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Memorandum

To: Ordinance and License Committee, Common Council
From: Brian Running
Re: Amendments to Municipal Code 17.09

When brand-new code section 17.09 was presented and then passed about a month ago, minor changes and tune-ups were promised as real-world experience revealed issues. Some of those issues appeared to our building inspection division very quickly, so some changes are being proposed already.

A redline showing the proposed changes is attached, for your reference.

First, a refinement in the definition of Enclosed Structure in subsection (1)(b) to clarify that “enclosed on all sides” means having walls that block the view of the contents of the structure. Building inspectors pointed out that a dog kennel with a roof but having chain-link fencing as the enclosure on all sides would qualify as an Enclosed Structure, but would not meet the goal of screening the public’s view of the contents.

Second, a clarification in the definition of Personal Property in subsection (1)(h). Existing subsection (1)(h) excludes “items for which a building permit is required” from the definition of Personal Property. This could be interpreted to include Building Materials, which are expressly included in the definition of Personal Property in the same section. To eliminate this conflict, subsection (1)(h) now describes the exclusion as “items the construction or placement of which require a building permit,” i.e., things that become fixtures to real estate.

Finally, the second sentence of subsection (2) is deleted. Presently, §17.09 does not apply to properties with buildings for which valid building permits are issued. Our building inspectors have pointed out that there are buildings in the city for which building permits are nearly perpetually issued, and that property owners could exempt themselves from the ordinance simply by taking out and maintaining a building permit. The intent of the original language was for the ordinance not to interfere with properties having buildings under construction. Unfortunately, that provides a large loophole for some of the worst outdoor-storage offenders we have in the city. Elimination of that sentence will remove the loophole, and building materials will still be covered by subsection (4)(a)(vii), with the ability to get an extension under subsection (1)(g).

We request passage of the ordinance and suspension of the three-reading rule for immediate effectiveness of the changes.

17.09 Outdoor Storage.

- (1) **Definitions.** For purposes of this Section only, capitalized terms have the following meanings.
- (a) Building Materials means materials that will be incorporated into a structure or improvement to real estate, and includes landscaping materials, plants, and trees.
 - (b) Enclosed Structure means a rigid structure that is permitted by Municipal Code Chapter 22, which is fully enclosed on all sides with solid walls and has a full roof.
 - (c) Hazardous Materials means any materials described in Wis. Stats. §291.05(1), (2) or (4); explosive or highly-flammable materials, except gasoline in an amount no greater than 5 gallons, LP or propane gas in UL-approved tanks no greater than 40 pounds in capacity; pesticides and herbicides, except in total quantities of no more than 5 gallons, in the original container and being stored and used in strict compliance with the manufacturer's instructions; and solvents and lubricants, except in total quantities of no more than 5 gallons, in the original container, and being stored and used in strict compliance with the manufacturer's instructions.
 - (d) Junk means worn-out or discarded material having little or no usefulness or practical value, the accumulation of which has an adverse effect on neighboring property values, health, safety, or general welfare, and includes construction debris.
 - (e) Ornamental Items means decorative items or artwork that is not Junk and would be perceived by a reasonable person of ordinary sensibility and sensitivity as ornamental, such as statues, sculptures, fountains, gazing balls, lamps, lighting, or birdbaths.
 - (f) Outdoors means outside of an Enclosed Structure, and includes areas within carports, lean-to roofs, portable garages, open-sided or open-ended tents, open-sided or open-ended shelters, open-sided or open-ended sheds, decks, porches, patios, gazebos, and other, similar areas open to external view.
 - (g) Outdoor Storage means the placement Outdoors by any person of any item of Personal Property on a residential parcel, including roofs of buildings, and the Personal Property remaining in place on the residential parcel for at least 30 consecutive days. Outdoors placement of Personal Property for fewer than 30 consecutive days is not Outdoor Storage and is not regulated by this Section. Extension of this time period may be granted by the Community Development Department upon written application and good cause shown. Applications for temporary uses may also be made to the Community Development Department under Municipal Code §22.64, and if permitted and done in compliance with the permit, those temporary uses shall not be a violation of this Section.
 - (h) Personal Property means any and all items of tangible personal property, but does not include signs regulated by Municipal Code Chapter 27, religious symbols, structures, improvements or fixtures to real estate, above-ground swimming pools, or any items the construction or placement of which requires a building permit~~for which a building~~

~~permit is required.~~ Personal Property includes Building Materials, Junk, and dirt, topsoil, sand, gravel, crushed rock, mulch, or other similar materials before they are incorporated into an improvement to real estate.

- (i) Rear Yard, Side Yard, and Street Yard are as defined in Municipal Code §22.05(202)-(205).
- (j) Screened means:
 - (i) Behind a Solid Fence, as defined in Municipal Code §22.05(75);
 - (ii) Behind evergreen vegetation, at least as tall as the items being stored and of sufficient density to block at least half of the view, year-round, of items being stored behind it;
 - (iii) Completely covered by a brown, tan, or green tarp, in good condition and securely fastened;
 - (iv) Inside a commercially-made container or bin designed and intended for storage of the items placed within it, such as pool, patio, and deck storage boxes, or compost bins, not exceeding 6 feet in length, 3 feet in depth, and 3 feet in height; or
 - (v) Inside an Enclosed Structure.
- (k) Section means this Municipal Code §17.09.

(2) **Applicability.** This Section is applicable only to properties within residential zoning districts, except for Rs-4. ~~This Section does not apply to properties with buildings for which a building permit has been issued by the City and remains valid.~~

(3) **General Rules.**

- (a) Outdoor Storage of Personal Property is prohibited in Street Yards and Side Yards, and is allowed in Rear Yards only, except as specified in subsection (4).
- (b) All Outdoor Storage must be Screened, except as specified in subsection (4).
- (c) Outdoor Storage of the following items is prohibited in all cases and in all yards:
 - (i) Vehicles, whether motorized or not, and trailers, that are not legally operable on public roads.
 - (ii) Hazardous Materials.
 - (iii) Materials and equipment used in connection with a business, unless permitted as a conditional use by the Plan Commission, in which case it is still subject to the other rules in this subsection (3). Licensed vehicles, otherwise allowable under this Section, bearing signs or other messages relating to a business do not constitute “materials and equipment” for purposes of this Section.

- (iv) Semi trailers.
 - (v) Shipping containers, portable storage containers, and vehicles used solely for storage.
 - (d) Outdoor Storage may occupy a total area of no greater than 400 square feet, or 5% of total parcel area, whichever is greater.
 - (e) Outdoor Storage is prohibited in primary environmental corridors regardless of whether the area is in the Rear Yard or not.
 - (f) Outdoor Storage of dirt, topsoil, sand, gravel, crushed rock, mulch, or other similar materials, must have appropriate protection against erosion by rain or wind so that it does not leave the property on which it is located, such as tarps, silt fences, or ground cover, as necessary.
 - (g) No individual or stacked items being stored may be higher than six feet from the ground.
 - (h) Regardless of any provision in this Section, no items may be placed Outdoors on any property that would constitute a Public Nuisance as defined in Municipal Code Chapter 12.
- (4) **Exceptions.** The following items are excepted from the General Rules of subsection (3):
- (a) **Permitted in Any Yard without Screening.** The following items may be stored Outdoors in any yard without being Screened, but only in quantities usual and customary for residential uses:
 - (i) Ornamental Items.
 - (ii) Items that are designed for use in residential yards, such as grills, smokers, lawn furniture, lawn ornaments, hoses and hose reels, flower pots, bird feeders, and bird baths; and are being kept on the property for their intended uses.
 - (iii) Garbage cans and recycling bins.
 - (iv) Games, sport and recreational items, such as basketball hoops, soccer goals, beanbag games, trampolines, and badminton nets.
 - (v) Children's play items, such as swing sets, pools, sand boxes, and jungle gyms.
 - (vi) Outdoor Fireplaces, as defined in Municipal Code §21.04(3)(b).
 - (vii) Building Materials, including roofing materials placed on roofs, for no longer than 30 days.
 - (b) **Permitted in Side and Rear Yards without Screening.** The following items may be stored Outdoors in Side Yards and Rear Yards without being Screened:

- (i) Lawn and garden tools being kept for actual use on the property, such as wheelbarrows, carts, ladders, shovels, and rakes, not to exceed a reasonable number for ordinary and customary use in a residential setting.
 - (ii) Small, consumer-grade power equipment being kept for actual use on the property, such as lawnmowers, roto-tillers, generators, snow blowers, pressure washers, etc., not to exceed a reasonable number for ordinary and customary use in a residential setting.
 - (iii) Small watercraft not greater than 18 feet in length and not requiring a trailer, such as canoes and kayaks, not exceeding five in number.
 - (iv) Hot tubs, provided they are functional, operable, and maintained in a good state of repair and sanitary condition.
 - (v) Firewood.
- (c) **Permitted on Paved Driveways and Paved Parking Areas without Screening.** The following items may be stored Outdoors in paved driveways and paved parking areas without being Screened: Vehicles, including trailers, that are legally operable on public roads, and registered and licensed if required by law for their operation on public roads.
- (d) **Junk Being Held for Disposal.** Outdoor Storage of Junk that is being held for disposal is allowed in any yard for a maximum of 72 hours if not in a container, or 90 days if in a dumpster or similar waste-hauling container. Regardless of the foregoing, dumpsters or other waste-hauling containers must be removed as soon as they are full, and may not remain on a property for more than 90 days in any event.
- (e) **Items Otherwise Permitted.** Any item that is being stored in compliance with an express provision of the Municipal Code or of a permit issued pursuant to the Municipal Code.
- (5) **Compliance with Other Code Provisions.** All items allowed to be stored Outdoors pursuant to this Section, and their storage and use, must also comply with all other applicable ordinances, codes, statutes, and regulations. This Section does not override any other provision of the Municipal Code.
- (6) **Penalty.** Violations of this Section shall be subject to the penalties provided in Municipal Code §25.05.