

Committee of the Whole

Monday, August 27, 2018

5:00 PM

McFarland Municipal Center
Conference Room A

AGENDA

1. CALL TO ORDER.
2. ATTENDANCE/ROLL CALL.
3. PUBLIC APPEARANCES.
4. APPROVAL OF MINUTES.
 - a. None.
5. BUSINESS.
 - a. Discussion and action to make a recommendation to the Village Board on revisions to Section 23-94 of the Village Code of Ordinances regarding direct legislation ordinance to require a binding referendum for projects requiring a Village expenditure of \$1,250,000 or more.
6. SCHEDULE NEXT MEETING DATE.
 - a. To be determined.
7. ADJOURNMENT.

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related to Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the McFarland Municipal Center at (608) 838-3153 or cassandra.suettinger@mcfarland.wi.us



VILLAGE BOARD SUMMARY SHEET

MEETING DATE: Monday, August 27, 2018

SECTION: Business

DEPARTMENT: Administration

CONTACT:

AGENDA ITEM: Discussion and action to make a recommendation to the Village Board on revisions to Section 23-94 of the Village Code of Ordinances regarding direct legislation ordinance to require a binding referendum for projects requiring a Village expenditure of \$1,250,000 or more.

PREVIOUS ACTION:

ISSUE SUMMARY:

Several changes were discussed at the last Committee of the Whole meeting regarding revisions to the current code regarding referendum requirements. The following attachments are included in response to that discussion:

1. Current Code - This is our current ordinance and requirements for reference.
2. Sussex Code - This is the example that was discussed in the last meeting in order to provide background on their requirements.
3. Revised Code REDLINE - The Village Attorney and Administrator prepared the enclosed revision to the code to address the points discussed at the last meeting.
4. Revised Code CLEAN - Same version as the redline but without the markups to make it easier to read.

The Original Referendum Requirement Ordinance was adopted as a "regular" ordinance while the amendment was approved as a "charter" ordinance. A "regular" ordinance is what we are most familiar with and would have the most flexibility with. Charter Ordinances are a bit more formal and require the following in order to be altered:

- It must designate itself as a charter ordinance.
- It requires a 2/3 vote of the members elect (meaning 5 votes regardless of how many vote).
- It must state that it is repealing or amending the prior charter ordinance.
- It must be published as a class 1 notice
- It must be kept by the clerk/treasurer in an official ordinance book maintained for



recording charter ordinances, with a statement as to how it was adopted.

- A certified copy must be filed with the Secretary of State.
- It cannot take effect for 60 days after enactment by the VB to allow for a referendum petition to be filed. The petition has to include signatures of 7% of the votes cast for Governor in the Village at the last general election).

It would be possible go through this process to repeal the existing charter ordinance and reinstate the former requirements as a regular ordinance if that were desired. Otherwise, we would follow this process in order to amend the current requirements which is not terribly difficult as it just has a few other steps to follow.

FINANCIAL/BUDGET IMPACT:

VILLAGE PLAN REFERENCE:

ORDINANCE REFERENCE:

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

ATTACHMENTS:

1. Section 23-94 - Referendum Requirement CURRENT
2. Section 3.14 - Sussex Referendum
3. Sec. 23-94 Amendment Proposal REDLINE
4. Sec. 23-94 Amendment Proposal CLEAN

Sec. 23-94. - Direct legislation ordinance to require a binding referendum for projects requiring a Village expenditure of \$1,250,000.00 or more.

- (a) Prior to the start of any physical construction of any Village-financed project requiring a net Village capital expenditure of \$1,250,000.00 or more, the Village Board shall submit to the electorate a binding referendum for approval of the project. Failure of the binding referendum shall preclude the Village from proceeding with the project. The wording of any referendum shall provide the specific purpose, location, and cost of the project. Nothing in this provision shall be construed to preclude the Village from exercising its role in the planning or design of such publicly financed projects.
- (b) Subsection (a) shall not apply to public street projects, public projects paid for by McFarland Utilities (water, sewer and stormwater), or to any other capital expenditures that are not public construction projects.
- (c) The maximum capital expenditure amount in subsection (a) shall be adjusted annually for inflation or deflation in November of each year for the subsequent calendar year, utilizing the Consumer Price Index for all Urban Consumers, National Series (CPI-U), assuming [November 1, 2014] = 100, for all nonfood items as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Village shall maintain a file open to the public and published on the Village website showing the said maximum amount for all years after the initial effective date.
- (d) This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60-day period a referendum petition as provided by Wis. Stats. § 66.0101 shall be filed, in which case this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereon.

(Code 1998, § 3-1-14; Ord. No. 2005-09, 4-14-2005; Ord. No. 2014-11, § 1, 10-13-2014)

Editor's note— Section 1 of Ord. No. 2014-11, adopted Oct. 13, 2014, changed the title of § 23-94 from "Direct legislation ordinance to require a binding referendum for projects requiring a Village expenditure of \$1,000,000.00 or more" to read as herein set out.

State Law reference— Direct legislation, Wis. Stats. §§ 9.20, 61.342.

(1) Whenever the Assessor, in the performance of the Assessor's duties, requests or obtains income and expense information pursuant to Section 70.47(7)(af), Wis. Stats., or any successor statute thereto, then, such income and expense information that is provided to the Assessor shall be held by the Assessor on a confidential basis, except, however, that the information may be revealed to and used by persons: in the discharging of duties imposed by law; in the discharge of duties imposed by office including, but not limited to, use by the Assessor in performance of official duties of the Assessor's office and use by the Board of Review in performance of its official duties; or pursuant to order of a court. Income and expense information provided to the Assessor under Section 70.47(7)(af), unless a court determines that it is inaccurate, is, per Section 70.47(7)(af), not subject to the right of inspection and copying under Section 19.35(1), Wis. Statutes.

3.13 VILLAGE BOARD'S POWER TO AUTHORIZE PUBLIC WORKS PROJECTS; INVESTIGATIONS. The Village Board shall have the sole and exclusive power to determine whether to authorize expenditures on behalf of the Village pertaining to public works, specifically including the sole and exclusive power to determine whether to approve public works projects, and to borrow funds and enter contracts for public works projects, and no referendum is required except as may be required by State Statute, or as described in Section 3.14, below. Prior to exercising this authority, the Village Board shall ensure that it is well informed and fully advised in order to best serve the government and good order of the Village, for the Village's commercial benefit, and for the health, safety, and welfare of the public. To ensure that the Village Board is well informed and fully advised, the Village Board shall conduct all investigations as may be necessary, which may include: Authorizing the preparation of studies related to planning, engineering, architectural rendering and feasibility; Referring the matter to Village Staff for report and recommendation; Submitting the matter to review by Village committees and commissions; Investigating financing, such as possible bonding and/or grants and/or cost sharing with other municipal entities; Submitting the matter for review by other governmental entities having jurisdiction; and seeking such additional information and advice as the Village Board deems to be necessary and appropriate.

3.14 LIMIT ON CONSTRUCTION OF CERTAIN NON-EMERGENCY PUBLIC WORKS PROJECTS WHEN ESTIMATED COSTS EXCEEDS ONE QUARTER OF ONE PERCENT (0.25%) OF THE EQUALIZED VALUE OF THE VILLAGE OF SUSSEX.

(1) LIMIT ON CONTRACTING AUTHORITY. Notwithstanding the reserved authority of Section 3.13, when the specific qualifying criteria of subsection (2), below, apply, the Village shall not enter into any such qualifying contract for the construction of a public works project without first obtaining additional information and involvement from the community about the public works project in the manner described in subsections (3) or (4), as applicable.

(2) CRITERIA FOR QUALIFYING PROJECTS. The limits described in subsection (1) only apply if the project satisfies all of the following seven criteria:

(A) The public works project is funded by Village property tax dollars in an amount above one quarter of one percent (0.25%) of the equalized value of the Village of Sussex.

(B) The public works project is not for the operations or infrastructure improvements of a Village Utility.

(C) The public works project is not for infrastructure improvements included in a TIF District Project Plan.

(D) The public works project is not a roadway project.

(E) The public works project is not required by any Federal, State, County, or local

Ordinances or Rules and/or Court orders or previously approved agreements.

(F) The public works project is not a joint project with another government entity.

(G) The public works project does not address an emergency situation as determined by the Village Board.

(3) COSTS OF LESS THAN ONE PERCENT OF THE EQUALIZED VALUE OF THE VILLAGE. When a project qualifies pursuant to subsection (2), but is to be funded by Village property tax dollars in an amount of less than one percent (1%) of the equalized value of the Village of Sussex, the additional information and involvement from the community shall be from an advisory committee as follows. The Village Board shall establish an advisory committee to make a recommendation to the Village Board. The Village Board shall determine the scope and membership of the advisory committee, and shall establish a deadline of not less than 6 months for the advisory committee to make its recommendation to the Village Board. The advisory committee membership shall be limited to residents of the Village of Sussex, and two of the members of the committee shall be the Village President and a Village Trustee, but in no case shall the Village Board members constitute more than half of the membership of the advisory committee. The Village Board is not required to act in accordance with the advisory committee's recommendation, but rather it is the importance of community input through the process, which will enable the Village Board to make a more informed decision. If the advisory committee fails to offer a recommendation by the deadline established by the Village Board the Village Board may proceed to enter the contract without further limitation by this subsection 3.14.

(4) COSTS OF ONE PERCENT OR MORE OF THE EQUALIZED VALUE OF THE VILLAGE. When a project qualifies pursuant to subsection (2), and is to be funded by Village property tax dollars in an amount of one percent (1%) or more of the equalized value of the Village of Sussex, the additional information and involvement from the community shall be from a referendum. The Village Board intends to be bound by the results of the referendum required by this subsection. The wording of any referendum shall provide the specific purpose, location, and estimated cost of the public work project.

(5) RETAINED AUTHORITY. Nothing in this section shall be construed to preclude the Village from exercising its role in the planning or design of any public works project.

3.15 MANDATING OF EMPLOYEE WAGE AND BENEFITS FOR EMPLOYERS. Unless otherwise required by Federal or State Law or Section 3.16, no ordinance of the Village of Sussex nor any other municipal ordinance, rule, or regulation shall mandate that any employer shall provide certain wages or benefits to its employees or set forth the amount or type of any employee wages or benefits that must be provided by an employer located within the Village limits.

3.16 VILLAGE BOARD'S POWER TO ESTABLISH EMPLOYEE STAFFING, PAY AND BENEFITS. The Village Board has the sole and exclusive power to determine whether to adopt any municipal ordinance, rule, or regulations related to the establishment of staffing, wages and other forms of compensation of Village employees except as may be required by State Statute or Federal Law or as assigned by the Village Board to the Village Administrator under Chapter 1.15 of the Municipal Code of Ordinances. Prior to exercising this authority, the Village Board shall ensure that it is well informed and fully advised in order to best serve the government and good order of the Village, for the Village's commercial benefit, and for the health, safety, and welfare of the public. To ensure that the Village Board is well informed and fully advised, the Village Board may conduct all such investigation(s) as the Village Board may deem necessary and appropriate, which may include: Authorizing the preparation of studies related to economics, marketing, employee retention and feasibility; Referring the matter to Village Staff for report and recommendation; Submitting the matter to review by Village committees and commissions; Investigating alternatives with other municipal entities; Submitting the matter for review by other

Sec. 23-94. - ~~Direct legislation ordinance to require a binding referendum for projects requiring a Village expenditure of \$1,250,000.00 or more.~~ Public Input or Approval for Large Capital Construction Projects.

~~(a) Except as provided in par. (b), P~~prior to the start of any physical construction of ~~fn~~ any Village-financed project ~~requiring-involving~~ a net ~~Village capital~~cost to the Village expenditure of ~~\$1,250,000.00 or more~~ exceeding 0.25% of the Village's equalized value as most recently determined by the Wisconsin Department of Revenue, the Village Board shall ~~obtain public input or approval as provided herein~~ As used in this section, the term "net cost" means the total amount paid or to be paid by the Village less any amounts received or to be received in connection with the project in the form of governmental grants, private donations, developer contributions or other third-party funding sources.

- ~~(1) If the net cost of the project is greater than 0.25% but less than 1% of the Village's equalized value, The Village Board shall establish an advisory committee comprised of (seven) 7 Village residents including not more than two (2) Village Board members, to review the proposed project and expenditure and make a recommendation to the Village Board. The Board shall establish a deadline of not less than four (4) months for the committee to make its recommendation. The Village Board shall consider the advisory committee's recommendation before taking final action to approve the expenditure. If the advisory committee fails to offer a recommendation by the deadline established by the Village Board the Board may proceed without further limitation by this section.~~
- ~~(2) If the net cost of the project is equal to or greater than 1% of the Village's equalized value, the Village Board shall~~ submit to the electorate a binding referendum for approval of the project. Failure of the binding referendum shall preclude the Village from proceeding with the project. The wording of any referendum shall provide the specific purpose, location, and cost of the project. Nothing in this ~~provision-section~~ shall be construed to preclude the Village from exercising its role in the planning or design of such publicly financed projects.

~~(a)(b)~~ Subsection (a) shall not apply to the following:

- ~~(1) public street projects;~~
- ~~(2) -public projects paid for~~funded by ~~McFarland Utilities~~a Village utility (water, sewer and stormwater);
- ~~(3) -or to any other capital expenditures that are not public construction projects-projects qualifying as project costs in an approved tax incremental district project plan;~~
- ~~(4) Projects required by any Federal, State or County statute, regulation, rule or ordinance, any court order or any previously approved agreement;~~
- ~~(5) Projects undertaken jointly with another unit of government;~~
- ~~(6) Public safety facilities, limited to fire, police, EMS and municipal court;~~
- ~~(7) Projects undertaken to address emergency conditions as determined by the Village Board.~~

~~(c) The maximum capital expenditure amount in subsections (a)(1) and (2) shall be adjusted annually for inflation or deflation in November of each year for the subsequent calendar year, utilizing the Consumer Price Index for all Urban Consumers, National Series (CPI-U), assuming [November 1, 2014] = 100, for all nonfood items as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Village shall maintain a file open to the public and published on the Village website showing the said maximum amount for all years after the initial effective date.~~

(d) This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60-day period a referendum petition as provided by Wis. Stats. § 66.0101 shall be filed, in which case this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereon.

Sec. 23-94. - Public Input or Approval for Large Capital Construction Projects.

- (a) Except as provided in par. (b), prior to the start of any physical construction on any Village-financed project involving a net cost to the Village exceeding 0.25% of the Village's equalized value as most recently determined by the Wisconsin Department of Revenue, the Village Board shall obtain public input or approval as provided herein. As used in this section, the term "net cost" means the total amount paid or to be paid by the Village less any amounts received or to be received in connection with the project in the form of governmental grants, private donations, developer contributions or other third-party funding sources.
- (1) If the net cost of the project is greater than 0.25% but less than 1% of the Village's equalized value, The Village Board shall establish an advisory committee comprised of (seven) 7 Village residents including not more than two (2) Village Board members, to review the proposed project and expenditure and make a recommendation to the Village Board. The Board shall establish a deadline of not less than four (4) months for the committee to make its recommendation. The Village Board shall consider the advisory committee's recommendation before taking final action to approve the expenditure. If the advisory committee fails to offer a recommendation by the deadline established by the Village Board the Board may proceed without further limitation by this section.
 - (2) If the net cost of the project is equal to or greater than 1% of the Village's equalized value, the Village Board shall submit to the electorate a binding referendum for approval of the project. Failure of the binding referendum shall preclude the Village from proceeding with the project. The wording of any referendum shall provide the specific purpose, location, and cost of the project. Nothing in this section shall be construed to preclude the Village from exercising its role in the planning or design of such publicly financed projects.
- (b) Subsection (a) shall not apply to the following:
- (1) public street projects;
 - (2) public projects funded by a Village utility (water, sewer and stormwater);
 - (3) projects qualifying as project costs in an approved tax incremental district project plan;
 - (4) Projects required by any Federal, State or County statute, regulation, rule or ordinance, any court order or any previously approved agreement;
 - (5) Projects undertaken jointly with another unit of government;
 - (6) Public safety facilities, limited to fire, police, EMS and municipal court;
 - (7) Projects undertaken to address emergency conditions as determined by the Village Board.
- (c) (c)This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60-day period a referendum petition as provided by Wis. Stats. § 66.0101 shall be filed, in which case this ordinance shall not take effect until it shall have been submitted to a referendum vote of the electors and approved by a majority of the electors voting thereon.