

CHAPTER 3

FINANCE

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FINANCE

3.01 ANNUAL BUDGET Error! Bookmark not defined.

(1) Departmental Estimates. On or before the first day of October in each year, each officer or department shall file with the City Clerk an itemized statement of disbursements made to carry out the powers and duties of such officer or department during the preceding fiscal year, and a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer or department during such year, and of the condition and management of such funds; also detailed estimates of the same matters for the current fiscal year and for the ensuing year. Such statements shall be presented in the form prescribed by the City Clerk and shall be designated as the "departmental estimates" and shall be as nearly uniform as possible for the main divisions of all departments.

(2) Consultation With Department Head. The Mayor and Finance Committee shall consider such departmental estimates in consultation with the department head, and shall then determine the total amount to be recommended in the budget for such department or activity.

(3) Mayor and Finance Committee to Prepare Budget. On or before the twentieth day of October in each year, the Mayor and Finance Committee shall prepare and submit to the Common Council a proposed budget presenting a financial plan for conducting the affairs of the City for the ensuing calendar year. The budget shall include the following information:

(a) The expense of conducting each department and activity of the city for the ensuing fiscal year and corresponding items for the current and last preceding fiscal years, with reasons for any proposed increase or decrease as compared with actual and estimated expenditures for the current year.

(b) An itemization of all anticipated income of the City from sources other than general property taxes and bond issues, with a comparative statement of the amounts received by the City from each of the same or similar sources for the current and last preceding fiscal years.

(c) An estimate of the amount of money to be raised from general property taxes which, with income from other sources, will be necessary to meet the proposed expenditures.

(d) All existing indebtedness of the City, including the amount of interest payable and principal to be redeemed on any outstanding general obligation bonds of the City and any estimated deficiency in the sinking fund of any such bonds due during the ensuing fiscal year.

(e) All anticipated, unexpended or unappropriated balances and surpluses, if any.

(f) Such other information as may be required by the Common Council.

(4) Notice of Public Hearing. A summary of such budget and notice of the place where such budget in detail is available for public inspection and the time and place for holding a public hearing thereon shall be published as a Class 1 notice, under Wis. Stat. Chapter 985, in a newspaper of general circulation in the City at least fifteen (15) days prior to the time of such public hearing.

(5) Hearing on Budget; Appropriation. Not less than fifteen (15) days after the publication of the proposed budget and the notice on the hearing thereon a public hearing shall be held at the time and place stipulated at which time any resident or taxpayer of the City shall have an opportunity to be heard on the proposed budget. The budget hearing may be adjourned from time to time. The amount of the tax to be levied or certified, the amounts of the appropriations and the purposes for such appropriations stated in the budget, after any alterations made pursuant to the hearing, shall be adopted by a majority vote of the members of the Common Council and such vote shall constitute an appropriation of the items therein stated and the final budget for the ensuing year.

(6) Changes in Final Budget. Upon recommendation of the Finance Committee the Common Council may by a two thirds (2/3) vote of the entire membership change or alter an appropriation in the final budget or transfer any portion of an unencumbered balance of an appropriation to any other purpose or object. Notice of such transfer shall be published as a Class 1 notice under Wis. Stat. Chapter 985, in the City within eight (8) days thereafter.

(7) Expenditures Limited to Annual Appropriation. No money shall be drawn from the treasury of the City nor shall any obligation for the expenditure of money be incurred, except in pursuance of the appropriations in the final budget or in such budget as changed or altered as authorized by subsection (6) hereof. At the close of each fiscal year any unencumbered balance of an appropriation shall revert to the general fund and shall be subject to reappropriation.

3.02 TREASURER'S BOND ELIMINATED.

The City of Middleton elects not to be bound by the provisions of Wis. Stat. s. 70.67, which require the City Treasurer to execute and deliver to the County Treasurer a bond conditioned upon his or her paying over all taxes of every kind which shall come into his or her hands and which he or she is required to pay to the County Treasurer. In lieu of such bond, the Common Council hereby obligates the City of Middleton to pay, in case the City Treasurer shall fail to do so, all taxes required by law to be paid by the City Treasurer to the County Treasurer.

3.03 CLAIMS AGAINST THE CITY.

(1) Approval and Payment of Claims. Payment of claims in excess of \$50.00 other than tort claims may be made by the Financial Director after the Finance Committee shall have audited and approved each such claim as a proper charge against the treasury and shall have endorsed its approval thereon after the following conditions have been complied with:

- (a) That funds are available therefor pursuant to the budget approved by the Common Council.
- (b) That the item or service covered by such claim has been duly authorized by the proper official, department head, board or commission.
- (c) That the item or service has been actually supplied or rendered in conformity with such authorization.
- (d) That the claims is just and valid pursuant to law.

The Finance Committee may require the submission of such proof and evidence to support the foregoing as in its discretion it may deem necessary.

(2) List of Payments Submitted to Common Council. The Finance Committee shall file with the Common Council monthly a list of the claims approved, showing the date paid, the name of the claimant, purpose and amount.

(3) Annual Audit. There shall be an annual detailed audit of the financial transactions and accounts of the City of Middleton by an independent certified public accountant pursuant to Wis. Stat. s. 73.10.

(4) Approval and Payment of Smaller Claims.

(a) Payment of claims of \$50.00 or less other than tort claims may be made by the Financial Director after he or she audits and approves each claim as a proper charge against the treasury and endorses his or her approval on the claim. The City Administrator shall countersign each claim approved under this procedure. The Financial Director and City Administrator shall, prior to approving claims, determine that the following conditions have been complied with:

- 1. That funds are available therefor pursuant to the budget approved by the Common Council.
- 2. That the item or service covered by such claim has been duly authorized by the proper official, department head, board or commission.
- 3. That the item or service has been actually supplied or rendered in conformity with such authorization.
- 4. That the claim is just and valid pursuant to law.

(b) List of Payments to be submitted to the Common Council. The Financial Director shall file with the Common Council monthly a list of the claims approved under this section, showing the date paid, the name of the claimant, purpose, and amount.

(5) Liability Claims. The City Administrator shall review all claims filed with the City claiming City liability for personal injury, property damage or any other claims of liability for which the City may have insurance coverage. Within thirty (30) days of receipt of any such claim, or such additional time as may be necessary to investigate the merits of the claim, but not more than one hundred twenty (120) days, the City Administrator shall provide a summary report including the claimant's name, the amount of the claim and nature of the claim to the Finance Committee and Common Council along with his or her recommendation for action. Notwithstanding Section 1.02(2)(c), any claim the City Administrator recommends be disallowed may be placed upon a consent agenda for action by both the Finance Committee and Council in accordance with Section 1.02(2)(a) and (b).

3.04 PUBLIC WORKS CONTRACTS; RESTRICTIONS ON BIDDERS.

(1) All municipal public construction, the estimated cost of which exceeds \$25,000.00, shall be let by contract to the lowest responsible bidder, as required by Wis. Stat. s. 62.15(1). In the case of contracts of \$5,000 or more but less than \$25,000.00, a class 1 notice of the proposed contract shall be provided. Pursuant to Wis. Stats. §62.15(1), any class of public construction to be performed directly by the City shall not be required to be let by bid.

(2) No person who shall engage in an illegal act of bid-rigging, price fixing or collusion in connection with any state or municipal public construction after April 1, 1974, and who shall be convicted thereof by any court of record in the State of Wisconsin, shall qualify as a "responsible" bidder on any City of Middleton construction advertised after said date for a period of two (2) years from and after the date of the conviction. The word "person", as used in this paragraph, shall likewise apply to any corporation or partnership, as well as an individual.

3.05 INTEREST ON SPECIAL ASSESSMENTS.

From and after June 21, 1988, interest payable on installments of special assessments levied by the Common Council shall be one and one half (1 1/2) percent in excess of the rate presently charged the City for the affected capital borrowing projects. This rate is to be additionally rounded off to the next higher percent in the event the rate is a fraction of a whole percent.

3.06 PAYMENT OF SPECIAL ASSESSMENTS BY THE CITY AS A LIEN AGAINST THE PROPERTY BENEFITTED.

(1) The Common Council has made the following findings of fact:

(a) In the interest of public health, safety, and welfare, it is often necessary to construct improvements in areas in which property owners reside for whom the payment of the special assessments for the improvements could constitute a severe financial hardship.

(b) Since Wis. Stat. s. 74.77 authorizes any city to direct the City Treasurer to pay

any tax legally assessed against the real estate of any person, as defined in that statute, for whom such tax would be a financial hardship, this ordinance is adopted in order to exercise the power granted by that statute.

(2) For the purposes of this ordinance, an individual described in Wis. Stat. s. 74.77 shall be defined as any individual who meets all of the following criteria:

(a) An individual owns and resides in a single-family or two-family residence, against which a special assessment has been levied in accordance with law.

(b) An individual who has an annual gross income equal to or less than 175% of the United States Community Services Administration's Poverty Guidelines most recently issued prior to the time the special assessment, or any installment of a special assessment, is placed on the tax roll.

(c) An individual who certifies to the City Treasurer in writing that the payment of the special assessment, or any installment of the special assessment, is a financial hardship, and that he or she qualifies under paragraphs (a), and (b), above.

(3) The Common Council may, by resolution, direct the City Treasurer to pay the special assessment, or balance thereof, assessed against the residence of any individual who meets the criteria hereinabove specified.

(4) A copy of such resolution, including a statement of the amount, date paid and description of the real estate, certified by the City Clerk, shall be recorded with the Register of Deeds of Dane County, and the amount shall thereby become a lien upon such real property in favor of the City prior to any other lien other than prior outstanding tax certificates or prior liens hereunder for the amount paid, with legal interest, and shall be enforceable upon transfer of title of the property by sale, inheritance, or will, in the manner provided by law for the enforcement of mechanic's liens, except when such transfer is to a surviving spouse who meets the above criteria.

(5) The owner of such property, his or her heirs, personal representatives or assigns may discharge such lien at any time by paying the amount of such lien, with accrued interest, to the City Treasurer who shall execute a proper satisfaction which may be duly recorded with the Register of Deeds.

(6) The holder of any other lien against said real estate may purchase such lien by payment of the amount thereof, with accrued interest, to the City Treasurer, who shall execute and deliver a proper assignment thereof to such payer and, upon recording said assignment, the assignee shall have the same rights which the City of Middleton had prior to the assignment.

(7) The City Treasurer shall prepare a report of the financial impact of this ordinance for the preceding year to the Common Council.

3.07 FEES FOR COPIES OF CITY RECORDS.

(1) Charges and fees as set forth in the Fee Schedule under Section 3.12 may be charged for the following:

(a) Duplication and furnishing copies of any public records or papers. Public records such as minutes, which may be printed in quantity in advance of requests for copies, may be furnished without charge. No copies of any nature shall be mailed to any applicant unless prior arrangements are made with the City Clerk for the payment of postage.

(b) Duplicate real estate tax bills requested by anyone other than the property owner for the property in question. No copies of any nature shall be mailed to any applicant unless prior arrangements are made with the City Treasurer for the payment of postage.

(c) Preparation of a "Statement of Real Property Status" form which the City Clerk is hereby authorized and directed to prepare upon request and which shall include such information as is normally sought by interested parties when ownership of real property is transferred such as special assessments, deferred assessments, changes in assessments, outstanding water bills, latest water bill, contemplated improvements, flood plain status and violations of building and health codes. Pursuant to Wis. Stats. 196.137 no utility customer information which serves to identify the customer individually by usage or account status shall be released without the customer's consent. No copies of any nature shall be mailed to any applicant unless prior arrangements are made with the City Clerk for the payment of postage.

(d) Preparation of a Zoning Letter which the City Planning Director/Zoning Administrator is hereby authorized and directed to prepare upon request and which shall include such information as the zoning classification of a property and acknowledgment of its legal conforming use. The authorization granted in this subsection shall not be deemed to authorize any cause of action against the City or any officer, employee or agent of the City for any erroneous information provided in a Zoning Letter, nor shall this paragraph be deemed to allow any information contained in a Zoning Letter to supersede the terms of the City Zoning Code or any other City Ordinance.

3.08 PENALTY AND FEES FOR CERTAIN DELINQUENT PAYMENTS AND CHECKS ISSUED WITHOUT SUFFICIENT FUNDS

(1) There is hereby imposed a penalty of .5% per month or fractional part thereof, in addition to the interest provided for in Wis. Stat. s. 74.80(1), on all personal property taxes and special assessments overdue or delinquent.

(2) Checks Returned for Insufficient Funds. In the event any check submitted to the City for payment of any fee, utility bill, parking or other citation, special assessment or other obligation and the financial institution upon which the check is

drawn refuses to honor the check due to insufficient funds, the City Treasurer or other employee or officer authorized to administer or process, after written notice and reasonable opportunity to cure, shall charge a fee as set forth in the Fee Schedule adopted under Section 3.12 to cover administrative costs relating to the insufficient payment. (O1442, 8/1/17)

3.09 PAYMENT OF RECORDING FEES REQUIRED.

There is hereby granted the authorization to the City Treasurer to require payment of an amount not to exceed the actual out of pocket costs for any fees for recording or filing with other municipal corporations, counties or state agencies in order to accomplish the purposes or requirements under these City of Middleton General Ordinances. These amounts may be assessed prior to the recordings of filings where the amount required can be reasonably ascertained.

3.10 HOTEL-MOTEL ROOM TAX.

(1) Definitions. In this Section, the following definitions shall apply:

- (a) **Hotel or Motel.** A building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, bed and breakfast establishments, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations rented for a continuous period of more than one (1) month and accommodations furnished by any hospital, sanatorium or nursing home or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private share- holder or individual.
- (b) **Gross Receipts.** Has the meaning as defined in Sec. 77.51(4)(a), Wis. Stats., insofar as applicable.
- (c) **Transient.** Any person residing for a continuous period of less than one (1) month in a hotel, motel or other furnished accommodation available to the public.
- (d) **Bed and Breakfast Establishment.** Any place of temporary lodging that provides four (4) or fewer rooms for rent, which is open for rental more than ten (10) nights in a twelve (12) month period, is the owner's personal residence and is occupied by the owner at the time of rental, and in which the only meal served is breakfast.

(2) Imposition of Tax.

(a) Pursuant to Sec. 66.0615, Wis. Stats., a tax is hereby imposed on the privilege

and services of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for the use of the accommodations. Such tax shall be at the rate of seven percent (75%) of the gross receipts from such retail furnishing of rooms or lodgings. Such tax shall not be subject to the selective sales tax imposed by Sec. 77.52(2)(a)1, Wis. Stats.

(b) **Exemptions.** The following room sales are exempt from this tax:

1. Sales to the federal government;
2. Sales to persons listed under Sec. 77.54(9a), Stats.

(c) **Exemption Conditions.** The following conditions must occur for a sales to be exempt from the room tax:

1. The lodging establishment must issue the billing or invoice for the lodging in the name of the exempt entity; and
2. The lodging establishment must receive from the exempt entity:
 - a. in the case of federal and Wisconsin state or local governmental units, a purchase order or similar written document (such as a letter of authorization), or
 - b. in the case of nonprofit religious, charitable, scientific or educational organization, the organizations' certificate of exempt status number.
3. The exemption still applies if the employee pays with his or her own funds, as long as the above conditions are met.

(3) Collection of Tax.

(a) **Administration by City Treasurer.** This tax shall be administered by the City Treasurer who shall, at City expense, provide the necessary application and reporting forms at no cost to the taxpayer.

(b) **Reporting Periods.** The tax imposed for the months of January, February and March, and for each calendar quarter thereafter, is due and payable on the last day of the month next succeeding the calendar quarter for which imposed. A return shall be filed with the City Treasurer, by those furnishing at retail such rooms and lodging, on or before the same date on which such tax is due and payable. Such returns shall show the gross receipts of the preceding calendar quarter from such retail furnishing of room or lodging, the amount of taxes imposed for such period, and such other information as the City Treasurer deems necessary. Every person required to file such quarterly return shall, with his first return, elect to file an annual calendar year or fiscal year return. Such annual return shall be filed within ninety (90) days of the close of each such calendar or fiscal year. The annual return shall summarize the quarterly returns, reconcile and adjust for errors in the quarterly returns, and shall contain certain such additional information as the City Treasurer requires. Such annual returns shall be made on forms as prescribed by the City

Treasurer. All such returns shall be signed by the person required to file a return or duly authorized agent, but need not be verified by oath. The City Treasurer may, for good cause, extend the time for filing any return, but in no event longer than one (1) month from the filing date.

(c) Sale or Conveyance of Business. If any person liable for any amount of tax under this Section sells out his business or stock of goods or quits the business, his successors or assigns shall withhold sufficient portion of the purchase price to cover such amount until the former owner produces a receipt from the City Treasurer that it has been paid or a certificate stating that no amount is due. If a person subject to the tax imposed by this Section fails to withhold such amount of tax from the purchase price as required, he shall become personally liable for payment of the amount required to be withheld by him to the extent of the price of the accommodations valued in money.

(d) Determination of Tax by Audit.

(1) The City Treasurer may, by office audit, determine the tax required to be paid to the City or the refund due to any person under this Section. This determination may be made upon the basis of the facts contained in the return being audited or on the basis of any other information within the City Treasurer's possession that meets the criteria set forth in Sec. 66.75(2), Stats. One or more such office audit determination may be made of the amount due for any one or for more than one period.

(2) The City Treasurer may, by field audit, determine the tax required to be paid to the City or the refund due to any person under this Chapter. The determination may be made upon the basis of the facts contained in the return being audited or upon any other information with the City Treasurer's possession. The City Treasurer is authorized to examine and inspect the books, records, memoranda, and property of any person in order to verify the tax liability of that person or of another person. Nothing herein shall prevent the City Treasurer from making a determination of tax at any time.

(e) Failure to File Return. If any person fails to file a return as required by this Chapter, the City Treasurer shall make an estimate of the amount of the gross receipts under Subsections (b) and (c). Such estimates shall be made for the period for which such person failed to make a return and shall be based upon any information which is in the City Treasurer's possession or may come into the Treasurer's possession. On the basis of this estimate, the City Treasurer shall compute and determine the amount required to be paid to the City, adding to the sum thus arrived at a penalty equal to ten percent (10%) thereof. One or more such determinations may be made for one or more than one period.

(f) Interest on Unpaid Taxes. All unpaid taxes under this Chapter shall bear interest at the rate of twelve percent (12%) per year from the due date of the return until the first day of the month following the month in which the tax is paid or deposited with the City Treasurer. An extension of time within which to file a return shall operate to extend the due date of the return for purposes of interest computations. If the City Treasurer determines that any overpayment of

tax has been made intentionally or by reason of carelessness or neglect, or if the tax which was overpaid was not accompanied by a complete return, he shall not allow any interest thereon.

(g) Delinquent Returns: Late Fees; Penalty.

(1) Delinquent tax returns shall be subject to a late filing fee of One Hundred Dollars (\$100.00). The tax imposed by this Chapter shall become delinquent if not paid:

(a) In the case of a timely filed return, within thirty days (30) days after the due date of the return, or within thirty (30) days after the expiration of an extension period, if one is granted.

(b) In the case of no return filed or a return filed late, by the due date of the return.

(2) If due to negligence no return is filed, or a return is filed late, or an incorrect return is filed, the entire tax finally determined shall be subject to a forfeiture established herein as follows:

A forfeiture of 25% or \$5,000.00, whichever is less, of the tax imposed and is due and owing within thirty (30) days after the due date of said return.

If a person fails to file a return when due or files a false or fraudulent return with the intent in either case to defeat or evade a tax imposed by this ordinance, a forfeiture of 50% of the entire tax finally determined shall be added to the tax required to be paid exclusive of interest and other penalties.

(4) Security Required. In order to protect the revenue of the City, the City Treasurer may require any person liable for the tax imposed by this Section to place with him before or after a permit is issued such security not in excess of One Hundred Dollars (\$100.00) as the City Treasurer shall determine. If any taxpayer fails or refuses to place security, the City Treasurer may revoke or refuse to issue such permit. If any taxpayer is delinquent in the payment of the taxes imposed by this Section, the City Treasurer may, upon ten (10) days' notice, recover the taxes, interest and penalties from the security placed with the said Treasurer by such taxpayer. No interest shall be paid or allowed by the City to any persons for the deposit of such security.

(5) Records to be Maintained. Every person liable for the tax imposed by this Section shall keep or cause to be kept such records, receipts, invoices and other pertinent papers in such form as the City Treasurer and this Chapter shall require. Such records shall be retained and made available for a period of five (5) years from the date of a filing period.

(6) Confidentiality Maintained.

(a) All tax returns, schedules, exhibits, writings. or audit reports relating to such

returns on file with the City Treasurer are deemed to be confidential, except the City Treasurer may divulge their contents to the following and no others:

- (1) The person who filed the return.
- (2) Officers, agents or employees of the Federal Internal Revenue Service or the State Department of Revenue.
- (3) Officers, employees or agents of the City Auditors.
- (4) Such other public officials of the City of Middleton when deemed necessary.

(b) No person having an administrative duty under this Section shall make known in any manner the business affairs, operations or information obtained by an investigation of records of any person on whom a tax is imposed by this Section or the amount or source of income, profits, losses, expenditures or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person, except as provided above.

(7) Penalties. Any person who is subject to the tax imposed by this Chapter or who fails or refuses to permit the inspection of his records by the City Treasurer after such inspection has been duly required by such Treasurer, or who fails to file a return as provided in this Chapter, or who violates any other provision of this Chapter, shall be subject to a forfeiture pursuant to Section 30.04. Each day, or portion thereof, that such violation continues is hereby deemed to constitute a separate offense.

3.11 IMPACT FEE ADMINISTRATION.

(1) **Intent.** This Ordinance is intended to allocate financial burdens of providing public facilities fairly between residents living in the City at the time of adoption of this Ordinance, the owners of existing development projects in the City and developers of new land developments, as well as to comply with Wis. Stats. § 66.0617. The Common Council is adopting this Ordinance to provide a means to recover the cost of development beyond that already existing to finance public facilities by other means authorized by law as authorized under Wis. Stats. § 66.0617(2)(b) and Chapter 19 of the Middleton Municipal Code.

(2) **IMPACT FEES ESTABLISHED.** The following fees are impact fees established by the City pursuant to Wis. Stats. § 66.0617:

(a) Public law enforcement facilities impact fees pursuant to Section 11.05(16)(a) of the Middleton Municipal Code;

(b) Public fire facilities impact fees pursuant to Section 11.05(16)(b) of the Middleton Municipal Code; and

(c) Public emergency medical services facilities impact fees pursuant to Section 11.05(16)(c) of the Middleton Municipal Code.

(3) BASIS FOR IMPACT FEES. The following City documents contain the Needs Assessments for the impact fees identified under (2), above, and demonstrate City compliance with the requirements of Wis. Stats. § 66.0617(3):

(a) Public Facilities Needs Assessment and Impact Fee Study prepared by Ruckert & Mielke, Inc. dated October, 2007.

(4) DISPOSITION OF IMPACT FEE REVENUE. Revenues collected by the City as impact fees shall be placed by the Finance Director in separate segregated interest-bearing accounts, and shall be accounted for separately from other funds of the City. Impact fee revenues and interest earned on impact fee revenues may be expended by the City only for the capital costs for which the impact fees were imposed, and shall be expended on a first-in first-out basis. In the event that the City should ever establish separate impact fee zones with different fees depending upon the zone in which the property is located, separate accounts shall be kept of fees collected from different impact fee zones, where the particular Impact Fee Ordinance provides for differential fees according to zones, and revenues collected in particular zones shall be spent in the zones as appropriate.

(5) EXPENDITURES FROM IMPACT FEE REVENUE.

(a) The City determines the following lengths of time to be appropriate for the planning, financing, acquisition and construction of the public facilities listed below:

<u>Type of Facility</u>	<u>Maximum Time to Use Impact Fees Collected From Time of Fee Collection</u>
(i) Law Enforcement Facilities	7 years
(ii) Fire Facilities	7 years
(iii) EMS Facilities	7 years

(b) Notwithstanding the maximum time period specified herein, if the statutory maximum time to use impact fees collected is less than any maximum time specified herein, the maximum time to use such impact fees collected shall be the statutory maximum period.

(c) Fees held by the City under (5)(a), above, and not used within the time period specified herein shall be refunded to the current owner of record of the property at the time of the refund with respect to which the impact fees were imposed.

(6) USE OF IMPACT FEES. Funds collected from impact fees shall be used solely for the purpose of paying the proportionate cost of providing public facilities that may become necessary due to land development. These costs may include the cost of debt service on bonds or similar debt instruments when the debt has been incurred for the purpose of proceeding with designated public facilities projects prior to the collection of all anticipated impact fees for that project, to reimburse the City for advances of other funds or reserves, and for such other purposes consistent with Wis. Stats. § 66.0617 which are approved by the Common Council.

(7) PAYMENT OF IMPACT FEES.

(a) All required impact fees, unless expressly exempted in a section of this Ordinance, or as specified in (b) herein, shall be paid in full at the time of issuance of a building permit.

(b) In the event that Wis. Stats. § 66.0617, or any successor statute, requires impact fee payments to be made later than at the time of building permit issuance, then any impact fees shall be payable no earlier than the earliest date allowed under State law. As of the effective date of this Ordinance, the earliest date of payment of impact fees is 14 days after issuance of building permits pursuant to Wis. Stats. § 66.0617(6)(g).

(c) Any person failing to timely pay an impact fee due in full after issuance of a building permit shall be subject to summary revocation of said building permit the day after the impact fee was due in full.

(d) The Common Council may authorize the payment of impact fees otherwise payable in full in installment payments. If installment payments are authorized, interest shall be paid on the installment payments at the same rate charged by the City on installments of special assessments.

(e) Pursuant to Wis. Stats. § 66.0617(7), the Common Council shall have the right to provide for an exemption from, or a reduction in the amount of, any impact fees on land development that provides low-cost housing, except that no amount of any impact fee for which an exemption or a reduction is provided may be shifted to any other land development in the City. Any such exemption or reduction in impact fees otherwise due shall be provided by the Common Council in a subsequent Ordinance.

(8) REVIEW OF IMPACT FEES. The Finance Director shall report annually to the Common Council with respect to all deposits, withdrawals and fund balances in the impact fee funds. The purpose of this report is to provide the Common Council with information necessary to determine that all fees collected are spent within the time required for the purpose intended and that the amount of fees imposed continues to represent an equitable and reasonable apportionment of the cost of public improvements and requirements generated by land development. Upon such consideration and for such purposes, the Common Council may make reasonable adjustments to the amount of such fees and determine whether there exists any reasonable need for refund of fees previously collected. Any such adjustment or refund shall be by Ordinance. In addition, irrespective of the preceding sentence, all impact fees imposed shall be adjusted annually as of January 1st of each year commencing January 1, 2009 by the Finance Director utilizing the Engineering News Record Construction Cost Index for the previous 12 months. The Finance Director shall maintain a copy of the calculation and adjusted impact fees.

(9) APPEALS. A developer may appeal to contest the amount, collection or use of impact fees in the manner provided herein:

(a) It shall be a condition to the commencement of such an appeal that the impact fee from which the developer appeals shall be paid as and when the fee or any installment thereof

becomes due and payable and, upon default in making any such payment, such appeal may be dismissed.

(b) The only questions appealable under this section are the following, as authorized by Wis. Stats. § 66.0617(10):

- i. The amount of fee charged and paid by the developer;
- ii. The method of collection of the impact fee; and
- iii. The use to which the particular fee paid by the developer is made by the City.

(c) Appeals must be brought within 15 days of the date of payment of the impact fee.

(d) The appellant shall pay a filing fee of \$200.00 at the time of filing the appeal. The notice of appeal shall be filed with the City Clerk.

(e) Following the filing of the notice of appeal, the City Clerk shall compile a record of the Ordinance imposing the impact fee that is the subject of the appeal, a record of the management and expenditure of the proceeds of the impact fee and shall transmit these documents to the City Administrator. In consultation with the City Departments, the Clerk shall also compile a report on each appeal in which the appellant is seeking a reduction or refund in the impact fee paid. This report shall specify the fiscal impact on the City of Middleton if the appeal overturns the impact fee. If the fiscal impact report indicates that the appeal, if successful, will cause a revenue shortfall that otherwise was not budgeted with respect to the specified public facility, and if this revenue shortfall cannot be reconciled by the reduction in impacts caused by development on the appellant's property, the report shall estimate whether it will be necessary for the City to adjust impact fees or amend existing Ordinances to recover the proposed revenue shortfall.

(f) The Common Council shall hold a public hearing on the appeal, preceded by a Class 1 notice, and provide a fair opportunity for the appellant to be heard. The burden shall be on the appellant to establish illegality or impropriety of the impact fee from which the appeal has been taken. Following the close of the public hearing, the Common Council shall deliberate upon the matter, and shall conduct such studies and inquiries as it deems appropriate to decide the appeal.

(g) If the Common Council determines that the appeal has merit, it shall determine appropriate remedies. These may include reallocation of the proceeds of the challenged impact fee to accomplish the purposes for which the fee was collected, refunding the impact fee in whole or in part, along with any interest collected by the City thereon, or granting the appellant the opportunity to make the impact fee payment in installments, or such other remedies as it deems appropriate in a particular case.

(10) **DEFINITIONS.** In this Ordinance, the following definitions shall be applicable:

(a) **Capital Costs.** The capital cost to construct, expand or improve public facilities, including the cost of land, and including legal, engineering and design costs to construct,

expand or improve public facilities, except that not more than 10% of capital cost may consist of legal, engineering and design costs unless the City can demonstrate that its legal, engineering and design costs relate directly to the public improvement for which the impact fees were imposed actually exceed 10% of the capital costs. Capital costs do not include other non-capital costs to construct, expand or improve public facilities, the costs of equipment to construct, expand or improve public facilities, or the cost of any vehicles.

(b) **Developer.** A person that constructs or creates a land development.

(c) **Impact Fees.** Cash contributions, contributions of land or interest in land or any other item of value that are imposed on a developer by the City under this section.

(d) **Land Development.** The construction or modification of improvements to real property that creates additional residential dwelling units within the City or that results in non-residential uses that create a need for new, expanded or improved public facilities within the City.

(11) **EXEMPTIONS.**

(a) **Purpose.** It is the established policy of the City of Middleton to encourage the development of owner occupied housing for a range of incomes, to protect and preserve the community's investment in existing housing and neighborhoods. To further these goals, the City of Middleton supports programs to encourage affordable housing alternatives in the City. To the extent impact fees impose a burden upon such programs, the Common Council has determined that it is in the public interest to exempt housing involved in such programs from impact fees or provide rebates where appropriate.

(b) **Housing Programs Eligible For Exemption.** Any property constructed pursuant to any of the following programs or policies shall be entitled to an exemption or rebate of impact fees imposed upon the subject property:

1. City of Middleton Workforce Housing Agreement;
2. City of Middleton Down Payment Assistance Program;
3. Dane County Housing Authority Down Payment Assistance Program;
4. Wisconsin Partnership for Housing Development Down Payment Plus Advantage Program;
5. Federal Low Income Housing Tax Credits. Exemption shall be granted only in proportion to the number of rent restricted units provided.
6. Habitat for Humanity.

(c) **Exemptions. How Granted.** Impact fees shall be waived by Workforce Housing Agreement in new developments for each dwelling unit reserved for qualifying homebuyers earning eighty (80) percent or less than the area

median income. For other programs, the City Administrator shall notify the appropriate officers or employees charged with the administration of each eligible program and coordinate with such individuals in developing policies to ensure that when a residential unit is constructed pursuant to an eligible program that impact fees are not charged at the time the building permit is issued. Such policies may require the eligible recipient of program benefits to provide any reasonable documentation appropriate to the applicable program to prove eligibility. Although the City Administrator and his or her designees shall make every effort to ensure fees are not charged where an eligible program warrants exemption, it shall be the ultimate responsibility of the eligible recipient of program benefits to ensure impact fees are not charged and that adequate support for the exemption is provided.

3.12 FEE SCHEDULE.

Except as expressly established elsewhere in this Code or by superseding state statute, the fees for City issued licenses, permits, and various City regulatory applications and services are hereby established as set forth in the Fee Schedule as set forth in Appendix A to this Chapter.

3.13 EQUAL BENEFITS TO BE PROVIDED BY CONTRACTORS.

(1) **Statement of Purpose, Findings.** The purpose of this ordinance is to ensure that contractors doing business with the City of Middleton under certain public works contracts, service contracts, and contracts for financial assistance provide benefits for their employees in domestic partnerships that are equal to the benefits provided for similarly-situated employees who are married. The Common Council finds that City funds should support employers that offer equal compensation, including benefits, to all employees, including employees in a domestic partnership. The Council finds that the equal benefit requirements of this ordinance ensure that City funds are used responsibly and with contractors who reflect values that the City shares while also meeting requirements that public construction contracts be awarded to the lowest responsible bidder. The requirements of this ordinance are for the protection and welfare of the public in the performance of all public contracts.

(2) **Definitions.** In this section:

(a) “Benefit” means any plan, program or policy provided or offered by a contractor to its employees as part of the employer’s total compensation package. This includes, but is not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefit, dental insurance or other dental benefit, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits; and is intended to include benefits

that are provided directly to an employee (such as bereavement leave) and to the employee's spouse or domestic partner (such as health insurance coverage for the spouse or domestic partner).

- (b) **“Cash equivalent” means an amount equal to the actual cost to the employer for providing the benefit in question to the spouse of a married employee.**
- (c) **“City financial assistance” for purposes of this ordinance means any grant, cooperative agreement, loan contract or any other arrangement by which the City provides or otherwise makes available assistance in an amount or value exceeding twenty-five thousand dollars (\$25,000) in whatever form, including, but not limited to:**
 - 1. **Funds;**
 - 2. **Services of City personnel;**
 - 3. **Leases of real property for less than the fair market value;**
 - 4. **The sale, lease or permission to use other City property (other than real property) or any interest in such property;**
 - 5. **The furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease or furnishing of services to the recipient;**
- (d) **“Contractor,” for purposes of this ordinance, means a Service Contractor, a contractor who has entered into a Public Works contract, or a recipient of City Financial Assistance.**
- (e) **“Employee” means any individual, who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to or work or be at any time in any place of employment. “Employee” includes individuals whose work is permanent or temporary, or on a full-time or part-time basis.**
- (f) **“Domestic partner” means an individual in a domestic partnership.**
- (g) **“Domestic partnership” means two adults that are currently registered as a domestic partnership in any governmental jurisdiction offering a domestic partnership or similar registry, or who satisfy the following requirements:**
 - 1. **They are in a relationship of mutual support, caring and commitment and intend to remain in such a relationship in the immediate future; and**

2. They are not married (unless they are married to each other) or legally separated and, if either party has been a party to an action or proceeding for divorce or annulment, at least six (6) months have elapsed since the date of the judgment terminating the marriage; and
 3. Neither domestic partner is currently registered in a domestic partnership with a different domestic partner and, if either partner has previously been registered as a domestic partner in a domestic partnership, at least six (6) months have elapsed since the effective date of termination of that registration; and
 4. Both are eighteen (18) years of age or older; and
 5. Both are competent to contract; and
 6. They are occupying the same dwelling unit as a single, nonprofit housekeeping unit, whose relationship is of permanent and distinct domestic character; and
 7. They are not in a relationship that is merely temporary, social, political, commercial or economic in nature; and
 8. They are not nearer of kin to each other than would be permitted to marry under Wis. Stats. §765.03 or any exceptions thereunder.
- (h) “Person” means any individual, partnership, joint venture, corporation, limited liability company or partnership, trust, association, or other entity that may employ individuals or enter into contracts.
- (i) “Public Works Contract” means any contract for public construction if the value of such contract requires it to be let to the lowest responsible bidder under Wis. Stats. § 62.15.
- (j) “Recipient of City Financial Assistance” means any person, including that person’s subcontractors if the subcontractor has any employee who spends 20 hours or more per week at a project site funded by City Financial Assistance, successors, assignees and transferees, who enters into a contract with the City to receive City Financial Assistance.
- (k) “Service Contract,” for purposes of this ordinance, means any single contract with the City for the provision of services to any City department or agency with an annual budget under the control of the Common Council that has a value exceeding twenty-five thousand dollars (\$25,000) or is in the nature of a general service contract making the contractor available to provide services for as yet unspecified projects or otherwise on an “as needed” basis where the total amount of the contract cannot be predetermined . This includes, but is not limited to, standard “Purchase of Services” contracts.

(l) “Service Contractor” means any person who enters into a Service Contract with the City, including that person’s subcontractors if the subcontractor is performing \$25,000 or more in work, successors, assignees, or transferees.

(3) **Equal Benefits Requirement.**

(a) **Applicability.** This ordinance shall apply to the following types of contracts: Service Contracts, contracts for City Financial Assistance, and Public Works Contracts.

(b) **Requirement to Provide Equal Benefits.** All Contractors shall offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses. If a benefit would be available to the spouse of a married employee or to the employee based on his or her status as a spouse, the benefit shall also be made equally available to a domestic partner of that employee, or to the employee based on his or her status as a domestic partner. Equal availability shall include extending benefits to the dependents of a domestic partner if benefits would be available to the dependents of the employee or spouse. If, after making a reasonable effort to provide an equal benefit as required by this paragraph, the contractor is unable to provide the benefit, the contractor shall provide the employee with the cash equivalent of the benefit.

(c) **Exemptions.** The following contracts shall be exempt from the requirements of this ordinance:

1. Contracts for the purchase of goods or supplies only.
2. Contracts necessitated by or resulting from an emergency which will not permit the delay required to assure compliance with this ordinance.
3. A contract with a contractor whose employees are under a collective bargaining agreement that was in effect prior to the effective date of this ordinance, however, the contractor must agree to propose to the applicable collective bargaining unit that an equal benefit requirement consistent with this ordinance be incorporated into the next collective bargaining agreement or into the existing agreement upon amendment, extension or other modification that occurs after the effective date of this ordinance.
4. Contracts for donations to the City.
5. Contracts With Other Municipalities. For purposes of this ordinance, “municipalities” shall include all units of government listed in Wis. Stats. § 66.0301, inclusive of future amendments.

- 6. Contracts with the State of Wisconsin, the University of Wisconsin, and the Area Board of any Vocational, Technical and Adult Education District.**
- 7. Contracts with the United States of America and individual agencies of the U.S. government.**
- 8. Contracts for the sale or purchase of real property, including through the exercise of eminent domain and the payment of related relocation benefits.**
- 9. Contracts under which the City receives full value in cash, including, but not limited to contracts where the City leases real property, and sells or leases goods or services for cash.**
- 10. Agreements with bond underwriters and agreements with financial institutions where the agreement relates to the City's borrowing.**
- 11. A contract for services if the services are determined to be available from only one person or firm.**
- 12. If a competitive selection process was used for a contract to which this ordinance applies and the responses demonstrate that none of the bidders or applicants can comply with this ordinance, and one or more of the bids or applications would have been responsive if compliance with this section was not required, the contract may be re-bid or new applications sought without the requirements of this ordinance. If a contract is awarded as a result of a re-bid or call for new applications under this paragraph, that contract will be exempt from the requirements of this ordinance.**
- 13. Contracts to which this ordinance would apply that were in effect prior to June 28, 2013.**
- 14. A renewal or extension of a contract to which this ordinance applies that was executed prior to June 28, 2013, if the contractor is providing an essential service or work that, in the opinion of the City Administrator or City Engineer, is not available from any other contractor. Examples include, but are not limited to, renewal of a support or maintenance contract for proprietary software that was purchased prior to the date this ordinance first takes effect, or an extension of time or change order on a public works contract signed prior to the date this ordinance first took effect.**
- 15. Contracts related to the settlement of claims against the City or settlement of litigation in which the City is involved.**

16. Insurance contracts.

17. Contracts for the provision of expert services, including, but not limited to, expert witness testimony for litigation in which the City is or is likely to become involved.

(4) **Proof of Domestic Partner Status.** Contractors with employees who reside in Wisconsin may require those employees to sign and file a Declaration of Domestic Partnership in conformance with Wis. Stats. Ch. 770 and register accordingly with their local County Clerk, as a prerequisite to providing equal benefits under this ordinance. Contractors with employees who reside outside of Wisconsin may require those employees to provide proof of an equivalent registration or other procedure in the jurisdiction where the employee resides, if available. If none is available in the jurisdiction where the employee resides, the Contractor shall recognize a domestic partnership meeting the definition of domestic partnership in this ordinance.

(5) **Mandatory Contract Language.** All contracts to which this ordinance applies shall include the following language and the contractor, before any such contract may become effective, supply a certificate of compliance therewith:

“Equal Benefits Requirement. For the duration of this Contract, the Contractor agrees to offer benefits to employees with domestic partners that are equal to the benefits offered to married employees with spouses, as defined by and in compliance with Section 3.13 of the City of Middleton Code of Ordinances. If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. Equal benefits shall include benefits to the dependents of a domestic partner if benefits would be available to the dependents of the employee or spouse.

Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, the contractor is unable to provide the benefit, the contractor shall provide the employee with the cash equivalent of the benefit.

Proof of Domestic Partner Status. The Contractor may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits.

Notice Posting, Compliance. The Contractor shall post a notice informing all employees of the equal benefit requirements of this Contract, the complaint procedure, and agrees to produce records upon request of the City Subcontractors (Public Works Contracts Only). Contractor shall require all subcontractors, the value of whose work equals or exceeds \$25,000 or 20% of the total labor costs of the contract, whichever is less, to provide equal benefits in compliance with Section 3.13 of the City of Middleton Code of Ordinances.

Subcontractors (Recipients of City Financial Assistance Only).

This requirement also applies to employees of contractors hired by the Recipient who expend at least twenty (20) hours a week at the project site funded by City financial assistance.

Subcontractors (Service Contracts Only). Contractor shall require all subcontractors, the value of whose work is twenty-five thousand dollars (\$25,000) or more, to provide equal benefits in compliance with Section 3.13 of the City of Middleton Code of Ordinances.”

(6) Monitoring and Enforcement.

- (a) Posting of Notice.** While the contract is in effect, all contractors or recipients of City financial assistance to which this ordinance applies shall post notices explaining the equal benefits requirement under the contract and the procedure for filing a complaint under this ordinance, in prominent locations at the workplace where it can be viewed by all employees.
- (b) Complaints.** Any person may file a complaint with the City Administrator that a contractor is in violation of the terms of the contract or this ordinance. The City Administrator shall investigate or cause to be investigated any such complaint and shall report the findings to the Common Council.
- (c) Record-Keeping and Production of Records.** All contractors and recipients of City financial assistance shall keep full and accurate records of benefits provided or cash equivalents paid to employees under this ordinance. If a complaint is filed with the City under sub. (b), the Contractor shall provide upon the City’s request access to all records relevant to compliance with this ordinance and shall require their subcontractors to allow the same access. Contractors shall provide such records to the City Administrator within ten (10) business days of the date requested in writing and shall permit the City access during normal business hours to the above records, as well as access to persons who may have information relevant and necessary to ascertain compliance with this ordinance, within ten (10) business days of the date requested in writing.

- (d) **Violation, Remediation and Sanctions.** The City Administrator shall inform the contractor if a complaint has been filed under this ordinance or a violation has been determined to exist, and in addition to examining the contractor's records, the City may discuss the violation with the Contractor. The purpose of the discussion is to encourage the Contractor to change its practices to achieve compliance. The City may, at its sole option, prescribe appropriate measures for the Contractor to take in order to comply with the Ordinance and may agree, in writing, to a compliance plan which shall be incorporated as an amendment to the contract. If the Contractor or subcontractor fails to comply with this ordinance as made applicable through the contract, the City at its option may do any or all of the following:
1. Cancel, terminate, suspend or non-renew the contract in whole or in part.
 2. Declare the contractor ineligible for further City contracts or disqualify the Contractor from bidding or submitting proposals on City contracts or applying for City Financial Assistance.
 3. Recover on behalf of the City from the prime Contractor 0.5 percent (.5%) of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described herein. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the non-complying subcontractor.
- (e) **Submission of False Information.** Any person who has been found by the City to have submitted any false, misleading or fraudulent information to the City regarding compliance with this ordinance during the term of this contract or an investigation of a complaint under this ordinance may be subject to any of the above sanctions.
- (f) **No Waiver.** Nothing in this subsection shall be construed as a waiver or limitation of the City's remedies under an existing contract or other remedies available at equity or at law.
- (7) **Effective Date and Applicability to Existing Contracts.** This ordinance shall take effect on June 28, 2013, and apply to contracts executed, extended, or renewed by the City on or after that date. No existing contract to which this ordinance applies shall be extended or renewed on or after June 28, 2013, unless the requirements of this ordinance are incorporated into the contract or the contract is determined to be exempt.

(8) Penalty. In addition to any of the sanctions set forth elsewhere in this ordinance, any person who violates any portion of this ordinance or fails to comply with any of its requirements shall, upon conviction hereof, be subject to a forfeiture of not less than one-hundred dollars (\$100) and not more than one thousand dollars (\$1,000), plus costs. Each day or portion thereof that such violation continues shall be considered a separate offense. Prosecution of a forfeiture action for a violation of this ordinance shall not preclude imposition of other sanctions listed above, nor shall the imposition of such sanctions be construed as a limitation on prosecution.