounter with a local regulation imposing a prior restraint came in *Lovell v. City of Griffin*[45] where the court voided a city ordinance that required a permit prior to the distribution of "circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin." A City of Griffin, Georgia court convicted Alma Lovell for violating the ordinance and sentenced her to imprisonment for fifty days in default of the payment of a $50 fine. Her violation was distributing a pamphlet and magazine in the nature of religious tracts, setting forth the gospel of the "Kingdom of Jehovah" without the required permission. She did not apply for a permit, as she regarded herself as sent "by Jehovah to do His work" and felt such an application would have been "an act of disobedience to His commandment."

The Court found the ordinance invalid on its face. Reflecting the free press origins of the Doctrine of Prior Restraint, the Court made the following observations on the ordinance and the reasons for its invalidity:

Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing." And the liberty of the press became initially a right to publish "without a license what formerly could be published only with one." While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See *Patterson v. Colorado,* 205 U.S. 454, 462, 27 S.Ct. 556, 10 Ann.Cas. 689; *Near v. Minnesota,* 283 U.S. 697, 713-716, 51 *S.Ct. 625, 630; Grosjean v. American Press Company,* 297 U.S. 233, 245, 56 S.Ct. 444, 447. Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form.

Subsequent decisions of the Court reflect other concerns with prior restraints on free speech. These include the "danger of censorship and abridgment of our precious First Amendment freedoms."[46] Accordingly, prior restraints are presumptively unconstitutional.[47]

A permit or other prior restraint scheme can overcome this very substantial burden by satisfying some key constitutional requirements. First, "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a [pre-approval]" must contain "narrow, objective, and definite standards to guide the [approving] authority."[48] These standards must be "explicit by textual incorporation, binding judicial or administrative construction, or well-established practice."[49]

Second, the prior restraint scheme must "place limits on the time within the decisionmaker must issue the [approval]" that are reasonable.[50] Third, it must "provide an avenue for prompt judicial review so as to minimize suppression of the speech in the event of a …denial."[51]

Imposing special fees or charges for the use of political signs is a uniquely disfavored and problematic kind of prior restraint because "[a] state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."[52] However, the government may impose a charge to meet the government expenses incident to the speech activity where the government activity conserves, rather than impairs, the First Amendment activity.[53] Nonetheless, special bonding, fee, deposit and registration requirements for political signs have been found unconstitutional.[54] And, the government's ability to establish fees for government expenses may have no or very limited applicability to political signs on private property.[55]

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / Public Forum vs. Non-Forum Regulation of Signs: Regulating Political Signs on Public Property

Public Forum vs. Non-Forum Regulation of Signs: Regulating Political Signs on Public Property

Another critical factor for analyzing political sign restrictions is whether the regulation or rule is made by government in its capacity as regulator of private property or owner/manager of public property. When municipalities act as regulators of private property for the public interest in health, safety, etc., these interests are confronted by and balanced against the constitutionally protected private property and speech interests of individuals. However, when the government is the owner or manager of the property in question and the property interest is transferred to the government in the analysis, there is a dramatic change in the First Amendment analysis and the ability of persons to use public property as a free speech forum.

Outlines of the current Public Forum Doctrine used to address questions about the use of public property as a free speech forum by citizens are found in the following statement by Justice Roberts:

Wherever the title of the streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.[56]

While courts have developed this idea to extend the right of citizens to use a variety of government property for free speech purposes, it is well-established that "the First Amendment does not guarantee access to public property simply because it is owned or controlled by the government."[57] Instead, "[t]he right to use government property for one's private expression depends on whether the property has by law or tradition been given the status of a public forum, or rather it has been reserved for specific official use."[58] Accordingly, the Supreme Court has defined three types of public property for public forum analysis: (1) the traditional public forum; (2) the limited or designated public forum; and (3) the non-public forum.

A traditional public forum includes places identified by Justice Roberts such as streets and parks which have been traditionally been used for public assembly and debate irrespective of their ownership. The government may not prohibit all communicative activity in a traditional public forum.[59]

In traditional forum cases, courts apply the same kind of standards as they apply when the government regulates speech on private property. Accordingly, the government may impose content-based restrictions on traditional public forum speech if they are narrowly drawn to achieve a compelling governmental interest.[60] Likewise, the government may enforce content-neutral time, place and manner regulations on traditional forum speech, so long as they are narrowly tailored to serve a significant governmental interest and leave open ample alternative channels of communication.

A leading case applying the public forum analysis to political signs is *Los Angeles City Council v. Taxpayers for Vincent*[61] where the Court addressed a First Amendment challenge to a section of the Los Angeles Municipal Code that prohibited the posting of signs on public property.[62] The Court upheld the ordinance as a valid content-neutral time, place, or manner restriction on speech.

The Court concluded that the government interest in aesthetics was substantial because "the visual assault on the [city's] citizens ... presented by an accumulation of signs posted on public property ... constitute[d] a significant substantive evil within the [c]ity's power to prohibit."[63] Moreover, the Court found that the regulation "curtail[ed] no more speech than ... necessary to accomplish its purpose."[64]

The Court also recognized the important difference between a public property and private property prohibition on political signs. "[T]he validity of the [city's] [a]esthetic interest in the elimination of signs on public property is not compromised by failing to extend the ban to private property. The private citizen's interest in controlling the use of his own property justifies the disparate treatment."[65]

The murkiest area of the Public Forum Doctrine is distinguishing a limited or designated public forum from a non-public forum. The lack of clarity on this issue prevents a full exploration in this comment. However, a thorough discussion of this distinction applied to sign displays can be found in *United Farm Workers Union v. Southwest Ohio Regional Transportation Authority.*[66] Moreover, the different standards applied by the courts to regulations of speech in these categories should be noted.

If the government creates a designated or limited public forum, it is bound by the same standards as apply in a traditional public forum for as long as the forum is retained.[67] In non-public forums, the government may reserve the forum for "its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view."[68]

The distinction between a designated or limited forum classification and a non-forum classification is critical to the survival of a political sign regulation since political signs and other speech may be excluded from a designated or limited public forum only for a "compelling" governmental interest, while the exclusion from non-public forums need only be "reasonable." For example, the Supreme Court upheld a municipal ban on political advertising on municipally-owned transit buses even though commercial advertising was routinely permitted because the buses were not found to be a traditional or designated public forum.[69] However, the Seventh Circuit Court of Appeals reached a different conclusion when it determined that mass transit vehicles had become a "public forum" for the expression of ideas, and content-based restrictions on speech in such circumstances required acompelling state interest furthered by a narrowly tailored restriction.[70]

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / CONCLUSION

CONCLUSION

The foregoing represents a modest survey of and introduction to some complex constitutional law. Hopefully, it adequately demonstrates some important constitutional limitations on political sign regulations as they have developed in the Supreme Court and other jurisdictions. If so, it should provide a rough but useful guide for assessing the legal strengths and weaknesses of existing or proposed political sign restrictions in our Wisconsin cities and villages.

Elections / Elections # 606 The First Amendment & Political Signs: Is Your Ordinance Constitutional? August 31, 2004 / Endnotes

Endnotes

1. *Baldwin v. Redwood City*, 540 F.2d 1360, 1366 (9th Cir. 1976).

2. 453 U.S. 490 (1981).

3. *Id.* at 494-95.

4. *Id.* at 521.

5. *Central Hudson Gas & Electric Corp. v. Public Service Comm'n.*, 447 U.S. 557 (1980)

6. *Metromedia*, 453 U.S. at 513.

7. *Id.*

8. The City of Two Rivers, Wisconsin ordinance upheld by the Seventh Circuit Court of Appeals in *Lavey v. Two Rivers*, 171 F.3d 1110 (7th Cir. 1999) contained a substitution clause which read: "Notwithstanding any other provision contained herein to the contrary, noncommercial messages may be contained on any authorized sign."

9. *Outdoor Systems, Inc. v. City of Mesa*, 997 F. 2d 604 (9th Cir. 1993).

10. *Ackerley Communications v. City of Cambridge*, 88 F.3d 33 (1st Cir. 1996).

11. For example, in *National Advertising Co. v. City of Orange*, 861 F.2d 246 (9th Cir. 1988), the Ninth Circuit interpreted a sign ordinance to prohibit off-premise noncommercial and commercial signs and then found this prohibition unconstitutional. The court stated: "Merely treating noncommercial and commercial speech equally is not constitutionally sufficient. The First Amendment affords greater protection to noncommercial than to commercial expression."

12. *Regan v. Time, Inc.*, 468 U.S. 641, 648-649 (1984).

13. See *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993) and *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996); but see *Lorillard Tobacco Co. v Massachusetts*, 523 U.S.525 (2001).

14. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993); see also *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 811 (2000).

15. See *Boos v. Barry*, 485 U.S. 312, 319 (1988).

16. See *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 828-29 (1995) ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination."); *Playboy Entm't*, 529 U.S. at 811-12; Boos, 485 U.S. at 318; *Consolidated Edison Co. of New York,* 447 U.S. at 537-38 ("To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.")

17. *Rosenberger*, 515 U.S. at 828-29 ("In the realm of private speech or expression, government regulation may not favor one speaker over another.")

18. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976).

19. A regulation aimed at the secondary effects of sexually-explicit speech is content-neutral even if the regulation distinguishes the speech by its sexual content as long as the regulation is not justified by reference to the content of the speech. *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 70 (1976) ("society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude" than the societal interest in other forms of expression, such as political debate.)

20. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).

21. *Republican Party of Minnesota*, 536 U.S. 765, 774-75, (2002) (citations omitted) (quoting *Brown v. Hartlage*, 456 U.S. 45, 54 (1982)).

22. *Playboy Entm't*, 529 U.S. at 813 (citations omitted).

23. These tests are substantially the same. "The '*O'Brien* test' in the last analysis is little, if any, different from the standard applied to time, place, or manner restrictions." *Ward*, 491 U.S. at 798.

24. *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 n. 3 (2002) (quoting *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123, 130 (1992)); see also *Ward*, 491 U.S. at 790 (quoting *Community for Creative Non-Violence*, 468 U.S. at 293, for the alternative test that time, place, and manner restrictions in a public forum must be "justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.")

25. *Consolidated Edison Co. of New York*, 447 U.S. at 536.

26. *Young v. American Mini* Theatres, Inc., 427 U.S. 50 (1976).

27. *Consolidated Edison Co. of New York*, 447 U.S. at 537 (citations and footnote omitted); see also *Discovery Network*, 507 U.S. at 428-30 (noting that where the difference in content is the basis for the regulation, the regulation is content-based regardless of whether the justification for the regulation is the difference in content.)

28. *O'Brien*, 391 U.S. at 377.

29. See, e.g., *City of Erie v. Pap's A.M.*, 529 U.S. 277, 294-302 (2000).

30. *Ward*, 491 U.S. at 798.

31. *Id.* at 799 (citation and footnote omitted).

32. *City of Ladue v. Gilleo*, 512 U.S. 43 (1994) (affirming a lower court decision which found that government interests in traffic safety, aesthetics, and neighborhood preservation were not sufficiently compelling to support content-based restrictions on speech); see also *Whitton v. City of Gladstone*, 832 F.Supp. 1329, 1335 (W.D. Mo. 1993) ("[t]raffic safety and aesthetics are significant interests but they are not compelling interests, especially given the nature of the First Amendment rights at stake.")

33. *Collier v. City of Tacoma*, 121 Wn. 2d 737, 854 P.2d 1046 (1993)

34. *Fiedorowicz v. City of Pewaukee*, Case No. 02-C-0830 (E.D. Wis., 2004).("The justifications for the ordinance at issue - aesthetics, property values, safety, and space management - have not been determined to be compelling interests.").

35. *Burson v. Freeman*, 504 U.S. 191 (1992).

36. See *Martin v. Wray*, 473 F. Supp. 1131 (E.D. Wis. 1979) ("Even when a state or a municipality is pursuing a legitimate interest, it may not choose means that unnecessarily restrict constitutionally protected activity.")

37. *Arlington County Republican Comm. v. Arlington County, Virginia*, 983 F.2d 587 (4th Cir. 1993).

38. See e.g., *Outdoor Systems., Inc. v. City of Mesa*, supra.

39. *Baldwin,* supra.

40. See *Harp Advertising v. Village of Chicago Ridge*, 9 F.3d 1290 (7th Cir. 1993) (billboard company lacked standing to challenge city sign ordinance "because it could not put up its sign even if it achieved total victory in this litigation" since its proposed sign would measure 1200 square feet and the city's law set 200 square foot limit).

41. A somewhat novel approach to the content-neutral analysis was applied by the Texas Supreme Court to a law that included a content-based exception enroute to upholding the law against a political message sign despite its seeming inconsistency with *Metromedia*. *Texas Dept.of Transportation v. Barber*, Case No. 01-0414 (2003).

42. *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994).

43. *Id.*

44. See e.g., *S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975).

45. 303 U.S. 444 (1938).

46. See *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992).

47. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

48. *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969).

49. *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750 (1988) citing *Poulos v. New Hampshire*, 345 U.S. 395 (1953); *Kunz v. New York*, 340 U.S. 290 (1951).

50. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 228 (1990); but see *Granite State Outdoor v. City of St. Petersburg*, 348 F.3d 1278 (11th Cir. 2003), cert. denied (a definite time limit for decision on sign permit applications is not constitutionally required when the ordinance operates in a content-neutral manner); see also *Utah Animal Rights Coalition v. Salt Lake City Corporation*, 371 F.3d 1248 (10th Cir. June 16, 2004).

51. *FW/PBS, Inc.,* 493 U.S. at 429.

52. *Murdock v. Pennsylvania*, 319 US 105, 113 (1943).

53. *Cox v. State of New Hampshire*, 312 U.S. 569 (1941).

54. *Baldwin,* 542 F.2d at 1372, n.32 (ordinance provisions requiring payment of $5.00 removal deposit and $1.00 inspection fee for each political sign is unconstitutional restraint on speech because "[p]olitical signs neither interfere with the use of the streets or create a risk of disorder."); see also *Verrilli v. City of Concord*, 548 F.2d 262 (9th Cir. 1977) (local law requiring $100.00 cash bond for posting of politicals signs in order to ensure removal is unconstitutional prior restraint); and see *People v. Middlemark*, 100 Misc. 2d 760, 420 N.Y.S. 2d 151 (1979) (ordinance requiring registration and posting of $1000.00 performance bond for political signs invalid).

55. *Curry v. Prince George's County*, 33 F.Supp. 2d 447 (D.C. Md. 1999) ("But there is no justification for imposing such requirements in the case of campaign signs posted upon a private residence. There are no expenses to defray of the sort attributable to parades and processions as found in *Murdock*.")

56. *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515-516 (1939).

57. *United States Postal Service v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 129 (1981).

58. *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 761 (1995) (citations omitted).

59. *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).

60. *Id.* at 45.

61. 466 U. S. 789 (1984).

62. *Id* at 791.

63. *Id.* at 807.

64. *Id.* at 810.

65. *Id.* at 811.

66. 163 F.3d 341 6th Cir. 1998).

67. *Perry Education Ass'n*, 460 U.S at 46.

68. *Int'l Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 679 (1992).

69. *Lehman v. Shaker Heights*, 418 U.S. 298 (1974).

70. *Planned Parenthood Assn.-Chicago Area v. Chicago Transit Authoity*, 767 F.2d 1225 (7th Cir. 1985).